OFFICIAL

IN THE WAITANGI TRIBUNAL

WAI 3300
WAI 3389

IN THE MATTER	of the Treaty of Waitangi Act 1975
AND	
IN THE MATTER	of te Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry (Wai 3300)
AND	
IN THE MATTER	of a claim by Nicki Wakefield, Bonnie Jade Kake, Kiri Edwards, Hūhana Lyndon, Mark Ngahoia Scott and Brandon Edwards on behalf of themselves and diverse hapū across Tai Tokerau (Wai 3389)

MEMORANDUM OF COUNSEL
Dated 22 July 2025

RECEIVED
Waitangi Tribunal
22 Jul 25
Ministry of Justice
WELLINGTON

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Introduction

1. This memorandum is filed on behalf of Wai 3389, a claim by Nicki Wakefield, Bonnie Jade Kake, Kiri Edwards, Hūhana Lyndon, Mark Ngahoia Scott and Brandon Edwards on behalf of themselves and the diverse hapū across Tai Tokerau (the Claimants) in response to memorandum-directions dated 18 July 2025, confirming that the next wānanga will take place on 21 August 2025, however the venue and location remains TBC.[1]

2. In summary, the Claimants seek amendments to the wānanga process for the reasons as set out below and advanced notice of wānanga dates and venues.

Inquiry to date

3. Tomokia ngā tatau o Matangireia commenced in December 2022, with an objective to finish by 2030.[2]

4. The Tribunal commissioned the Pou Tikanga and Pou Ture report: Tomokia ngā tatau o Matangireia, released in December 2023 (#6.2.2). The report proposed that from the outset, the inquiry will take the form of a series of wānanga. A key component of the wānanga approach outlined:

> Wānanga tend often to be conducted under initial consensus and agreement that upon conclusion, a particular issue, challenge, or opportunity will have been sufficiently explored in order to arrive at an outcome or action (or set of outcomes or actions) that is unanimously endorsed.

5. On 26 April 2024, a judicial conference was held to discuss the inquiry planning and design for the Tomokia ngā tatau o Matangireia. At that judicial conference counsel for the Claimants made submissions as follows:[3]

   a) The letter of transmittal for the Stage 2 Report of Te Paparahi o te Raki, specifically notes that the Tribunal has not identified precisely when the sovereignty of the Crown holds and exercises today was acquired, nor has the Tribunal considered its legitimacy in a contemporary context. This Tribunal should thus focus on these issues.

   b) There remains a significant gap between Te Paparahi o Te Raki findings that there was no session of sovereignty under te Tiriti o Waitangi and the imposed constitutional arrangements of the Crown that persist.

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1 Wai 3300, #2.6.61(a).

c) It is paramount that the Crown's position on these issues is fully understood moving into the wānanga process. Given it is highly likely that the parties remain far apart on these issues, a research program and more adversarial process will likely be required to test the legal position in evidence as well as inquiring into the specific claims filed.

d) Our clients seek strong findings that Māori have never ceded sovereignty, and clear recommendations that reflect this and the constitutional transformation that is now required.

6. Wānanga have now been held as follows:

a) 2-3 December 2024 at Waikato-Tainui Endowed College, Ngāruawāhia:

b) 28-29 April 2025 at Te Poho-o-Rāwiri Marae, Gisborne:

c) 26 June 2025 at the Waitangi Tribunal Offices, Wellington

7. With dates and/or venues yet to be confirmed for:

a) Te Tai Tokerau;

b) Ōtaki;

c) Te Waiharakeke.

8. Wānanga Tuawhā has been confirmed for 21 August, but where this wānanga takes place remains TBC.

9. Nine themes for the wānanga have been developed by the Tribunal from the statements of claim filed, with a possible expansion of these themes. This Tribunal has indicated its intention to report on the key themes from the wānanga.

Key milestones of the inquiry thus far

10. Important progress in the inquiry to date has been made including:

a) The compilation by Tribunal staff of research reports already completed for other Tribunal inquiries that address issues of relevance,[4]

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2 Wai 3300, #2.6.46 at [20].
3 Wai 3300, #4.1.5 pp54-58.
4 Wai 3300, #6.2.1.

b) The wānanga ā-rohe background paper,[5]

c) Statements of position filed by multiple claimants,[6] and

d) The presentation of those statements to the Tribunal in the first three wānanga that have taken place.

Limitations

Limited participation

11. We have observed, as has the Tribunal in respect of te Wānanga Tuatoru, the low number of participants in the wānanga to date.[7]

12. The Claimants, like many other participants in the inquiry, are working to balance significant other commitments with involvement in this inquiry. The Claimants include working parents of young whānau, active hapū members, and an active Member of Parliament.

