IN THE WAITANGI TRIBUNAL

WAI 3300
WAI 682

IN THE MATTER of the Treaty of Waitangi Act 1975

A N D

IN THE MATTER of Tomokia ngā tatau o Matangireia – The Constitutional Kaupapa Inquiry (Wai 3300)

A N D

IN THE MATTER of a claim by Rewiti Paraone, Erima Henare, Pita Tipene and Waihoroi Shortland on behalf of Te Rūnanga o Ngāti Hine for and on behalf of descendants of Torongare and Hauhaua (Wai 682)

CLOSING SUBMISSIONS

Dated this 22nd day of May 2024

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TABLE OF CONTENTS

MAY IT PLEASE THE TRIBUNAL:

1.0 PREJUDICE: "THEY COULD AND THEY ARE IN THIS INSTANCE PROPOSING TO WIPE AWAY FOUNDATIONAL MĀORI RIGHTS WITH THE STROKE OF A LEGISLATIVE PEN"[1]

1.1 Introductory remarks of Natalie Coates:[2]

> The important point I just wanted to make in terms of that landing point though and where we are at now is that we exist currently in structural breach of Te Tiriti o Waitangi, that is our current power structures are not constituted in a manner that is consistent with Te Tiriti itself. So, that is just to recognise that whilst we have made much progress in this sense in a number of different ways and it must be acknowledged how far we have come, it is limited and of course the recognition of Te Tiriti o Waitangi in legislation in the way that it is, is varied across subject matter, pepper-potted and in many instances would say, it doesn't comply in [and][3] of itself with Te Tiriti o Waitangi.
>
> Which brings me to the Treaty [Principles] Bill and what I understand is being proposed there, noting of course that there is no bill yet, but we have effectively - have an insight into what is being planned and proposed in that sense.
>
> Based on what we know the current wording to be, I undertake a bit of an analysis in my brief of evidence and conclude that what that attempts to do or how it is currently [phrased] is in effect seeking to turn fiction into legal fact. The current wording is a backwards and regressive step that reinterprets and reimagines Te Tiriti in a manner that does absolute violence to its spirit, intents, and its text. It also does it in a disingenuous way, where it takes fragments of Treaty language to frame residence whilst flipping it on its head and recasting it in a way that bears little resemblance to the original promises. So, it creates a warped shadow that masquerades as Te Tiriti.
>
> In my opinion, it won't create the certainty that is claimed, it will likely have the opposite effect. It amounts to one party to an agreement seeking to freeze [it] unilaterally and in bad faith,

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[1] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 190.
[2] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 138, 140, 190.
[3] Counsel note that amendments have been made to quotes throughout these submissions where there are typographical or grammatical errors in the hearing transcript. These amendments are captured in brackets and will be filed as suggested amendments to the hearing transcript in due course.

read it down and out, read down and out the rights of the other party.

If passed, it will represent one of, if not the worst and most flagrant breaches of Te Tiriti o Waitangi in modern history. Even if it doesn't pass, this is one point I don't pick up quite as much in my brief of evidence, the introduction of such a Bill undermines the Crown Māori relationship. Off the back of Treaty Settlement where the Crown…has apologised for past behaviour and in most instances, seek[s] to chart a new more Treaty consistent course. What this does, when you have such a bad faith bill being introduced into Parliament, that proposes to turn Te Tiriti o Waitangi on its absolute head, it affirms what the Crown is capable of in how far they are willing to go.

They could and they are in this instance, proposing to wipe away foundational Māori Rights with the stroke of a legislative pen which is a show of hand, despite the progress of 40 years, that undermines and erodes the trust and faith that we have built up in the honour of the Crown. It also undermines Te Tiriti publicly and has fostered division already within the community and as part of a series of sweeping amendments that are being proposed which is creating that sentiment and hostility more broadly within society.

In terms of the review, I am relatively short on that in my brief, but I did want to clarify a comment that I made at paragraph 83 of my brief where I say: "A review of legislation in and of itself is not major cause for concern." I understand that was a comment that was picked up yesterday by the Crown… I don't want that comment to be taken out [of] context and I just wish to make a couple of clarificatory comments in that respect.

I am unbelievably concerned with what we know thus far about the proposed review. There is a clear coalition objective informing that review that speaks to removing or limiting provisions rather than strengthening them. It is therefore a review with a predetermined objective that is likely to be harmful and completely change our legislative landscape in the way that Treaty principles are currently used in legislation.

I acknowledge that there is still quite a lot of unknowns in that particular review tranche of work, but on the face of it, you've got one party to the Treaty setting the parameters of the review and setting the process of the review on a fundamental constitutional issue of how Te Tiriti o Waitangi is given real practical legal effect in Aotearoa. That needs to be done, led by Māori or at the very least done in partnership. So, those are my preliminary comments that I would make, and I am happy to take any questions from the Tribunal.

2.0 JURISPRUDENCE: "PARTNERSHIP, NOT ACTIVE PROTECTION, IS THE FRAMEWORK FOR THE GOVERNANCE OF NEW ZEALAND"[4]

2.1 The following extracts from Wai 1040, *Tino rangatiratanga me te Kāwanatanga (Stage 2)* contain important commentary on the treaty,[5] its principles and how the treaty relationship between Māori and the Crown should operate today:

> Our view, which we explain further in this chapter, is that we must consider if, or how, our understanding of treaty principles may evolve, both in light of our stage 1 report, and through the exploration of various principles in other Tribunal reports as applied to a range of contexts. In Te Raki, it may no longer be appropriate to rely on principles that are based on a cession of sovereignty by rangatira to the Crown. The treaty principles we apply must reflect the expectations and understandings of Te Raki Māori that have arisen from the history of their relationship with the British Crown and from the undertakings given to them at the treaty ceremonies. They must not be preoccupied with the intentions of the British, who in any case, as we have shown in stage 1 of our inquiry, did not reveal their full intentions and expectations to Māori.
>
> The principles must be based in the actual agreement entered into in 1840 between Te Raki rangatira and the Crown, rather than in an assumption that sovereignty was ceded by Māori, who would become the Queen's subjects in return for the protection 'of their chieftainships and possessions'. That was not the exchange that took place in Te Raki. Here, Māori leaders agreed to share power and authority with the Governor, though they would have different roles and different spheres of influence. They understood that they had received assurances from the Crown that they would retain their independence and chiefly authority, and they also understood that through the treaty, the Crown and its agents asked for authority (kāwanatanga) to control the Europeans. This was the arrangement to which they consented. They appear, too, to have agreed that the Crown would protect them from foreign threats and represent them in international affairs, where that was necessary.[6]
>
> …

[4] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry – Pre-publication Version* (Wai 1040, 2022), at 67.
[5] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry – Pre-publication Version* (Wai 1040, 2022), at 22.
[6] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry – Pre-publication Version* (Wai 1040, 2022), at 22.

