

**IN THE WAITANGI TRIBUNAL**

**WAI 3500  
WAI 1911  
WAI 2139  
WAI 2143  
WAI 3073**

<b>IN THE MATTER AND</b>	of the Treaty of Waitangi Act 1975
<b>IN THE MATTER AND</b>	of the Identity and Culture kaupapa inquiry (Wai 3500)
<b>IN THE MATTER AND</b>	of a claim by Aaron Smale (Wai 1911)
<b>IN THE MATTER AND</b>	a claim by Steven Wilson and Karen Pointon on behalf of Ngāti Turi (Māori Deaf) (Wai 2143)
<b>IN THE MATTER AND</b>	of a claim by Timothy Tukapua and Dennis Greenland on behalf of Muaūpoko and the Muaūpoko Tribal Authority (Wai 2139)
<b>IN THE MATTER</b>	of a claim by Tania Kingi on behalf of Te Roopu Waiora (Wai 3073)

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**JOINT MEMORANDUM OF COUNSEL REGARDING PARTICIPATION IN INQUIRY**

Dated: 16 December 2024

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**RECEIVED**

Waitangi Tribunal

**16 Dec 24**

Ministry of Justice  
WELLINGTON

**BENNION  
LAW**

Barristers and Solicitors  
L1, 1 Ghuznee Street  
PO Box 25433  
Panama Street  
Wellington 6011

Counsel: Tom Bennion / Emma Whiley / Kudrat  
[tom@bennion.co.nz](mailto:tom@bennion.co.nz) / [emma@bennion.co.nz](mailto:emma@bennion.co.nz) / [kudrat@bennion.co.nz](mailto:kudrat@bennion.co.nz)

**MAY IT PLEASE THE TRIBUNAL****Introduction**

1. This memorandum of counsel is filed on behalf of:
  - a. A claim by Aaron Smale on behalf of himself (Wai 1911);
  - b. A claim by Timothy Tukapua and Dennis Greenland on behalf of Muaūpoko and the Muaūpoko Tribal Authority (Wai 2139);
  - c. A claim by Steven Wilson and Karen Pointon on behalf of Ngāti Turi (Māori Deaf) (Wai 2143); and
  - d. A claim by Tania Kingi on behalf of Te Roopu Waiora (Wai 3073).

(together “the claimants”)
2. And in response to memorandum-directions dated 11 Oketopa 2024 directing parties to provide indications of which claimants wish to participate in this inquiry.<sup>1</sup>
3. Counsel apologises for the slight delay in filing and seeks leave to do so.

**Claims seeking to participate in this inquiry***Wai 1911 (a claim by Aaron Smale)*

4. The Wai 1911 claim concerns the health and wellbeing of tamariki Māori. Core issues include the removal of tamariki Māori from their whakapapa via State Care, Adoption, and Youth Justice processes. Claim issues concerning these matters are included within the Wai 3060 Justice Kaupapa Inquiry and inclusion is also sought within the Wai 2575 Mental Health and Addiction, Wai 3310 Education, and Wai 3460 Social Services inquiries.
5. However, the claimants submit that an overlap with the Wai 3500 Identity and Culture inquiry exists. The claimants assert that adoption processes and practice in New Zealand fails to respect the right of tamariki to their whakapapa and identity. The Adoption Act 1955 today continues to fail to recognise the unique importance that inheritance of genealogy has for tamariki Māori and their whānau.

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<sup>1</sup> Wai 3500, #2.5.2 at [6].

