

I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI  
IN THE WAITANGI TRIBUNAL

Wai 3300

KEI RARO I TE MANA O

te ture o te Tiriti o Waitangi 1975

Ā

I TE TAKE O

te pakirehua o Tomokia ngā  
Tatau o Matangireia  
Constitutional Kaupapa Inquiry  
(Wai 3300)

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**JOINT REPLY SUBMISSIONS FOR THE INTERESTED PARTIES**

**Dated 15 July 2024**

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**TamakiLegal**  
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Waitangi Tribunal

**15 Jul 24**

Ministry of Justice  
WELLINGTON

## MAY IT PLEASE THE TRIBUNAL

### INTRODUCTION

1. These joint closing submissions are filed on behalf of the following interested parties:
  - a. David Hawea, for and on behalf of the Hawea whānau and Te Whānau a Kai iwi (Wai 892);
  - b. Jasmine Cotter-Williams, for and on behalf of her whānau and Ngāti Taimanawaiti iwi (Wai 2063);
  - c. Stephanie August, for and on behalf of the late Robert Charles William James Farrar and her whānau (Wai 3096);
  - d. Robert Gabel, for and on behalf of Ngāti Tara of Ngāti Kahu (Wai 1886);
  - e. April Grace, for and on behalf of her whānau, Ngā Wahapū o Te Rarawa, Ngāti Whātua and Ngāpuhi Nui Tonu (Wai 2206);
  - f. Annette Hale, for and on behalf of the Wikotu whānau of Te Upokorehe (Wai 2743);
  - g. Te Enga Harris and Lee Harris, for and on behalf of the Wiremu Hemi Harris and Meri Ōtene whānau, and on behalf of members of Ngāti Rangī, Ngāti Here, Ngāi Tūpoto, Ngāti Hōhaitoko, Ngāti Kōpuru, Te Rarawa and Ngāti Uenuku (Wai 1531);
  - h. Tasilofa Huirama, for and on behalf of the Huirama whānau and members of Ngāti Ueoneone and Ngāti Tautahi of Ngāpuhi (Wai 2890);
  - i. Te Urunga Evelyn Aroha Kereopa, for and on behalf of the Kereopa whānau and members of Te Ihingārangi, hapū of Ngāti Maniapoto (Wai 762);
  - j. Richard Nathan, for and on behalf of the Mangakahia Hapū Claims Collective (Wai 861);

- k. Diane Marie Paekau for and on behalf of her whanau and members of Ngāti Hounuku, Ngāti Houa, Ngāti Poua, Ngāti Mahuta, Ngāti Te Ata and Ngāti Whātua (Wai 3131);
- l. John Pikari, for and on behalf of the descendants of Hone Karahina and members of the hapū of Te Uri o Hua and Ngāti Torehina (Wai 2394);
- m. Rueben Taipari Porter, for and on behalf of the hapū of Ahipara (Wai 1968);
- n. Audrey Okeroa Rogers, for and on behalf of her whānau and members of Ngāti Koheriki (Wai 2869);
- o. Jane Stevens, for and on behalf of her whānau and Ngāi Tahu iwi (Wai 2671);
- p. Violet Eva Walker, for and on behalf of her whānau and members of Ngāti Rangi o Waiapu ki Tawhiti and Ngāti Kahu ki Whangaroa (Wai 2382);
- q. Kahura James Watene and Elizabeth Watene, for and on behalf of Ngāi Tukōkō and Ngāti Moe of Rangitāne me Ngāti Kahungunu (Wai 2778); and
- r. Michael Williams and Jessica Williams, for and on behalf of their whānau, and members of Ngaitūpango, hapū of Ngāpuhi (Wai 2838  
  
(together, the “**interested parties**”))

## **EXECUTIVE SUMMARY**

- 2. The interested parties make these submissions in reply to the Crown’s Closing Submissions.<sup>1</sup>
- 3. The Crown’s submission that it is too early to consult with Māori on the Treaty Principles Bill (“**the Bill**”) and that the issues of parliamentary

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<sup>1</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23.

sovereignty and related points can wait to be heard in the Constitutional Kaupapa Inquiry is rejected by the interested parties.