Consistent with the treaty, the relationship of the Crown with Te Raki Māori should always have been based on dialogue and shared decision-making, as well as independent decision-making by either party where appropriate and where both parties agreed to this. Where unilateral Crown consultation has left hapū and iwi feeling disempowered, but trapped in processes that seem to them to offer the shadow of participation rather than the substance, it has not met the test of partnership. In accordance with the principle of partnership, the Crown's duty was always to engage with Te Raki Māori leadership actively (rather than merely consulting), and to ensure their role in shaping policy. True partnership remains the ideal; the foundation of any renegotiation of the relationship between Te Raki Māori and the Crown. [7]

…

We note that previous Tribunal reports have variously emphasised the Crown's obligation to recognise and respect Māori concepts and systems, particularly tikanga and the Māori sphere of authority outlined in the treaty. For the Crown, its recognition and respect of hapū communities, their authority over their lands and waters, taonga (including awa, maunga, and ngahere), and their values, rights, and spheres of authority, should be evident in the importance it places on the treaty guarantee of tino rangatiratanga.[8]

…

Partnership, not active protection, is the framework for governance of New Zealand; this unique arrangement is one to be celebrated and cherished.[9]

…

Under the treaty agreement, it has always been the Crown's duty to give effect to the guarantee of tino rangatiratanga contained in the plain meaning of article 2. The Crown's progressive expansion of its own authority from 1840 in ways that have encroached on and often eroded that of Te Raki Māori has heightened this duty.[10]

Today, the Crown has the power and capacity to recognise, respect, and give effect to the treaty guarantee of tino

[7] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry – Pre-publication Version* (Wai 1040, 2022), at 76.
[8] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry – Pre-publication Version* (Wai 1040, 2022), at 64.
[9] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry – Pre-publication Version* (Wai 1040, 2022), at 67.
[10] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry – Pre-publication Version* (Wai 1040, 2022), at 71.

> rangatiratanga. It has had this power since it signed te Tiriti. Its duty to give effect to the guarantee of tino rangatiratanga is as important today as it was in 1840. That is the basis for te houruatanga, a partnership in which each party to the treaty recognises the authority of the other, and together they decide how each will exercise that authority on matters in which both have important interests.[11]

2.2 The claimants **attach** the relevant findings from the Wai 1040 Te Paparahi o Te Raki Stage 1 and 2 reports as **Appendix "A".**

2.3 In addition, Appendix "A" filed with Ngāti Hine's opening submissions provides a te Tiriti framework that Ngāti Hine consider to be an appropriate starting point for considering how te Tiriti applies in this inquiry.[12]

2.4 The claimants consider that tino rangatiratanga, kāwanatanga and partnership are the most relevant principles in this inquiry.

2.5 The agreements and principles in te Tiriti provide how Māori and the Crown should exercise their tino rangatiratanga and kāwanatanga authorities.

2.6 The tenor of previous Tribunal reporting is that "Māori rangatiratanga or authority 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".[13]

2.7 In respect of the Crown's duties arising from the principles of tino rangatiratanga, the Tribunal speaks to a positive obligation to foster tino rangatiratanga, to ensure its laws and policies are just and fair, and to give effect to treaty rights and guarantees:[14]

> The duty of the Crown was (and is) to foster tino rangatiratanga (Māori autonomy), not to undermine it, and to ensure its laws and policies were just, fair, and equitable, and would adequately give effect to treaty rights and guarantees, notably

[11] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry – Pre-publication Version* (Wai 1040, 2022), at 71.
[12] Wai 3300, #3.3.6(a) *Appendix A: Te Tiriti o Waitangi Framework, [29 April 2024].*
[13] Wai 3300, #3.3.6(a) *Appendix A: Te Tiriti o Waitangi Framework, [29 April 2024],* at [5].
[14] Wai 3300, #3.3.6(a) *Appendix A: Te Tiriti o Waitangi Framework, [29 April 2024],* at [10].

> those affecting hapū autonomy and tikanga, and hapū retention and management of their lands and resources.

2.8 The Tribunal found that the Crown's duty (arising under the principles of kāwanatanga) from the outset was to ensure treaty rights and guarantees were recognised in its laws and policies, and where decisions or policies or their **impacts were discriminatory or placed unreasonable limits on the exercise of rangatiratanga**; they were inconsistent with the treaty:[15]

> Where Government decisions or policies, or their impacts, were discriminatory, or placed unreasonable limitations on tribal or hapū exercise of tino rangatiratanga, they were not in accordance with the agreement reached with Te Raki Māori in February 1840 as to the respective spheres and responsibilities of kāwanatanga and rangatiratanga.

2.9 It is important to note the high threshold the Tribunal has accorded to the principle of kāwanatanga. In instances where the Crown exercises kāwanatanga in a manner that limits or undermines Māori te Tiriti rights, including the exercise of tino rangatiratanga, the Tribunal say:[16]

> We accept that it might well be the case that in some situations the Crown must balance its treaty obligations to Māori against the interests of other sections of the community – for instance, in exceptional circumstances, such as war, or in the interests of public safety, or in matters involving the national interest. But even so, as the Tribunal has found in the past, such a balancing exercise must not be undertaken 'without restraint'; that is, it must not diminish the authority of tribes and hapū. And in the absence of such exceptional circumstances, the Crown had and has no right to impinge on the rights of Te Raki hapū and iwi to make their own decisions.

