OFFICIAL

IN THE WAITANGI TRIBUNAL
KEI MUA I TE TARAIPIUNARA

WAI 3325

UNDER **The Treaty of Waitangi Act 1975**

CONCERNING **The Climate Change Priority Inquiry**

MEMORANDUM OF COORDINATING COUNSEL

Dated: 14 November 2025

TĒNĀ, E TE TARAIPIUNARA

1. This memorandum is filed by coordinating counsel in response to the memorandum of Crown counsel dated 7 November 2025 and accompanying documents.

2. Amongst other things, the Crown memorandum responded to the Tribunal's directions of 3 November that the Crown keep the Tribunal advised of any significant policy of legislative developments as they occur on an ongoing basis.

3. In response, the Crown advised that on 4 November 2025 the Minister for Climate Change had announced that the government intended to make a raft of legislative changes to the Climate Change Response Act 2002 (**CCRA**). These were broadly described as being changes to the Emission Trading Scheme (**ETS**) and a general review of the legislation with a focus "to streamline processes to ensure that the Government can streamline processes to focus on delivering its climate change priorities".[1]

4. It is noted that these signalled legislative changes were made by Cabinet on 17 September 2025—and Cabinet appears to have expected to proactively and publicly release these relevant materials in September.[2] It appears that the Crown has only disclosed this decision now in response to the directions of the Tribunal.

5. The signalled changes will, in total, make some significant changes to Aotearoa's legislative climate change framework and response. They will in turn significantly impact on the issues the Tribunal will need to consider and, as a result, the evidence that will need to be presented by the claimants.

6. In these circumstances the claimants wish to express their disappointment that the Crown did not disclose the decisions to make the changes when they occurred or consult on the changes when they

[1] http://environment.govt.nz/news/government-announces-a-series-of-changes-to-nzs-climate-change-law/.
[2] [MFE011.0082].

were being considered. That omission appears to breach the Crown's obligations under Te Tiriti o Waitangi.

7. We also note the observation of the Court of Appeal in *Colleen Skerret-White and Ors v Minister for Children and Ors* [2024] NZCA 160 that "cooperation and candour" should mark the relationship between the Tribunal and the Crown.[3]

8. The Crown filed its evidence at the end of August when the development of the proposals was already well advanced. It is submitted that the Crown should have responsibly signalled to the Tribunal, before filing its evidence, that significant legislative changes were being considered by the Government and seeking an extension of filing dates to allow the final decision on the changes to be reflected in the Crown evidence filed. As it is, the Crown evidence filed is now in a number of material respects out of date and directions will be sought for supplementary Crown evidence to be filed.

9. The claimants respectfully seek a direction that the Crown disclose all relevant materials concerning the proposed amendments and related policy changes. This disclosure is necessary for the Tribunal and the claimants to understand the implications of the proposed reforms and to assess their consistency with the Crown's Te Tiriti obligations.

10. The timetable for the intended changes falls within 2 tranches. There is an intention to introduce legislation before the end of the year and have it passed though urgency procedures for two matters, being the dropping of the requirement to have regard to the Nationally Determined Contribution (**NDC**) in ETS settings, and for the reductions on the 2050 methane targets earlier announced. For the other changes, it is intended that a bill will be introduced in the New Year and proceed in the normal way, although likely under truncated timeframes given that 2026 is an election year.

[3] At [115].

11. These developments change the way claimants must approach the upcoming Crown hearing weeks. The statement of issues, and the claimants' evidence, were based on the framework as it stood. The proposed amendments substantially alter that foundation. Sudden or poorly signalled changes also risk undermining the investments and the wider transition strategies that many Māori communities have developed to participate in the carbon market.

12. Of initial concern, Crown documents that we have seen state that no consultation has been undertaken or will be undertaken on what is perhaps the most consequential proposal to Māori and Māori forestland owners in particular. This change is the removal of the requirement for limits and price control settings in the ETS scheme to be in accordance with NDCs under the Paris Agreement (under s30GC of the CCRA).

13. Crown documents admit that the delinking of the ETS from the Paris Agreement is intended to reduce likely upward pressure on ETS prices to try to meet NDC requirements.

14. This policy change strikes at the heart of the understanding that Māori landowners have, that their forests would be placed under the ETS without their agreement, because an international crisis has arisen, and there would be some compensation for these new restrictions through the ETS scheme and its role in resolving the international crisis.

15. A number of Crown witnesses stress how integral the Paris Agreement and NDCS are to functioning of the ETS and demand for units from forestry and how central the Paris Agreement and NDCs are to Māori involvement. For example:[4]

> 233. The Climate Change Iwi Leaders Group summarised the key themes from regional hui in its submissions to the government, including:
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> 233.1 The new Paris Agreement is seen as a positive for the Māori community in bringing together all the

[4] Wai 3325 Brief of evidence of Bryan Smith and Simon Mandal-Johnson - 29 August 2025(8500674.20)

countries of the world to reduce global emissions, noting that the agreement in itself will not achieve this objective. This has to happen domestically requiring a lot of work to be done by the government in a short period of time for New Zealand to meet its new international commitments.

