

IN THE WAITANGI TRIBUNAL

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

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

MEMORANDUM OF COUNSEL IN ADVANCE OF THE JUDICIAL CONFERENCE

Dated: 19 September 2025

RECEIVED

Waitangi Tribunal

22 Sep 25

Ministry of Justice
WELLINGTON

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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 tamariki Maaori who have been forcibly removed from their whakapapa via the state processes of adoption and state care (Wai 1911);
 - b. A claim by Timothy Tukapua and Dennis Greenland on behalf of Muauupoko and the Muauupoko Tribal Authority (Wai 2139);
 - c. A claim by Steven Wilson and Karen Pointon on behalf of Ngaati Turi (Maaori 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 12 AAKuhata 2025 directing parties to file written submissions in advance of the judicial conference.¹
3. Counsel apologises for the delay in filing and seeks leave to do so.

Feedback on draft definitions

4. Reflecting on the koorero shared at Hui Whakatuwhera, the Tribunal panel has suggested the following draft definitions:

Definition one (traditional)

Cultural identity is a collective expression of who a people are and similarly how they are seen by others. It is derived from a people’s origin and whakapapa and is legitimised through shared traditional knowledge and belief systems. A peoples cultural identity informs their behaviour and decisions; and is determined by their traditional environments as well as the environments of the time. A people’s language, practices, customs, artifacts, belief systems and the natural environment all play a role in defining their cultural identity.

¹ Wai 3500, #2.5.8.

Definition two (not necessarily traditional)

Cultural identity is a collective expression of who a people are and similarly how they are seen by others. It is derived from a people's origin and is legitimised through shared knowledge and belief systems. A people's cultural identity informs their behaviour and decisions; and is determined by their environments. A people's language, practices, customs, artifacts, belief systems and the natural environment all play a role in defining their cultural identity.

5. A final definition is intended to support the panel in determining the scope for the inquiry. Accordingly, the claimants wish to highlight matters in relation to any definition adopted for the purposes of this inquiry.
6. Primarily, the definition of cultural identity in this inquiry must be careful to not further disenfranchise or exclude Claimants who have been denied their cultural identity through the very actions of the Crown, that they seek to bring as claims before this Tribunal.
7. Article 33 (1) of the UN Declaration of the Rights of Indigenous Peoples also protects the right of Māori to determine their own identity or membership in accordance with their customs and traditions.
8. Flexibility to the definition adopted in this inquiry, the right of Maaori to determine their own identities, and the effect of Crown actions in breach of Te Tiriti should be considered. Further Claimant specific considerations are set out below.

the Wai 1911 claim

9. The Wai 1911 claim concerns the health and wellbeing of tamariki Maaori. This claim seeks to address the considered and deliberate practice of removing indigenous children from their whaanau, hapuu, and iwi, thus dismantling indigenous polities, their political independence and control of resources.
10. The removal and violence against indigenous children is an experience common to indigenous peoples throughout the world. Historically, this has been a crucial tactic in the state's attempt at destroying or at least diminishing the collective identity of indigenous peoples across time.

11. For example, in Aotearoa, Part IX of the Native Land Act 1909 prohibited the cultural practice of whaangai. This was in part, an attempt to simplify issues of succession to individualised land titles, which Maaori whaanau arrangements did not fit neatly into.
12. This wording was also included in the 1955 Adoption Act. The definition of Māori employed in the 1955 Act was based on prevailing statistical notions of “half-caste” blood quantum or more. This was used to support the adoption of Maaori children of less than “half-caste” blood quantum through the Magistrate’s Court, rather than the Maaori Land Court where whakapapa and placement with kin were more likely to be considered. Compounding these issues was the haphazard recording of children’s Maaori ancestry in adoption files which has meant that ethnicity was rendered invisible in child welfare statistics.
13. More recently, the koorero shared in the Royal Commission of Inquiry into Abuse in State Care highlights the harmful legacy caused by the State’s intervention and removal of tamariki Maaori from their whaanau, hapuu and iwi. It created a pipeline which took taamariki Māori straight from institutions and directly into gangs and prisons.
14. The philosophy underpinning State practices was to classify different groups and their ways of life and setting up narratives that undermine and attack indigenous narratives and knowledge, thus undermining the authority of their collective identities. This has a long-term and intergenerational impact on those tmariki Maaori and their cultural identity.
15. It is with this context in mind, we submit that any articulation of a final definition must provide flexibility and room for those that were forcibly severed from their cultural identity.

the Wai 3073 and Wai 2143 claims

16. The claimants have filed a statement for this inquiry as they were unable to attend Hui Whakatuwera.² The Wai 2143 and Wai 3037 claims concern the health and wellbeing of whaanau hauaa who are a diverse community,

² Statement on behalf of the Wai 3073 and Wai 2143 dated 2 September 2025 (awaiting ROI reference).

inclusive of Maaori with physical, intellectual, and sensory impairments. Whaanau Hauaa are a diverse community, inclusive of those with physical, intellectual, and sensory impairments.