2.10 The principle of partnership is particularly interesting in respect of policy development in the modern context. The Tribunal say, "the Crown cannot unilaterally decide what Māori interests are or what the

[15] Wai 3300, #3.3.6(a) *Appendix A: Te Tiriti o Waitangi Framework, [29 April 2024],* at [11].
[16] Wai 3300, #3.3.6(a) *Appendix A: Te Tiriti o Waitangi Framework, [29 April 2024],* at [12].

sphere of tino rangatiratanga encompassed – that is for Māori to negotiate with the Crown", adding:[17]

> 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. The Tribunal has said that where questions of relative authority arose between the exercise of tino rangatiratanga and kāwanatanga, those questions "were to be negotiated through discussion and agreement between the parties". Negotiation, discussion, and agreement being essential characteristics and practices in the treaty partnership between Māori and the Crown.

2.11 What can be said about the principles of tino rangatiratanga, kāwanatanga and partnership against the standards expressed by the Tribunal above, for this inquiry?

2.12 The development and policy decisions regarding the Treaty of Waitangi Principles Bill ("the Principles Bill") and the review of all enactments containing references to the "principles of the Treaty of Waitangi" ("the Review") invoke both tino rangatiratanga and kāwanatanga authorities.

2.13 The right of Māori to exercise rangatiratanga means influence and decision making over policy, including development and outcomes.

2.14 Where the Coalition Government decided to develop policy on the treaty, independent of Māori negotiation, discussion and agreement, it breached the principles of tino rangatiratanga and kāwanatanga. Here, treaty principles oblige the Crown to engage with Māori prior to making decisions that impact them.

2.15 Having reviewed the policy development and decision making for the Principles Bill and the Review, as well as considered the likely pathway to give effect to the legislative amendments based on the Crown's documents, Counsel cannot locate where tino rangatiratanga is able

[17] Wai 3300, #3.3.6(a) *Appendix A: Te Tiriti o Waitangi Framework, [29 April 2024],* at [14].

to be exercised, and where Māori can truly influence the trajectory of the policy development. Instead, the Crown, through the exercise of kāwanatanga authority wields complete power and control over the policy progression.

2.16 So long as this power imbalance exists, the Tribunal can conclude that the Crown's acts and omissions arising in the context of policy development and decision making for the Principles Bill and the Review are inconsistent and in breach of the principles of the treaty.

3.0 THE PROPOSED TREATY PRINCIPLES BILL AND THE REVIEW OF LEGISLATIVE PROVISIONS

3.1 What we have seen from the Coalition Government in its first 100 days is their commitment to implementing the content of their coalition agreements.

3.2 There is no genuine consideration or thought given to officials' advice, because it intends to carry out the agreements that were made at a political level in the process of forming a government, following their campaigning on treaty issues ahead of the election.

The policies

3.3 On 24 November 2023, by way of coalition agreements, the Crown agreed to:

(a) "introduce a Treaty Principles Bill based on existing ACT policy and support it to a Select Committee as soon as practicable;[18] and

(b) "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

[18] Coalition Agreement, New Zealand National Party and Act New Zealand, at 16.

relating to the relevance and application of the Treaty, or repeal the references".[19]

3.4 What do we know about the development and status of the two policies to date?

Treaty Principles Bill

3.5 A Briefing Paper was provided to the Minister of Justice, Paul Goldsmith, on 14 December 2024, describing steps and options for a Principles Bill.[20] The Briefing Paper outlines no reasoning behind providing a briefing for this policy other than referencing the coalition agreement.[21]

3.6 Responsibility of the Principles Bill was allocated to Associate Minister of Justice, David Seymour, on 25 January 2024.[22]

3.7 On 19 February 2024, the Minister of Justice, Paul Goldsmith, lodged a legislation bid requesting that the Principles Bill be included in the Government's legislative programme.[23]

3.8 Following meetings with Associate Minister Seymour, a Cabinet paper was drafted, and has since been revised following feedback from Associate Minister Seymour and the relevant government agencies that were consulted.[24] The draft Cabinet paper and Regulatory Impact Analysis have not yet been finalised and remain confidential.[25]

[19] Coalition Agreement - New Zealand First (nzfirst.nz).
[20] Wai 3300, #A7, *Redacted bundle of confidential documents,* [6 April 2024], page 57 at [1].
[21] Wai 3300, #A7, *Redacted bundle of confidential documents,* [6 April 2024], page 57 at [2].
[22] Wai 3300, #A23, *Brief of evidence of Andrew Kibblewhite and Rajesh Chhana,* [6 May 2024] at [24].
[23] Wai 3300, #A23, *Brief of evidence of Andrew Kibblewhite and Rajesh Chhana,* [6 May 2024] at [33].
[24] Wai 3300, #A23, *Brief of evidence of Andrew Kibblewhite and Rajesh Chhana,* [6 May 2024] at [36]-[38].
[25] Wai 3300, #A23, *Brief of evidence of Andrew Kibblewhite and Rajesh Chhana,* [6 May 2024] at [40].

Treaty Principles Review policy process

3.9 When the Coalition Government was sworn in, Te Arawhiti "proactively" carried out a "stocktake" of the references to treaty principles in legislation.[26] This stocktake was provided to the Minister for Māori Crown relations and the Minister for Treaty of Waitangi Negotiations by way of a Briefing on 4 December 2023 and included a request by Te Arawhiti for direction to provide further advice on options to progress the Review.[27]

3.10 On 18 February 2024, in accordance with the briefing, the Minister for Treaty of Waitangi Negotiations directed Te Arawhiti to provide further advice on options to progress the Review.[28] Accordingly, Te Arawhiti worked to develop a framework for the Review[29] which included questions around scope, approach, preferences on engagement with Māori, whether there were any priority pieces of legislation and how the Review would be progressed in light of the Principles Bill.[30]

3.11 Following direction from the Prime Minister's Office, on 10 April 2023, Te Arawhiti were advised that the Minister of Justice would lead the Review with support from Te Arawhiti.[31] Ms Anderson confirmed that this decision was made at a "ministerial level"[32] and that Te Arawhiti's role as a support agency is yet to be clarified by the Minister.[33]

3.12 The next steps in the policy process for the Review is for Te Arawhiti to handover their work to the Minister for Justice who will lead the

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[26] Wai 3300, #A22, *Unsigned brief of evidence of Lilian Marie Anderson and Warren David Fraser* [6 May 2024], at [18].
[27] Wai 3300, #A22, *Unsigned brief of evidence of Lilian Marie Anderson and Warren David Fraser* [6 May 2024], at [18].
[28] Wai 3300, #A22, *Unsigned brief of evidence of Lilian Marie Anderson and Warren David Fraser* [6 May 2024], at [21].
[29] Wai 3300, #A22, *Unsigned brief of evidence of Lilian Marie Anderson and Warren David Fraser* [6 May 2024], at [14].
[30] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 31.
[31] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 25.
[32] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 25.
[33] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 82.