6. Issues in relation to this inquiry are set out more fully in the Wai 1911 amended statement of claim.<sup>2</sup>

*Wai 2139 (a claim on behalf of the Muaūpoko Tribal Authority)*

7. The Wai 2139 amended statement of claim was filed on 18 April 2024.<sup>3</sup>
8. The claim is currently consolidated into the Wai 2200 inquiry. However, issues of relating to identity and culture are raised which are sought for inclusion in this inquiry as follows:
- a. The cultural orientation of the State care and protection system has caused significant and irreversible prejudice to tamariki Māori taken into State care, as well as to their whānau, hapū and iwi.
  - b. Muaūpoko requires urgent overhaul of current adoption law as it affects Māori to bring practices into line with the importance of preserving whakapapa and whānaungatanga to the Māori way of life.
  - c. Muaūpoko seeks greater involvement and partnership with Manatu Taonga, the Ministry for Culture and Heritage and Pouhere Taonga, Heritage New Zealand in the preservation, conservation, protection and management of Muaūpoko taonga tuturu, heritage places and archives.
  - d. Issues relating to the Karanga Aotearoa repatriation programme which has negotiated with international institutions to repatriate 420 ancestral remains to Te Papa on a temporary basis and then return to their whenua and descendants. However, there are estimated to be over 600 koiwi tangata and koimi tangata still remaining within overseas institutions.
9. These issues have not been inquired into. A request to aggregate the claim from the Wai 2200 inquiry is being sought from the Wai 2200 Presiding Officer, Chief Judge Fox, so that the Wai 2139 claim can also be included for aggregation into this inquiry.

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<sup>2</sup> Wai 1911, #1.1.1(d).

<sup>3</sup> Wai 2139, #1.1.1(f).

*Wai 2143 and Wai 3073 (Taangata Turi and Te Roopu Waiora)*

10. The Wai 2143 and Wai 2037 claims concern the health and wellbeing of whaanau hauaa who are a diverse community, inclusive of Maaori with physical, intellectual, and sensory impairments.
11. The Wai 2143 and Wai 2037 claims primarily fall within phase one of stage two of the Wai 2575 Health Inquiry. However, identity and culture themes underpin many of the issues faced by whaanau hauaa today.
12. Whaanau Hauaa are a diverse community, inclusive of those with physical, intellectual, and sensory impairments.
13. Disability is defined in the Statistics New Zealand 2013 Disability Survey as:<sup>4</sup>

**Disabled person:** someone with an impairment that has a long-term, limiting effect on their ability to carry out day-to-day activities. 'Long term' is defined as six months or longer. 'Limiting effect' means a restriction or lack of ability to perform day-to-day activities. People were not considered to have a disability if an assistive device (such as glasses or crutches) eliminated their impairment.
14. Concepts of disability are primarily Eurocentric in origin and have been imposed upon whaanau Maaori since the beginning of colonial rule.
15. Prior to colonial rule, hautipua were celebrated, revered, and sometimes feared due to the power and skills they possessed. These rangatira were connected and inseparable from their hapuu and political structures.<sup>5</sup>
16. The paramountcy of the individual in disability rhetoric continues to undermine whaanau hauaa roles and identities as whaanau, tupuna, kaitiaki and rangatira.
17. Whaanau hauaa are placed in 'care' services as an alternative to whaanau, marae, hapuu and iwi connections, diminishing the ability of members to be brought back into the fold of te ao Maaori and further displacing their roles and identities as whaanau, tupuna, kaitiaki and rangatira.

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<sup>4</sup> Statistics New Zealand (2015) He hauaa Maaori: Findings from the 2013 Disability Survey p9. <https://www.stats.govt.nz/assets/Uploads/Retirement-of-archive-website-project-files/Reports/He-haua-Maori-Findings-from-the2013-Disability-Survey/he-haua-maori-disability-survey.pdf>

<sup>5</sup> Wai 2143, #1.1.1 at [25] – [26].

18. Taangata Turi are a culturally and linguistically distinct group. Taangata Turi do not identify as disabled. Instead, Taangata Turi experience a disabling, colonising and fragmenting world.
19. At the core of the Taangata Turi claim is the prohibition and suppression of the human right to language.
20. The onset of colonisation brought with it Western construct deafness, shaped by ableist, racist, and audist ideology and reinforced through systems of institutionalism.
21. These processes destroyed Taangata Turi access to language as well as removed generations of Tamariki Turi their whaanau, hapuu, and whenua. Compulsory institutionalisation was part of the Crown's health and disability response to remove and/or assimilate populations that were not seen as contributing to or valued within New Zealand's colonial society.
22. Both claims assert that the Crown has imposed systems excluded whaanau hauaa and continues to displace whaanau hauaa from te ao Maaori as well as within their roles and identities as whaanau, tupuna, kaitiaki and rangatira.

**Dated** at Wellington this 16<sup>th</sup> day of December 2024



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**Tom Bennion / Emma Whiley / Kudrat**  
Counsel for the claimants