17. The claimants address how concepts of disability are primarily Eurocentric in origin and have been imposed upon iwi Maaori since the beginning of colonial rule.
18. In particular, deficit descriptors borne from western concepts of disability, such as “disabled”, “abnormal”, “deformed”, “handicapped”, “crippled” and “retarded” are all terms used to vilify, denigrate, distance, and isolate those who are ‘disabled’ from those who are not. The practice of confinement through institutionalisation has inflicted immeasurable harm on iwi Maaori generally and whaanau hauaa specifically.
19. 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.
20. Both claims assert that the Crown has imposed systems which 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.
21. Therefore, any definition regarding ‘culture’ or ‘identity’ or ‘cultural identity’ that places emphasis on cultural identity being informed by the environment should be alive to how its environment is the very factor that has continued a narrative of excluding whaanau hauaa from their culture and identity.
22. The claimants would like to see a flexible definition adopted – one that is alive to the ongoing struggle, marginalisation and displacement of whaanau hauaa from te ao Māori.

Timeframes

23. Hearings will not occur until around 2031. To utilise the time, suggested interlocutory steps include but are not limited to:

- a. Filing statements of claim for inclusion within this inquiry and confirming an initial list of claims deemed eligible to participate.
- b. Formation of key themes / issues for inquiry. We endorse the suggestions made by Tukau Law to identify high-level themes and issues that fall within this inquiry.
- c. Development of a research programme.
- d. Inclusion of an accessibility protocol to ensure participation of whaanau hauaa.
- e. Discovery - We note that the Stage Two Health Inquiry has benefited from the early production of overview Crown evidence as well as a list of publicly available documents by agency. A similar Crown approach to this inquiry would also assist.

Accessibility Protocol

24. As demonstrated by the statement filed by the Wai 2143 and Wai 3073 claimants, this inquiry is of significant interest to whaanau hauaa and taangata turi. Therefore, to ensure claimants can meaningfully participate accessibility requirements will need to be accommodated within this inquiry.
25. Counsel requested that the Tribunal consider the application of accessibility protocols similar to those currently used in the disability phase of stage two of the Health Services and Outcomes Kaupapa Inquiry (Wai 2575) (Wai 2575, #2.6.59(a)) ("the Accessibly Protocol") which provide for a fully accessible inquiry. A version of this protocol has also been successfully used in the Justice System inquiry.
26. Some minimum standards of accessibility include, but are not limited to:
 - a. Accessible hearing venues.
 - b. Filing summaries of all large documents.

- c. Accessible hearing week timetable structure, e.g beginning later and finishing earlier with regular breaks for participants and NZSL interpreters.
 - a. Live NZSL interpretation. Practice in the Health Inquiry has been to endeavour to contract a team of three interpreters to cover a full week of hearings. At least one interpreter should be a trilingual interpreter.
 - b. The livestream should include video of the NZSL interpreter.
27. A protocol could be developed further, prior to hearings commencing in 2031.

Statement of issues

28. Counsel are supportive of submissions by Tukau Law regarding identification of high-level themes.³ There is some merit in also utilising the time to refine statement of issues, which can also inform the research programme.
29. Statement of issues are able to provide some focus to an inquiry but should not be overly prescriptive. We note and support the approach of the Stage One Health Inquiry:⁴

“The statement of issues is intended to provide a guideline to the stage one claimants, the Crown and any interested party for whom leave may be granted, during the preparation of their respective cases and submissions. They are not intended to straightjacket the parties however they provide a clear indication of the issues which the Tribunal would like to be addressed during stage one of this Inquiry.

Dated at Wellington this 19th day of September 2025



Tom Bennion / Emma Whiley / Kudrat
Counsel for the claimants

³ Wai 3500, #3.1.56.

⁴ Wai 2575, #1.4.1 at 1.3.