Review moving forward, and for the supporting role of Te Arawhiti to be determined and clarified.[34]

No policy problem exists

3.13 The coalition agreements have been endorsed by Cabinet as the basis upon which the Coalition Government will operate.[35] All Crown witnesses in this inquiry acknowledged that they are confined or working within the scope of the coalition agreements.

3.14 Mr Fraser explains that the coalition agreement was the starting point for the work being undertaken, and now "we're trying to probe with those ministers how they want to conduct the review that they've agreed to undertake".[36] The "what" and "why" questions that would normally get asked in a policy process have both been answered by the coalition agreement, so officials are beginning their engagement of the policy by asking "how".

3.15 The scope of the policies being set by the coalition agreements will impact the work that officials will carry out, as Mr Kibblewhite explains:[37]

> …our advice will basically reflect the subject matter that it has been advised on and it will depend what the question is that's been asked of us, it will depend whether its advice that we are coming up with off our own bat, if you like or whether we are responding to a question or in this case, responding to a proposal that has come to us through the coalition agreements.

[34] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 64.
[35] Wai 3300, #6.2.6, *Cabinet Office Circular "National, ACT and New Zealand First Coalition Government: Consultation and Operating Arrangements" (25 March 2024) CO (24) 2,* [7 May 2024], at [3].
[36] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 86.
[37] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 100.

3.16 Because the coalition agreements "set the terms in place",[38] officials are limited in trying to develop policy solutions, as Ms Anderson states, "we can't just say: 'No, don't do that. Do this.'"[39]

3.17 In any case, any free and frank advice, from officials is of little consequence to the overall implementation of the coalition agreements. Even if officials want to give free and frank advice, they are limited in their ability to so because of the manner in which the coalition agreements are being expedited to become law, and there is no real capacity to explore options outside of the parameters of the coalition agreements.

3.18 The Government is also singularly focussed on its own solution to the problem it believes exists. Issues with the proposed solution - the Principles Bill, and its contents - have been raised with the Minister, however, it has continued to be progressed.[40]

3.19 Ministers are not asking officials to explore alternative options for the problem, in fact they are not defining a problem to explore. One of the first briefings on the Principles Bill states that the intention of the Bill is to create certainty, but goes on to say "there is already a degree of certainty".[41] This indicates that the problem the Principles Bill intends to solve does not exist, which has been confirmed by Mr Kibblewhite, who said in his evidence "I don't have a policy problem that would need a Bill of this type to finish".[42] The briefing then explains that a Bill such as this has a high risk of creating uncertainty in various ways.[43]

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[38] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 22.
[39] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 63.
[40] Wai 3300, #A7, *Redacted bundle of confidential documents,* [6 April 2024], at [18] page 8.
[41] Wai 3300, #A7, *Redacted bundle of confidential documents,* [6 April 2024], at [4] page 6.
[42] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 113.
[43] Wai 3300, #A7, *Redacted bundle of confidential documents,* [6 April 2024], at [18] page 8.

3.20 This is not the first time that the Coalition Government has proceeded with policy based on their beliefs rather than the existence of a problem. The Tribunal recently found that there was no evidence to support the Government's policy of removing Section 7AA of the Oranga Tamariki Act 1989:[44]

> Crown counsel and Crown witnesses have confirmed that the government's decision to repeal section 7AA is not based on an empirical public policy case. The Minister's repeal proposal as approved by Cabinet is said to reflect a political or philosophical viewpoint not reduceable to empirical analysis.

3.21 It is important to look to comments made in the house [Hansards] for answers to questions, and the media where Ministers talk about their intentions and the thinking behind the coalition agreements to understand the real intent of the Principles Bill and the Review.

3.22 Associate Minister Seymour claims that the purpose of the Principles Bill is "about allowing mana for all".[45] However, the real reason this policy is being pushed is because he personally disagrees with the jurisprudence of Treaty principles:[46]

> the courts of course have been doing the interpretation that led to our current understanding of the principles. I think they got it wrong, that's why I think Parliament should act.

3.23 In another interview showing his personal preferences over his purported claim of "mana for all", Associate Minister Seymour said, "If we can get a bill passed without a referendum that would be a major advance on where we are now".[47]

3.24 There is nothing about the Government's current mode of operation that suggests there is an intention to improve the principles of the treaty. The Government is not concerned with improving the way in which the treaty is considered and applied across Government

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[44] Waitangi Tribunal, *Oranga Tamariki (Section 7AA) Urgent Inquiry Report,* [10 May 2024], at 28.
[45] Q+A with Jack Tame, *David Seymour: Why the Treaty of Waitangi principles should be redefined,* 6 February 2024.
[46] Q+A with Jack Tame, *David Seymour: Why the Treaty of Waitangi principles should be redefined,* 6 February 2024.
[47] The Platform NZ, *Everything You Need to Know About the Treaty Principles Bill,* 29 January 2024

departments, and they do not intend any benefit for Māori in their policies.

4.0 CLAIMANT EVIDENCE: "TIHAHU I TE TIRITI O WAITANGI"[48]

4.1 The body of evidence provided by Ngāti Hine describes a "tsunami of change"[49] that is demonstrable of an inappropriate exercising of kāwanatanga by the Coalition Government.[50] The Principles Bill and the Review are just two examples in a recent spate of politically and racially charged policies that are being implemented unilaterally and at pace.