## PROCEDURAL BACKGROUND

4. The procedural background relevant to the interested parties is set out in the Joint Closing Submissions for the interested parties (**'closing submissions'**).<sup>2</sup>
5. In addition, on 3 July 2024, Chief Judge Dr Fox issued a Memorandum-Directions directing the Crown to file its closing submissions.<sup>3</sup>
6. On 9 July 2024 the Crown filed Closing Submissions with the Tribunal.<sup>4</sup> Claimants have been directed to file reply submissions by 5pm Monday 15 July 2024.<sup>5</sup>

## CONSULTATION

7. The duty of consultation is raised in the Crown's Closing Submissions.<sup>6</sup> In relation to the Crown's obligations under the principle of partnership, the Crown states they have to act reasonably and in good faith, which requires the Crown to be sufficiently informed when making decisions that affect Māori.<sup>7</sup>
8. While the Crown acknowledge that consultation will be required on 'truly major' issues affecting Māori,<sup>8</sup> it also submits that the level of consultation needed is unknown because of the early stage of the relevant policy proposals.
9. The interested parties do not accept this submission as the Crown has acknowledged there is a strong Māori interest in the issues raised by this urgent inquiry and that Treaty principles are engaged.<sup>9</sup> Furthermore despite the Crown accepting their obligations to act in good faith as a treaty

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<sup>2</sup> D C F Naden, V Tumai, R Wihongi, A Johns, L Redward, S Rickard, L Oliver *Joint closing submissions for the interested parties* dated 22 May 2024, Wai 3300, #3.3.18, from [9]

<sup>3</sup> Waitangi Tribunal, *Memorandum-Directions of Chief Judge Dr C L Fox Regarding Crown Closing Submissions* dated 3 July 2024, Wai 3300, #2.6.9, at [6].

<sup>4</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.023.

<sup>5</sup> Waitangi Tribunal, *Memorandum-Directions of Chief Judge Dr C L Fox Regarding Crown Closing Submissions* dated 3 July 2024, Wai 3300, #2.6.9, at [8].

<sup>6</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23.

<sup>7</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [38].

<sup>8</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [38].

<sup>9</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [37].

partner<sup>10</sup>, they have failed to do as such. The interested parties say that the Crown is not sufficiently informed because it has not engaged or consulted with Māori on the Bill. The Crown has failed to properly address their duty to consult and act in accordance with the principle of partnership, through the lack of consultation with Māori.

10. The Crown acknowledge the tensions which ‘lie at the heart of this inquiry’.<sup>11</sup> The Crown explains these tensions are between the pursuit of policies which are at the core of Government formation and the application of the Treaty to those policies or proposed policies.<sup>12</sup> The Crown suggest the Tribunal’s analysis in the urgent inquiry, may be directed at addressing how the Government might pursue the policies to which it has committed to in a Treaty-consistent manner.<sup>13</sup>
11. We submit the Crown’s acknowledgement of the tensions which lie at the heart of the inquiry, demonstrates that the Crown clearly knows the Bill will have truly major effects on Māori. Yet, it continues to make no decisions about consultation<sup>14</sup> in terms of who to consult, when to consult and how to consult despite guidance from Te Arawhiti that consultation should occur as early as possible in relation to major issues like changing te Tiriti Principles.<sup>15</sup>
12. The Crown further acknowledges the ‘significant concern’ from tangata whenua regarding the proposed Bill. It did not challenge the evidence of the prejudice and harm caused to tangata whenua by the Bill.<sup>16</sup> The Crown, therefore, cannot submit that this is not a ‘truly major’ issue irrespective of the ‘stage of the policy’.<sup>17</sup>
13. The Tribunal throughout the hearing heard copious evidence on the likely effects of the Bill, and the harm felt across the motu by the Māori treaty

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<sup>10</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [38].

<sup>11</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [46].

<sup>12</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [46].

<sup>13</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [46].

<sup>14</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [39].

<sup>15</sup> Te Arawhiti, *Engagement Framework - Crown engagement with Māori*, 2018, accessed at <https://www.tearawhiti.govt.nz/te-kahui-hikina-maori-crown-relations/engagement/> [4] notes Early engagement is a key principle for effective engagement. Early engagement can help clarify issues, support communications with your target audience and ensure that Māori are informed to participate. It is important to remember that engagement doesn’t have to be a one-off process, it can be ongoing and occur at various stages of the process

<sup>16</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [47].

