I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI	**WAI 3470**
BEFORE THE WAITANGI TRIBUNAL	**WAI 3440**

I TE TAKE O IN THE MATTER OF	the Treaty of Waitangi Act 1975
Ā AND	
I TE TAKE O IN THE MATTER OF	the Regulatory Standards Bill Urgent Inquiry (Wai 3470)
E PĀ ANA KI CONCERNING	Tetahi tono nō Eru Kapa-Kingi, Te Rawhitiroa Bosch, Anahera Mana-Tupara, Nyze Manuel, Kiri Tamihere-Waititi me Hohepa Thompson mō ngā tangata Māori i raro i te tāwharau o "Toitū Te Tiriti"

REPLY BRIEF OF EVIDENCE OF PROFESSOR ANDREW GEDDIS

Dated 13 Haratua 2025

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INTRODUCTION

1. My name is Andrew Geddis, I am a Professor at the University of Otago specialising in constitutional law. I provided a brief of evidence to this claim filed on 7 Haratua 2025.

SCOPE OF EVIDENCE

2. The purpose of this brief of evidence is to:

    a. Provide a brief reply to the Crown documents filed on 7 May 2025 (**Final RSB Documents**) that confirm the final form of the Regulatory Standards Bill (**RSB**) that will go to Cabinet on 19 May 2025 for final approval, followed by introduction of the RSB to Parliament that same day; and

    b. Confirm my position in relation to my evidence brief filed on 7 May 2025, in light of the Final RSB Documents.

FINAL RSB DOCUMENTS

1. I have read the Crown's Memorandum filed on 7 May 2025[1] (**Crown Memorandum**) and reviewed the Final RSB Documents provided with it. This reply is not intended to be an exhaustive analysis of the Final RSB documents given the extremely limited timeframes, and instead provides my comments on the main changes arising from the Final RSB Documents.

2. The Crown Memorandum and Final RSB Documents confirm:

    a. The Cabinet Minute contains Cabinet's direction for drafting and all of Cabinet's decisions as to proposed content of the Bill;

    b. The Final RSB Documents are current and, in terms of the Tribunal's jurisdiction under s 6 of the Treaty of Waitangi Act 1975, reflect the actual policy adopted by the Crown;

[1] Memorandum of Counsel for the Crown Regarding Regulatory Standards Bill Claim, 12 May 2025, at [3].

c. The key purposes of the Cabinet Paper and Minute are to articulate the Crown's adopted policy with sufficient particularity and clarity to inform legislative drafting, and these documents reflect collective decision-making by Cabinet as a whole; and

d. The Crown's process of consultation is apparent from the fact of – and on the face of – the discussion document produced for that purpose.

e. The Bill is proposed to come into force on **1 January 2026**[2]**,** with no ten-year waiting period before the RSB applies, retrospectively, to existing legislation.

c. The Cabinet minute confirms there will be six (rather than seven) principles in the RSB covering the following areas: rule of law; liberties; taking of property; taxes, fees and levies; role of courts and good law-making.[3] The content of those principles are the same as in the previously released consultation documents.[4] The seventh principle of regulatory stewardship as detailed in the Ministry for Regulation's consultation document, "Have your say on the proposed Regulatory Standards Bill", [5] has instead been subsumed into the broader purpose of the RSB focussed on "promoting the accountability of the Executive to Parliament in relation to the development of high-quality legislation and regulatory stewardship".[6]

d. Importantly for the purposes of my previous evidence, there is no change to the wording of the "Rule of Law" principle, and the subprinciple that "*every person is equal before the law*" is now confirmed to be included in the final RSB.

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[2] Crown bundle of documents assessed by the Crown to be critical to the inquiry, Wai 3470, #A8, Tab 1, at 7.
[3] Crown bundle of documents assessed by the Crown to be critical to the inquiry, Wai 3470, #A8, Tab 1, at 1-2.
[4] **Document JB2**.
[5] **Document JB2**.
[6] Crown bundle of documents assessed by the Crown to be critical to the inquiry, Wai 3470, #A8, Tab 1, at 1.

e. There will be no requirement for a referendum to take place at the next election before the RSB comes into force as was contained in the 2021 version of the Bill.

COMMENTS ON FINAL RSB DOCUMENTS

3. In summary, I confirm my views that:

a. While the Final RSB Documents confirm that there will be no entrenchment of the RSB via a referendum mechanism, my conclusions regarding the fundamental constitutional shift from the current legislative landscape that will be caused by this Bill if enacted remain, and this shift may even be realised even more quickly under the confirmed Crown RSB policy. This is because it has also been confirmed that there will be no ten-year waiting period before the RSB is applied to existing legislation, and the Bill is proposed to commence on 1 January 2026.

b. The 40 Acts that contain references to the principles of the Treaty of Waitangi can therefore be reviewed under the RSB starting immediately on 1 January 2026. When combined with the Coalition government's upcoming legislative programme that is already set to review 28 existing Treaty clauses, the Claimant's concerns that "by the time we reach the next election in late 2026, all Treaty clauses in existing legislation not relating to Treaty Settlements could be wiped from the statute books"[7] or at least a significant number of them, are understandable.

c. The Bill should not proceed, given the fundamental breaches to Te Tiriti o Waitangi and its principles that have already been caused by the RSB during the RSB consultation process, and that are likely to be caused if it is enacted in the final form proposed by the Crown as identified in my original brief and the evidence of Dr Carwyn Jones.

d. In light of the Final RSB Documents, all the existing conclusions detailed in my brief of evidence remain valid, except those relating

[7] Affidavit of Eru Kapa-Kingi, Wai 3440 #A1.

to the referendum mechanism which is not included in the final form of the RSB.

e. I also qualify my conclusions relating to the retrospective provisions of the RSB by noting that the 10-year waiting period before the RSB principles were to be applied to existing legislation that was provided in the 2021 version of the Bill has been removed. This represents a "worst case scenario" in terms of the likely prejudice that the Claimants will suffer if the Bill is enacted, as it means that the RSB can be applied immediately to all existing legislation except the listed exceptions, commencing from 1 January 2026 if no further changes are made through the select committee stage. The concerns I raised in my original brief about the application of the retrospective provisions therefore remain valid and are amplified by the timing of the proposed commencement of the RSB on 1 January 2026. While they may not quite be "gone by lunchtime", the existing Treaty provisions in our current legislative landscape[8] will be under intense threat once the RSB commences.

4. I support the Claimant's primary recommendation that the Crown abandons the RSB proposal. The RSB is a constitutionally significant piece of legislation that has not been adequately or appropriately developed in consultation with Māori as Treaty partner. The profound breaches of Te Tiriti that the RSB[9] will cause, will also cause substantial damage to the legitimacy of the Crown's right to govern due to the function of Te Tiriti as part of our nation's founding story. In my opinion, if the RSB proceeds in those circumstances, a constitutional crisis is a realistic possibility. For those reasons, my opinion is that the Bill must not go ahead.

DATED 13 Haratua 2025

ANDREW GEDDIS

[8] With the exception of those relating to existing Treaty Settlements.
[9] As identified by Dr Jones in his original brief.