4.2 Mr Waihoroi Shortland describes the notion of rewriting the treaty principles as "spurious at best, racially slanted at worst".[51] Mr Pita Tipene was of the view that the intent behind the Principles Bill is "a strong thrust to put Māori in their place and thereby appease those feeling unsure about our current circumstances." Mr Tipene goes on to suggest that the political parties have been "scaremongering" to exacerbate fears around what is embodied in the treaty,[52] and that the common thread in the Crown's latest policies is "undermining Māori authority, and undermining the positive and proactive changes that have been progressive over many years now".[53]

4.3 Mrs Rowena Tana suggested that "this Government needs to leave te Tiriti o Waitangi alone; do not tamper with it, do not meddle with it, just leave it alone".[54]

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[48] Wai 3300, #A13, *Kōrero taunaki o Moe Milne* [29 Paengawhāwhā 2024], at [12].
[49] Wai 3300, #A11, *Kōrero Taunaki a Pita Tipene* [29 Paengawhāwhā 2024], at [21]-[25].
[50] A table cross-referencing Ngāti Hine's evidence to the Tribunal's statement of issues is **attached** as **Appendix "B".**
[51] Wai 3300, #A10, *Kōrero Taunaki a Waihoroi Shortland* [29 Paengawhāwhā 2024], at [3].
[52] Wai 3300, #A11, *Kōrero Taunaki a Pita Tipene* [29 Paengawhāwhā 2024], at [21]-[22].
[53] Wai 3300, #A11, *Kōrero Taunaki a Pita Tipene* [29 Paengawhāwhā 2024], at [28].
[54] Wai 3300, #A12, *Kōrero Taunaki a Rowena Tana* [29 Paengawhāwhā 2024], at [6].

4.4 Whaea Moe Milne described this "tampering" as "tihahu i Te Tiriti o Waitangi":[55]

> The Coalition Government has started mucking around with the principles of te Tiriti o Waitangi. How dare they. Tihahu i Te Tiriti o Waitangi – it is just ridiculous. When you "tihahu" something you go and make a mess of it.
>
> I think they [the Government] are trying to tihahu te Tiriti o Waitangi because they are feeling a loss of power. They are starting to recognise our capacity and so their only weapon against that is to change legislation. We were making some progress.

4.5 Ngāti Hine say that while there is merit in the rationale of every New Zealander being part of the debate and discussion on this issue, that this is not what is motivating these policies. The claimants maintain that it was Māori that signed up to a partnership with the Crown, not "all New Zealanders", and to change it now is a "disillusionment of the original agreement":[56]

> The treaty is what it is. It was an agreement between the Crown and Māori. To change anything is a disillusionment of the original agreement. You cannot, after 184 years, start twisting and turning the words so that it includes something else. That not only sublimates the intent of the Treaty, but it also creates a whole new proposition.

4.6 Mr Tipene says that the policies have not been progressed in a proactive or positive manner, rather they have been pitched in a way that is "very negative" and is driven by political imperatives.[57] In the claimants' view, it is fundamentally unconstitutional for one party to te Tiriti to dictate and lead sweeping changes such as these without negotiation and dialogue with the other party.[58] Not only that, but the result of the Coalition Government's approach to these policies is

[55] Wai 3300, #A13, *Kōrero Taunaki a Moe Milne* [29 Paengawhāwhā 2024], at [12]-[13].
[56] Wai 3300, #A10, *Kōrero Taunaki a Waihoroi Shortland* [29 Paengawhāwhā 2024], at [8].
[57] Wai 3300, #4.1.6, *Hearing Transcript* [9-10 May 2024], at 139.
[58] Wai 3300, #4.1.6, *Hearing Transcript* [9-10 May 2024], at 191.

prejudicial in that it has opened the door to further racism and hostility towards Māori.

4.7 In response to the Tribunal's questions in writing, Pita Tipene stated that for the Crown to provide for tino rangatiratanga, there needs to be "space for the exercise of rangatiratanga at every step of the policy design and process. That means first and foremost that Māori need to be able to make their own decisions about policies which affect them".[59]

5.0 BREACHES OF TE TIRITI O WAITANGI: INAPPROPRIATE EXERCISE OF KĀWANATANGA, UNDERMINING OF RANGATIRATANGA, NO TREATY PARTNERSHIP

5.1 The first breach of te Tiriti occurs at the point the Government made and recorded the decisions in the coalition agreements for the Principles Bill and the Review. This breach was reinforced by Cabinet on 28 November 2023, when it said that the coalition agreements form the basis upon which the Government will operate.[60] Subsequent policy and legislative processes are the mechanisms through which the Government is able to finalise and implement its agreements.

The treaty is not central to policy development

5.2 As a preliminary point of analysis, counsel note that the Crown's policy work has been focussed on what may become of the treaty principles and treaty provisions as opposed to considering what its treaty obligations are in this context, and the implications its decision making will have on the treaty relationship.

5.3 There is also an irregularity or inconsistency between the Crown's written and oral evidence in this inquiry in terms of how the Crown's treaty obligations are acknowledged. For example, across the Crown's opening submissions and written briefs of evidence from

[59] Wai 3300, #A11(b), *Answers from Pita Tipene to Tribunal's questions in writing* [17 May 2024].
[60] Wai 3300, #3.1.82(b), *Appendix B: Chronology in respect of Treaty Principles Bill* [8 May 2024] at 1.

officials, there is minimal guidance from the Crown around what it considers its treaty obligations to be or how it intends to fulfil those obligations. The closest it gets is mentioning "the importance of working with Treaty partners"[61] and Ms Anderson's acknowledgement that the Crown has a duty to act consistently with the treaty:

> Responsibility for ensuring that policies are consistent with the Treaty and Māori rights and interests ultimately falls to responsible Ministers and their agencies and Te Arawhiti has an advisory role to ensure there is a clear understanding of Māori rights and interests in those policy processes.[62]
>
> Te Arawhiti has a role providing advice across government policy processes to ensure there is a clear understanding of Māori rights and interests. We will likely continue to be involved with the review in accordance with that role.[63]

5.4 During the hearing the treaty was more widely acknowledged by Crown witnesses. When speaking with Tribunal Panel Member, Mr Derek Fox, about the evolving nature of the treaty, Mr Kibblewhite acknowledges that the treaty is a foundational document and that "our understanding has evolved with the passage of time".[64]