<sup>17</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [39].

partner. Our closing submissions refer to some of this evidence at [145-154].<sup>18</sup>

14. There has been hui up and down the motu since the formation of the Coalition Government.<sup>19</sup> Māori have united, they have voiced their concerns, they have marched in outrage at what this Government is proposing, yet the Crown submit this is not a major issue affecting Māori.
15. It is clear the interested parties do not accept the Crown's submission that the Bill is not a truly major issue affecting Māori. Given the outrage and frustration felt by Māori it is evident that the Bill, regardless of whether it is in early stages of formation, is a truly major issue for Māori. As Professor Kelsey stated, even if the policies do not eventuate 'the effects of legitimisation and precedent will cause profound damage to Māori, to the promise of Te Tiriti, and to the peace, security and wellbeing of Aotearoa New Zealand.'<sup>20</sup>
16. The interested parties maintain the view that the time to engage with Māori on issues of major significance, such as amending the foundations of Aotearoa's constitution, as they propose to do with the Bill, was early.
17. We submit consultation should have occurred from the 28<sup>th</sup> of November 2023 at the time when the policy was formed. The time to begin consultation has been and gone. The Crown's failure to consult is a bad faith act. The harm caused to Māori through the lack of consultation has already occurred as seen through the evidence presented in this hearing.<sup>21</sup>

## **CONSTITUTIONAL KAUPAPA INQUIRY**

18. The Crown submits the expert evidence in this inquiry raised several multifaceted themes, including electoral arrangements, parliamentary sovereignty and related points.<sup>22</sup> The Crown anticipates these issues may

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<sup>18</sup> D C F Naden, V Tumai, R Wihongi, A Johns, L Redward, S Rickard, L Oliver *Joint closing submissions for the interested parties* dated 22 May 2024, Wai 3300, #3.3.18, at [145-154].

<sup>19</sup> D C F Naden, V Tumai, R Wihongi, A Johns, L Redward, S Rickard, L Oliver *Joint closing submissions for the interested parties* dated 22 May 2024, Wai 3300, #3.3.18, at [145-154].

<sup>20</sup> Kelsey, E.J., *Response of Professor Jane Kelsey to Questions from the Interested Parties Represented by Tamaki Legal* dated 17 May 2024, Wai 3300, #A15(d), at [3].

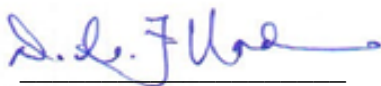
<sup>21</sup> See [211-225] of D C F Naden, V Tumai, R Wihongi, A Johns, L Redward, S Rickard, L Oliver *Joint closing submissions for the interested parties* dated 22 May 2024, Wai 3300, #3.3.18, for Claimant evidence on the lack of consultation and the effects of such.

<sup>22</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [41].

be further explored in the Constitutional Kaupapa Inquiry.<sup>23</sup> We submit that the issues being faced by Māori today as a result of parliamentary sovereignty cannot wait to be heard in the Constitutional Kaupapa Inquiry alone. The Crown today is breaching their fiduciary duties to uphold their obligations under Te Tiriti. Professor Mutu speaks of the violence and harm caused by the wording of the proposed Bill.<sup>24</sup> Jane Kelsey observed that the attacks on Te Tiriti and Māori are causing great friction and distress.<sup>25</sup> The Harm and prejudice caused to Māori through these Crowns actions is too substantial not to be addressed now in this urgent inquiry.

19. The Crown given the powers of parliamentary sovereignty is trying to unilaterally amend Te Tiriti without the consent or any engagement with Māori. By continuing to proceed with the Bill, the Crown has acted in bad faith as it supported a proposal to make changes that would impact the meaning of Te Tiriti in law which is acknowledged as the founding document of Aotearoa New Zealand.
20. Given the importance of this kaupapa, the concerns by Māori presented in the evidence for this urgent inquiry, together with the current governments pursuit to implement the coalition agreements, the interested parties request the Waitangi Tribunal to release an interim report as soon as possible that includes a recommendation requiring the Crown to cease all actions that culminate in the Bill progressing to the next stage of the process.

**Dated at Tāmaki Makaurau this 15<sup>th</sup> day of July 2024**



Darrell Naden  
**Counsel Acting**



Victoria Tumai  
**Counsel Acting**

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<sup>23</sup> Crown Law, *Closing Submissions of the Crown* dated 9 July 2024, Wai 3300, #3.3.23, at [41].

<sup>24</sup> Waitangi Tribunal, *Transcript for Tomokia ngā tatau o Matangireia - the Constitutional Kaupapa Inquiry: Treaty Principles Bill Urgent hearing held at Waitangi Tribunal Offices, Wellington, Thursday 9 May 2024 - Friday 10 May 2024* dated 17 May 2024, Wai 3300, #4.1.6, at 208.

<sup>25</sup> Kelsey, E.J., *Response of Professor Jane Kelsey to Questions from the Interested Parties Represented by Tamaki Legal* dated 17 May 2024, Wai 3300, #A15(d), at [4].



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Lauren Oliver  
**Counsel Acting**



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Sally Rickard  
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