

BEFORE THE WAITANGI TRIBUNAL

WAI 3470
WAI 3442

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

the Regulatory Standards Bill Urgent Inquiry
(WAI 3470)

AND

IN THE MATTER OF

a claim by **Pita Tipene, Moana Maniapoto, George Laking, India Logan-Riley, Donna Kerridge, Aroha Te Pareake Mead, and Maria Bargh** for and on behalf of **Ngā Toki Whakarururanga (WAI 3342)**

MEMORANDUM OF COUNSELDated on this 13th day of May 2025

RECEIVED Waitangi Tribunal
13 May 25
Ministry of Justice WELLINGTON

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TĒNĀ E TE TARAIPUNARA:

Introduction

1. This Memorandum of Counsel is filed on behalf of the following claim and respective claimants:

1.1 **Wai 3342** – a claim by Pita Tipene, Moana Maniapoto, George Laking, India Logan-Riley, Donna Kerridge, Aroha Te Pareake Mead, and Maria Bargh for and on behalf of Ngā Toki Whakarururanga.

(the Claimants)

Background

2. On 7 May 2025, the Tribunal received a memorandum of counsel for the Crown providing an urgent update on Cabinet decisions regarding the Regulatory Standards Bill (RSB)¹.

3. Counsel for the Crown advised that Cabinet has now made decisions to support the drafting of the RSB and confirm that a draft RSB and paper to introduce the Bill will proceed to Cabinet for consideration on 19 May 2025.

4. Along with the memorandum, Counsel filed a bundle of the following documents the Crown deems as critical to the urgent inquiry².

4.1 the Cabinet Minute (containing Cabinet’s direction for drafting, and all of Cabinet’s decisions as to proposed content of the Bill);

4.2 the underlying Cabinet Paper explaining the issues arising for decision;

4.3 the associated Regulatory Impact Statement;

4.4 the associated Treaty Impact Analysis;

4.5 the summary of public submissions; and

4.6 the summary of departmental feedback.

5. The Crown considered that such documents ‘comprehensively address’ the issue questions set out in the Tribunal Statement of Issues for this inquiry³. They submit these documents reflect current policies adopted by the Crown, rather than official advice to the Crown which may or may not be adopted⁴.

¹ Wai 3470, #3.1.26

² Wai 3470, #A8

³ Wai 3470, #1.4.1

⁴ Wai 3470, #3.1.26 at [5]

6. Crown Counsel submitted these documents are ‘fully explanatory of the Crown’s adopted policy’ and ‘not readily amenable to interpolation by any individual Crown official’⁵.
7. On the 12th day of May and following the filing of opening submissions and further evidence from Professor Jane Kelsey for and on behalf of Wai 3342 Professor Kelsey received further correspondence from the Honourable David Seymour as Minister of Regulations.
8. We attach herewith as Appendix “A”⁶ to this Memorandum of Counsel a true copy of that letter and accompanying appendices which addresses why further information is now being released to Professor Kelsey following her complaint to the Ombudsman by the ongoing concern that significant and relevant information that sat within the purview of her OIA requests were not being properly addressed by officials and Minister Seymour himself.
9. We seek leave notwithstanding the present directions for filing of material for this new information provided by the Crown for this Memorandum of Counsel and Appendices to now be placed on the record of inquiry as relevant material to assist in the present inquiry. Counsel only came into possession of the material this morning following correspondence from Professor Kelsey who is in Egypt.

The Treaty of Waitangi/te Tiriti o Waitangi

10. In the recommended actions noted in the annexures to now released documents there are some significant matters relevant to the present proceedings⁷. We include those recommended actions below for easy reference:

⁵ Wai 3470, #3.1.26at [6]

⁶ Response to OIA Request of Professor Jane Kelsey with annexures dated 12 May 2025

⁷ Annexures Recommended Actions in Appendix “A” of this MoC, at pages 7-8

Recommended action

We recommend that you:

- | | | |
|---|--|------------------|
| a | note that the 2021 Regulatory Standards Bill is silent on the Treaty of Waitangi/Te Tiriti o Waitangi (the Treaty) | Noted |
| b | note that the stated goal of the 2009 Regulatory Responsibility Taskforce report is to develop principles "designed to accord with and reflect broadly accepted principles of good legislation" | Noted |
| c | note that current best practice guidance on law-making includes that Māori rights and interests should be identified during policy-making and that legislation should be consistent with the principles of the Treaty | Noted |
| d | agree to include a principle in the Bill that legislation gives sufficient regard to consistency with the principles of the Treaty | Agree / Disagree |
| e | agree to include the following initial drafting in the A3s for the purposes of Ministerial consultation:

<i>The importance of maintaining consistency with the principles of the Treaty of Waitangi/te Tiriti o Waitangi</i> | Agree / Disagree |
| f | note that if you wish to proceed on the basis of the principle above, we recommend that the approach and wording be developed in collaboration with Māori | Noted |
| g | note that the Crown Law Office advises the addition of a principle relating to the Treaty carries legal risks, however on balance we consider that these are outweighed by the reputational and relationship risks of not including this principle | Noted |
| h | agree that this briefing will not be made public until proactive release of the final Cabinet paper, to ensure that you have sufficient time to consider and make decisions on the Bill | Agree / Disagree |

11. The recommended actions show that the Minister disagreed with amongst other matters was the need to include a principle in the Bill that legislation gives sufficient regard to the consistency with the principles of the Treaty. Furthermore, that the Minister disagreed of the need to include the following initial drafting in the A3's for the purpose of Ministerial consultations:

The importance of maintaining consistency with the principles of the Treaty of Waitangi/te Tiriti o Waitangi

Indicative list of stakeholders for targeted engagement

12. Annex 1 sets out a list of indicative group stakeholders that the crown would seek to engage with on the policy proposals for the Regulatory Standards Bill (RSB) as part of the consultation approach on the RSB.
13. Notwithstanding noting that the current best practice guidelines in our law making includes that Māori rights and interests should be identified during policy making and that legislation should be consistent with the principles of the Treaty significant comments are made in the handwriting, we assume of the Minister given that it was a briefing paper for his consideration, asking whether he should be limiting a consultation approach to actual iwi who operate parties.

14. The document then strikes out other significant Māori groups that should be engaged with including the New Zealand Māori Council; Federation of Māori Authorities and other Te Tai Kaha members⁸. We have copied it below for ease of reference:



Annex 1: Indicative list of stakeholders for targeted engagement

The list below is an indicative group of stakeholders we would seek to engage with on the policy proposals for the Regulatory Standards Bill.

- Key regulatory or legal contacts in public sector agencies
- Members of other branches of government (MPs)
- Former Regulatory Responsibility Taskforce members
- Business New Zealand (BusinessNZ)
- Property Council New Zealand (PCNZ)
- Local Government New Zealand (LGNZ)
- The National Iwi Chairs Forum (NICF)
- New Zealand Society of Local Government Managers (SOLGM)
- Māori Public Sector Network
- Legal communities. A variety of external public and constitutional law experts, including Government Legal Network, New Zealand Law Society (including Te Hunga Rōia Māori o Aotearoa/the Māori Law Society), Universities, Society committees, members of the judiciary, lawyers from major law firms
- Te Tai Kaha - ~~The~~ New Zealand Māori Council (NZMC) including Member Organisations Federation of Māori Authorities (FOMA) - Ngā Kaiārahi o te Mana o te Wai Māori (formerly Kāhui Wai Māori)

Inc. E.M.A. - Fed. Forum?

Don't repeat list of NZ! Let doc actual consults.

- Need to talk to actual Iwi: who operate as regulated parties. Eg. Tainui, Ngai Tahu and Ngati W. (Ngati W.)

15. There are some salient matters that emerge from the briefing paper that corroborate many of the express concerns of Ngā Toki Whakaruruanga and the failure of the Crown recognise internal advice about how to design meaningful engagement with those directly affected especially Māori. The author of the comments to the briefing paper observations suggests while Māori should be engaged with it is only a narrow approach when it notes that need to talk to actual iwi who.... vs regulated parties .e.g Tainui, Ngai Tahu and Ngati W which we assume is shorthand for Ngati Whatua.
16. The Crown has breached its kawanatanga obligations to act in good faith and its duty to meaningfully consult in developing the RSB. The haste with which this bill is proceeding to the House has left Māori rights in no position to adequately assess how this act will affect both the constitutional framework and international obligations that may impact on Māori rights and interests. Efforts to engage with

⁸ Annexure of Indicative list of stakeholders for targeted engagement in Appendix “A” of this MoC, at page 6.

material have been directly affected by the failure to provide in a timely manner material that can assist Māori in understanding legal and procedural barriers to protect Māori rights and interests and to analyse the effectiveness of the Bill and in particular in regulatory takings that may arise from decisions of the Crown.

17. The elevation of regulatory principles rooted in ideology—prioritising individual and property rights over collective interests of Māori— and their ability to exercise tino rangatiratanga, poses a direct threat to Aotearoa New Zealand’s constitutional foundations, particularly the status of Te Tiriti o Waitangi as the founding document.

DATED at Rotorua this 13th day of May 2025



Annette Sykes



Maia Te Hira

Counsel for the Claimants