5.5 Pointedly, when asked by Chief Judge Fox whether the text of the Principles Bill, in his opinion, as the lead policy manager for Te Arawhiti, was consistent with the Crown's obligations under the Treaty of Waitangi? Mr Fraser said "No".[65]

5.6 Throughout the course of the inquiry, it has become evident that the extent to which Māori will have any involvement in policy development processes and decision making will be little or none. This can be inferred by the Crown's evidence when officials say, "To date, no

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[61] Wai 3300, #A23, *Brief of evidence of Andrew Kibblewhite and Rajesh Chhana,* [6 May 2024] at [28.2].
[62] Wai 3300, #A22, *Brief of evidence of Lilian Marie Anderson and Warren David Fraser,* [6 May 2024] at [23].
[63] Wai 3300, #A22, *Brief of evidence of Lilian Marie Anderson and Warren David Fraser,* [6 May 2024] at [32].
[64] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 105.
[65] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 47.

tikanga Māori or te reo Māori experts have been involved in the policy development process for the Bill".[66]

5.7 Mr Chhana told the Tribunal that the team drafting the Cabinet paper for the Principles Bill may be informed by the evidence filed in this inquiry, but it would be subject to the time available.[67] This raises questions about the ability of the Ministry of Justice to properly inform itself of its treaty obligations when it does not appear to have done so to date, and depends on whether there is time.

5.8 When questioned whether Māori can expect to have any meaningful input in the policy process for the Principles Bill, Mr Chhana clarified that at this stage there is only a "proposal" for consultation, saying:[68]

> At this stage what the Associate Minister has indicated that he wants to go to the next step to be the development of an exposure draft of the Bill and that is where there is a proposal that they have an opportunity for consultation, and we are still determining what is the nature and form of that and the time available for that.

5.9 Presumably, the same can be said for the Review, which is at an even earlier stage of development.

Inappropriate and excessive exercise of kāwanatanga

5.10 The Crown's policies and actions in respect of the Principles Bill and Review breach te Tiriti because they are an inappropriate and excessive exercise of the Crown's kāwanatanga; with all power, authority and influence sitting squarely with the Crown.

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[66] Wai 3300, #A23, *Brief of evidence of Andrew Kibblewhite and Rajesh Chhana,* [6 May 2024] at [64].
[67] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 112.
[68] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 163.

5.11 Māori did not ask for the Principles Bill or the Review and firmly oppose the policies which have been, and will continue to be, developed and determined without Māori negotiation and agreement.[69]

5.12 Ngāti Hine describe the Crown's policies as "salt into the festering wound",[70] "backwards and regressive",[71] "shocking",[72] violent,[73] and a "structural breach" of te Tiriti.[74]

5.13 Ngāti Hine say unequivocally that the Crown's policies and actions overstep and undermine the rangatiratanga of Māori[75] and therefore, do not provide for the partnership that was created and envisioned by te Tiriti.

5.14 The Crown, in its opening submissions, say that decisions are yet to be made in respect of the policies and that Māori concerns in relation to the policies are premature and able to be mitigated as policy processes are further developed.[76] In this regard, the Crown emphasises that its policies (particularly in relation to the Principles Bill) are still only "proposed Crown action[s]"[77] and that "policy processes are ongoing and nascent"[78] with all options being "live options".[79]

5.15 The claimants say this narrative is disingenuous and does not take into account the decisions that have been made in respect of the policies and work done to date. For example, the Crown's unilateral decision

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[69] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 52, 58.
[70] Wai 3300, #A10, *Kōrero taunaki a Waihoroi Shortland* [29 April 2024], at [2].
[71] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 189.
[72] Wai 3300, #A13, *Kōrero taunaki a Moe Milne* [29 April 2024] at [15].
[73] Wai 3300, #A6, *Kōrero taunaki a Natalie Ramarihia Coates* [30 April 2024], at [12].
[74] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 189, 231.
[75] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 138, 140, 190.
[76] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 130.
[77] Wai 3300, #3.3.9, *Opening submissions* [6 May 2024], at [8].
[78] Wai 3300, #3.3.9, *Opening submissions* [6 May 2024], at [4].
[79] Wai 3300, #3.3.9, *Opening submissions* [6 May 2024], at [5].

to develop the Principles Bill and undertake the Review in the first place.

5.16 Notably, Crown witnesses accept that, while they may provide advice against the policies or to develop the policies in a way which does less or no harm to Māori, it is for the Ministers to determine the trajectory of the policies[80] and that the role of Crown officials is to "serve the Government of the day"[81] and "offer advice and options to Ministers about ways to execute those commitments or priorities".[82] Accordingly, the rights of Māori are being held in the hands of Ministers and subjected to the terms of the coalition agreements.

5.17 Māori have had no meaningful role, power or influence over the Crown's policies or actions and, given the direction towards implementing the coalition agreements,[83] are unlikely to have any meaningful influence in the process ahead. That Māori are being limited and ringfenced from a constitutional conversation about te Tiriti, despite being the treaty partner, is inconsistent with te Tiriti.

Issues with the Review

5.18 Notwithstanding the claimants opposition to the Review, it is concerning that the Review has been allocated to the Ministry of Justice over Te Arawhiti when Te Arawhiti have stronger and more established relationships with Māori as well as an existing role in reviewing treaty provisions in legislation through the functions of TPOG.[84]

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[80] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 63.
[81] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 119.
[82] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 22.
[83] Wai 3300, #6.2.6, *Cabinet Office Circular "National, ACT and New Zealand First Coalition Government: Consultation and Operating Arrangements" (25 March 2024) CO (24) 2* [7 May 2024], at [4.3].
[84] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 46, 59.

5.19 When asked why Te Arawhiti is not leading the Review, Ms Anderson said the decision was "made by Ministers" because of the Ministry of Justice's "role in constitutional matters".[85] However, Ms Anderson also said, given the Review and Principles Bill are both "around the Treaty, are around the principles, are around the use of those in legislation there is most certainly an overlap".[86] The Crown suggest the Review and the Principles Bill are separate workstreams and policy imperatives, however there is a clear link between the two. The lack of certainty around the nature and extent of the overlap between the Review and the Principles Bill is cause for concern for Māori and is a continuation of the cloud of doubt they sit under in respect the likely impacts these policies will have on them.