233.2 That the new international agreement recognises the rights and interests of indigenous peoples is seen as a positive for the Māori community across the hui.

233.3 The ETS has failed to reduce emissions across the economy with the collapse of the carbon price while emitters have been allowed by government to profit from polluting. The carbon price collapse was a very strong theme across the regional hui and its impact on iwi and Māori.

16. Hemi Smiler:

50. Officials also met with Pou Take Āhuarangi, the Climate Lead for the National iwi Chairs Forum, as part of targeted engagement. Pou Take Āhuarangi also provided a written submission.

51. Pou Take Āhuarangi highlighted that climate action must balance domestic and global commitments while addressing the unique needs of Māori communities, ensuring inclusivity, equity, and resilience. They noted that climate mitigation and adaptation measures are resource-intensive and disproportionately impact Māori landowners and iwi given the significant role of primary industries in the Māori economy. As well, Pou Take Āhuarangi noted that Māori are also at the forefront of climate change impacts, with the most recent example being Cyclone Gabrielle's impact on Māori communities in coastal and low-lying areas. A significant number of marae across New Zealand remain highly vulnerable to climate impacts.

> 52. Among other things, Pou Take Āhuarangi recommended the government set NDC2 with a target level of 69% or greater (of net emissions below gross 2005) level. It considered this target is the most ambitious of the scenarios outlined in the Commission's advice and supports Aotearoa to reduce emissions at pace to minimise climate impacts on vulnerable communities such as iwi and hapū.

17. Direct involvement by Māori in COP and Paris Agreement processes are also discussed (See also Kay Harrison "Engagement with Māori on the Paris Agreement" paras 20-35, Victoria Hallum's evidence at [55]-[65]).

18. Bizarrely, current government policy is more open to Māori raising these issues at the current COP than being able to do so through any domestic processes.

19. The claimants also note that these changes further weaken the already weak provision of Crown guidance for local authorities in terms of mitigating or addressing the impacts of climate change on Māori at a local level.

20. For instance, with the simplification of the content of Emission Reduction Plans (**ERP**) and National Adaptation Plans (**NAP**), there will be less lead-time, a less visible process and little opportunity for feedback to ensure any guidance from central government to local government in terms of mitigating or addressing the impacts of climate change on Māori at a local level.

21. The simplification of these plans, which must be considered under the RMA framework, will likely also lead to more conservative approaches in local planning frameworks (e.g. hazard mapping, infrastructure resilience planning, land-use change for retreat).

22. The shift in timing to a 2050 target means local government will have much less certainty on the national direction in the short term. This means local government will need to plan for a range of possible trajectories.

23. Though non-forestry removal projects (e.g. blue carbon, soil carbon, wetlands) may open opportunities for local government and Māori, no guidance appears forthcoming of how to approach such opportunities in practice.

24. Less prescriptive central government direction will make it harder for local authorities to justify funding/financing at a local level in addressing issues of concern for Māori.

25. Finally, the claimants note that there is uncertainty over the impact on these changes on the Government's specific obligation to ensure the adequacy of consultation carried out by the Commission with Māori in regard to proposed ERPs (s 5ZI(1)), which specially referred to in the CCRA as being to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi (S 3A(ad)). Irrespective, the signalled changes will significantly impact on the ability of Māori to have input into emission budgets and reduction plans and as such the Crown's wider Te Tiriti obligations in this respect.

26. In these circumstances:

    a. The claimants ask that a judicial conference is scheduled during the upcoming hearing week to discuss these matters.

    b. The claimants seek a direction that the Crown disclose before 24 November all further relevant materials (beyond the proactive release) concerning the proposed amendments and related policy changes.

    c. Once received, the Tribunal seek submissions on:

        i. The extent of the changes and how dramatically they affect the current inquiry including the statement of issues;

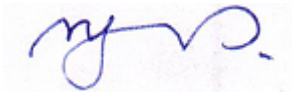
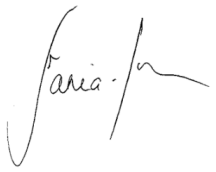
        ii. Whether amendment to the statement of issues is required;

iii. Whether a targeted hearing could provide interim recommendations on some changes, including what shape that hearing might take (whether on the papers, through submission etc).

27. Any interim process would not displace the need for a full report to be issued in due course.

28. Finally, the claimants have been directed to respond on whether they intend for a conferencing of experts to occur prior to the next hearings. In the circumstances, the claimants do not see merit in conferencing of experts.

Dated: 14 November 2025

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