13. It would greatly assist the Claimants and maximize their ability to participate in the wānanga process, if advanced notification of dates and venues for the remaining wānanga can be provided.

14. We further note the limited ability of the Claimants to now participate in Wānanga Tuawhā, should this be confirmed as taking place in Te Tai Tokerau. The Claimants are not in a position to provide a statement of position informed by the wānanga that have taken place do date by 31 July, when the location of the wānanga remains TBC.

Crown statement of position

15. In addition, the initial Crown position filed in advance of these wānanga, simply outlined some of the standard principles that the Crown considers underpin New Zealand's constitution such as democracy and Parliamentary Supremacy. It did not address the challenges or comment on the positions advanced by the claimants.[8]

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5 Wai 3300, #6.2.18.
6 Wai 3300, #B1 – B13, B15 – B24, B29 and B30.
7 Wai 3300, #2.6.61at [21].
8 Wai 3300, #B14.

16. In response to the Tribunal seeking further information on the question of whether the Crown considers the principle of equality forms part of the principles of constitutionalism[9] and a response to the claimant statements of position filed,[10] the Crown filed an updated statement of position. This updated statement of position outlined some more detail in respect of the principle of equality, but simply acknowledged that "the claimants' statements of position raise matters to be considered over the course of the inquiry".[11]

17. The Crown has indicated that it will present its statement of position in full at the conclusion of the wānanga.

18. In our respectful submission, it remains paramount that the Crown's position in response to the Claimants is fully understood in advance of the wānanga, rather than simply being stated in response at its conclusion. In lieu of the Crown's fully articulated position, the Claimant's position cannot be finalised and the Claimants will require an opportunity to respond.

Wealth of knowledge

19. As this Tribunal is well aware, the kaupapa of constitutional transformation has been part of Māori political debate for over 170 years. There is therefore, a wealth of knowledge, and Māori led advocacy on these issues, which includes:

    a) Hui-a-motu held in 2024;

    b) 2024 Mahuta Ake i te Pai, Imagining the Impossible: Designing our Constitution hui;[12]

    c) Māori Constitutional Convention 2021;[13]

    d) The Work of Te Wai Ariki;[14]

    e) The Power in Our Truth Conference 2023;[15]

    f) Leading texts such as Matike Mai,[16] He Puapua,[17] He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa,[18] Weeping Waters: The Treaty of Waitangi and Constitutional Change,[19] and the recent work of Dr Ned Fletcher;

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9 Wai 3300, #2.6.40, at [19].
10 Wai 3300, #2.6.46 at [9].
11 Wai 3300, #B14(b) at [2].
12 https://www.designingourconstitution2024.org.nz/recordings/
13 https://tehiku.nz/te-hiku-radio/matike-mai-maori-constitutional-convention/
14 https://www.auckland.ac.nz/en/law/our-research/research-centres/te-puna-rangahau-o-te-wai-ariki.html
15 https://www.wananga.com/the_power_in_our_truth

g) The work of leading Māori academics such as Professor Margaret Mutu, Dr Claire Charters, the late Moana Jackson, Dr Carwyn Jones, Professor Jacinta Ruru, and Morgan Godfery to name just a few.

20. Given this Tribunal has indicated its desire to keep a tight control of this inquiry, of which the Claimants support, with an aim to finish by 2030,[20] we submit that the research needs of the Claimants should be prioritised. At the very least, a history and literature review of all the leading work done to date is required so that this inquiry can build on that work.

Summary

21. In summary, the Claimants respectfully request:

a) Advanced notification of dates and venues for the remaining wānanga;

b) A full statement of position from the Crown that addresses the Claimants statement of claim, its constitutional legitimacy and the challenges faced;

c) The commencement of a research programme that draws together the significant body of work that has been done the core issues for this inquiry.

22. In our respectful submission, this will greatly assist the utility, participation, and engagement in the remaining wānanga and the objective to conclude the inquiry by 2030.[21]

Dated at Wellington this 22nd day of July 2025

Tom Bennion / Emma Whiley / Kudrat
Counsel for the Claimants

16 Wai 3300, #6.2.011.
17 Wai 3300, #6.2.014.
18 Wai 3300, #3.2.008(c).
19 Weeping Waters: The Treaty of Waitangi and Constitutional Change (2010) Edited Malcom Mulholland and Veronica Tawhai
20 Wai 3300, #2.6.46 at [20].
21 Wai 3300, #2.6.46 at [20].