6.0 TRAJECTORY OF COALITION GOVERNMENT'S 100 DAY AGREEMENTS

6.1 The Crown claims that decisions have not yet been made, and it is not clear how the policies will proceed. In respect of the Review, "The Ministry is yet to do any work on this workstream and has not received any directions from Minister on the review".[87] The Ministry requires direction because "The proposal came about from the Coalition Agreement and was not arrived at based on a policy proposal or problem from the Ministry".[88] While work on the Principles Bill has progressed, the Ministry are still waiting for decisions to be made, such as, "No final decisions have been made regarding consultation. Final decisions will be made by Cabinet".[89]

6.2 While these policies are in development and decisions still need to be made, we have seen examples where the Crown considers that the

[85] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 61.
[86] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 65.
[87] Wai 3300, #A23, *Brief of Evidence of Andrew Kibblewhite and Rajesh Chhana,* [6 May 2024] at [44].
[88] Wai 3300, #A23, *Brief of Evidence of Andrew Kibblewhite and Rajesh Chhana,* [6 May 2024] at [49].
[89] Wai 3300, #A23, *Brief of Evidence of Andrew Kibblewhite and Rajesh Chhana,* [6 May 2024] at [73].

coalition agreements take precedence, and the policy process is just a way to arrive at a pre-determined outcome.

6.3 The disestablishment of Te Aka Whai Ora is evidence of this. The Waitangi Tribunal granted an urgent hearing regarding the Crown's intention to disestablish Te Aka Whai Ora, and specifically set a timeframe that would allow the Tribunal to report its findings before 8 March 2024, the date that the Crown indicated they would be introducing the legislation to the House of Representatives.[90] The hearing was set down for 29 February to 1 March 2024.[91] On 22 February 2024, the Crown informed parties it would instead introduce the legislation as early as 27 February 2024.[92] Documents released under the Official Information Act 1982, attached as **Appendix "C"** show that the Bill was originally proposed to be introduced on 20 February 2024.[93] As the Crown proceeded with this timeframe, it meant that the Waitangi Tribunal was unable to inquire into, and report on, the disestablishment of Te Aka Whai Ora.

6.4 The Bill to disestablish Te Aka Whai Ora was introduced and passed through all stages under urgency. Māori were not able to stop the legislative process.[94] The key point to be made is that the Crown cannot be relied upon when giving time indications, as they change the parameters to suit their agenda.

6.5 While the Crown may claim that decisions relating to the Principles Bill and the Review have not been made, the disestablishment of Te Aka Whai Ora shows that decisions and processes can (and are) expedited at an unstoppable rate.

6.6 Another example where upholding the coalition agreements has taken priority over any other concerns raised in the policy process is the

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[90] Wai 3307, #2.5.006, *Memorandum-Directions of Judge D Stone on the Te Aka Whai Ora Urgent Application* [16 February 2024], at [3], [11], [21].
[91] Wai 3307, #2.5.006, *Memorandum-Directions of Judge D Stone on the Te Aka Whai Ora Urgent Application* [16 February 2024], at [18].
[92] Wai 2575, #3.2.968, *Memorandum of Crown counsel in response to decision to inquire urgently* [23 February 2024], at [5].
[93] Appendix C at 58, 74.
[94] Wai 2575, #M15, *Brief of evidence of Geoff Milner* [20 February 2024], at [4].

repeal of Section 7AA from the Oranga Tamariki Act 1989. In *The Oranga Tamariki (Section 7AA) Urgent Inquiry report,* the Tribunal found that there was only anecdotal evidence backing the policy to repeal Section 7AA, and that the Crown was treating the coalition agreement as overriding or taking precedence over their treaty obligations.[95]

6.7 In another example, the Crown's policy process regarding reinstating the Māori wards poll provisions was subject to Ministerial direction on timeframe and scope.[96] The Regulatory Impact Statement on the policy states that "there has been limited opportunity to investigate the specific impacts on Māori, iwi, and hapū, and any impacts on Treaty of Waitangi settlement agreements".[97] Despite this, the policy has continued to progress.

6.8 The progression of coalition policies on the disestablishment of Te Aka Whai Ora, repealing Section 7AA of the Oranga Tamariki Act 1989, and reinstating the Māori wards poll provisions all show a legislative trajectory for coalition agreements, to the exclusion of Māori.

7.0 PREJUDICE AND THE WAY FORWARD

7.1 The Crown's decision to unilaterally determine and pursue the Principles Bill and the Review, based on its own political objectives that are fundamentally at odds with te Tiriti, has and will continue to cause significant and irreversible prejudice to Māori.

7.2 The claimants describe the layers of prejudice that the Crown's policies and actions have caused, and will continue to cause:

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[95] Waitangi Tribunal, *The Oranga Tamariki (Section 7AA) Urgent Inquiry Report* [10 May 2024], at 27-28.
[96] Wai 3365, #A1, *Proactive release of Cabinet Minute, Cabinet Paper, Options Table, and Regulatory Impact Statement - binding polls on the establishment of Māori Wards,* [6 May 2024], at 29.
[97] Wai 3365, #A1, *Proactive release of Cabinet Minute, Cabinet Paper, Options Table, and Regulatory Impact Statement - binding polls on the establishment of Māori Wards,* [6 May 2024], at 29.

(a) Prejudice arising from breach of tino rangatiratanga, kāwanatanga and partnership – the Crown's policies and actions constrain tino rangatiratanga to the extent that it cannot be exercised to alter the initial policy decision in respect of the Principles Bill and the Review, or change the trajectory of the policy processes that are being undertaken by the Crown. The inability to exercise tino rangatiratanga is prejudicial to Māori. The Crown has exercised its kāwanatanga over the top of, and in opposition to, Māori, eroding trust between Māori and the Crown[98] and negating the work that has been done by Māori to realise their te Tiriti rights;[99]

(b) The Crown's policies and actions destabilise te Tiriti constitutionally, legally and politically by seeking to mutate,[100] "water down",[101] "rewrite"[102] and reimagine te Tiriti "in a way that does absolute violence to its spirit, intent and its text";[103]

(c) Socially - the Crown's policies and actions undermine te Tiriti within society and has already "fostered division" and created "hostility" within communities and society more broadly;[104] and

(d) To Māori collectively - the Principles Bill and Review are felt as "a strong thrust to put Māori in their place",[105] and an "attack"[106] on Māori that limits and "threaten[s] our very existence."[107] The policies are damaging to the identity and maintenance of tino rangatiratanga and tikanga Māori. Ngāti Hine say the policies are "likely to cause further oppression and loss of identity for

[98] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 190.
[99] Wai 3300, #A13, *Kōrero taunaki a Moe Milne* [29 April 2024] at [14].
[100] Wai 3300, #A12, *Kōrero Taunaki a Rowena Tana* [29 Paengawhāwhā 2024], at [8].
[101] Wai 3300, #A11, *Kōrero Taunaki a Pita Tipene* [29 Paengawhāwhā 2024], at [16].
[102] Wai 3300, #A10, *Kōrero taunaki a Waihoroi Shortland* [29 April 2024], at [23].
[103] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 189.
[104] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 190.
[105] Wai 3300, #A11, *Kōrero Taunaki a Pita Tipene* [29 Paengawhāwhā 2024], at [21].
[106] Wai 3300, #A13, *Kōrero taunaki a Moe Milne* [29 April 2024], at [14].
[107] Wai 3300, #A10, *Kōrero taunaki a Waihoroi Shortland* [29 April 2024], at [23].

our people"[108] and that future mokopuna will "never know the things that we know so intimately about what te Tiriti intended".[109]

7.3 The prejudice outlined above has culminated in a breakdown in the treaty partnership between the Crown and Māori, with Māori left with no faith that the Crown will honour its te Tiriti obligations where the Principles Bill and Review are concerned and where the wider treaty relationship between Māori and the Crown is at play.

7.4 The Crown has committed to (and actioned) a number of policies in its coalition agreements that undermine te Tiriti and the rights of Māori. These policies are described as an "overwhelming" "attack on Māori"[110] and, to date, have included the de-prioritisation of Te Reo Māori in the public sector, disestablishment of Te Aka Whai Ora, the repeal of Section 7AA of the Oranga Tamariki Act, and the reinstatement of Māori wards poll provisions.

7.5 Ms Coates explains that while the prejudice being suffered by Māori is "directly linked" to the coalition agreements, at its full manifestation, it is the Crown carrying out the policies and actions that are causing prejudice to Māori.[111] The claimants point out the Crown does this in a context where Māori have "been litigating against the Crown for decades in terms of the meaning and effect of te Tiriti"[112] and on the back of settlements where the Crown has apologised for past treaty-breach and promised to "chart a new more Treaty consistent course".[113]

7.6 Ngāti Hine say the harm and prejudice arising from the Crown's Principles Bill and the Review is such that Māori cannot permit the Crown's policy development to continue.

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[108] Wai 3300, #A12, *Kōrero Taunaki a Rowena Tana* [29 Paengawhāwhā 2024], at [8].
[109] Wai 3300, #A12, *Kōrero Taunaki a Rowena Tana* [29 Paengawhāwhā 2024], at [8]
[110] Wai 3300, #A11, *Kōrero Taunaki a Pita Tipene* [29 Paengawhāwhā 2024], at [27].
[111] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 192.
[112] Wai 3300, #A12, *Kōrero Taunaki a Rowena Tana* [29 Paengawhāwhā 2024], at [5]
[113] Wai 3300, #4.1.6, *Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* [17 May 2024], at 190.

7.7 Accordingly, Ngāti Hine ask the Tribunal to find that the Crown has overstepped the bounds of its kāwanatanga in relation to the Principles Bill and the Review and has therefore breached te Tiriti, and recommend the Crown abandon its policies and take immediate steps to acknowledge and redress the prejudice that has been caused by the Crown's actions to date.

7.8 It is suggested a public apology be made to Māori in respect of the prejudice caused by the Crown's policies and actions and should address the harm that has been caused to Māori and te Tiriti. Such an apology should also include a public commitment to moving forward in a te Tiriti consistent way.

7.9 Following a public apology, the Crown should commit to meeting with hapū and iwi in their regions to personally apologise for the prejudice caused. Meeting in person will give the Crown an opportunity to listen to and consider iwi and hapū perspectives on how the Crown can improve the treaty partnership in light of the harm caused, and how it can redress the prejudice suffered.

7.10 Ngāti Hine say the Crown would benefit from increased understanding of te Tiriti and the Crown's te Tiriti obligations. Such education should be facilitated by Pou Tikanga and Pou Tiriti who are independent of the Crown and should be attended by Ministers and Crown officials to ensure this knowledge is being learned and held by those in decision-making positions.

7.11 In the long term and for any hope of a healthy and functioning treaty partnership, the Crown should honour its te Tiriti obligations moving forward. This means that any discussions around a way forward for te Tiriti must include Māori from the outset and Māori must have influence over decision-making; in proper exercise of rangatiratanga and in treaty partnership.

7.12 This would see Māori and the Crown working collaboratively to determine where rangatiratanga and kāwanatanga intersect and how those principles can be properly applied and upheld in law, policy, and

practice. Such a practice would give life to the words of Erima Henare where he said:[114]

> Te Tiriti o Waitangi should be paramount in every law enacted by Parliament, so as to give full binding, lawful and moral status. The principles of Te Tiriti are many and I suggest, the real way to deal with them, special note to the Government, is to stand by them when they are unpopular as well as when they are popular, knowing that their truth will one day manifest itself.

DATED at Pakaraka this 22nd day of May 2024

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Dr Season-Mary Downs/Chelsea Terei-Tipene/Heather Jamieson/Majka Cherrington
Counsel for the claimants

[114] Wai 3300, #A12, *Kōrero Taunaki a Rowena Tana* [29 Paengawhāwhā 2024], at [13] and Wai 1040, #A30(c), *Brief of Evidence of Johnson Erima Henare* [10 September 2010], at [252].