
KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 3300

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Tomokia ngā tatau o Matangireia - the
Constitutional Kaupapa Inquiry

CROWN STATEMENT OF POSITION FOLLOWING WĀNANGA Ā-ROHE

11 December 2025



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o te Karauna**
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INTRODUCTION

1. This statement of position follows the Crown's initial statement of position and the addendum to that document.¹
2. Through this document the Crown sets out its position on the issues identified by the Tribunal and commented on by claimants during the six wānanga ā-rohe. The Crown hopes this document will assist the Tribunal in planning ahead for this inquiry.
3. The Crown understands the purpose of this inquiry is to inquire into claims concerning New Zealand's constitutional arrangements and, where it finds those claims to be well-founded, for the Tribunal to make practical recommendations for change.
4. Context is important. New Zealand is a modern liberal democracy. This means, among other things, that everyone has the same fundamental rights, including the right to participate equally in free and fair elections. In practice, political authority resides in all the people of New Zealand collectively who elect Members of Parliament. It is Parliament that exercises what has been called 'the sovereignty of the people' and in doing so balances various competing rights and interests.² Any discussion about our constitution takes place in that context.
5. The Crown acknowledges that the laws establishing our constitutional framework can change over time so that they remain effective and credible. As the Crown noted in its initial statement of position, such changes need broad public support to be seen as legitimate, and constitutional change is often preceded by broad public discussion about the reasons for change and possible alternatives.³ Making changes to the constitutional system depends on all communities being able to engage constructively, which is not possible within the confines of a Tribunal

¹ See Wai 3300, #B14 and #B14(b).

² Sir Kenneth Keith at 5. In distinguishing between notions of legal and political sovereignty, Dicey wrote that in a political sense the electors are the actual sovereign power: see AV Dicey, *Lectures Introductory to the study of the law of the constitution* (1st ed, Macmillan, London, 1885) at 67-69.

³ Wai 3300, #B14 at [28].

inquiry. However, the Crown views this inquiry as an important contribution to a broader national conversation.

6. This statement of position does not replace the Crown's earlier statement and addendum. The purpose of this statement is to provide a detailed statement of constitutional principles already identified by the Crown in relation to issues framed by the Tribunal and comments made by claimants.
7. The Crown wishes to acknowledge the many claimants who filed statements of position and who presented those statements during the six wānanga ā-rohe at Ngāruawāhia, Tūranga-nui-a-Kiwa, Te Whanganui a Tara, Whakatū, Te Papaioea and Waitangi.

BACKGROUND

Purpose of wānanga ā-rohe

8. The purpose of the wānanga ā-rohe has been to enable claimants and the Crown to identify:⁴
 - 8.1 the themes of the inquiry;
 - 8.2 areas of agreement as to New Zealand's constitutional principles; and
 - 8.3 to clearly identify the issues that emerge.
9. Following the wānanga ā-rohe, the Tribunal will produce a report that will confirm the principles, themes and remaining issues that will underpin the rest of the inquiry.⁵

Statements of position

10. Prior to the first wānanga, the Tribunal directed:⁶
 - 10.1 claimants to file statements of position that outline tikanga principles that underpin Māori notions of constitutionality; and

⁴ Wai 3300, #2.6.19.

⁵ Wai 3300, #2.6.19. A draft of this report will be circulated to parties before a judicial conference to be held in March 2026: Wai 3300, #2.6.75 at [63].

⁶ Wai 3300, #2.6.33.

- 10.2 the Crown to file a statement of position that states the principles of constitutionality that the Crown considers underpins the unwritten constitution of New Zealand.
11. Following the first wānanga, the Tribunal confirmed:⁷
- 11.1 the Crown would be asked to periodically update its statement of position to respond to each round of claimant statements of position filed prior to each wānanga; and
- 11.2 the Crown would present its statement of position at the final wānanga.
12. More recently, the Tribunal updated directions such that:⁸
- 12.1 the Crown statement of position would be filed in December 2025, shortly following the final wānanga; and
- 12.2 arrangements would be made for presentation of the Crown position at an online fixture.

Crown statements of position to date

13. To date, the Crown has filed:
- 13.1 an initial Crown statement of position (filed prior to the first wānanga);⁹ and
- 13.2 an addendum in response to the Tribunal's questions concerning the value of equality (filed prior to the second wānanga).¹⁰
14. Prior to the third, fourth and fifth wānanga, the Crown confirmed it had no updates to its statement of position.¹¹
15. When filing its initial statement of position, the Crown noted that there are limitations to what officials can engage on and/or agree to at the wānanga without providing advice to, and seeking decisions from, Ministers.¹²

⁷ Wai 3300, #2.6.46.

⁸ Wai 3300, #2.6.73 at [11]-[12].

⁹ Wai 3300, #B14(a).

¹⁰ Wai 3300, #B14(b).

¹¹ Crown memoranda dated 19 June 2025; Wai 3300, #3.2.71; Crown memoranda dated 21 October 2025.

¹² Wai 3300, #3.2.152 at [2].

Accordingly, the Crown's primary role at the wānanga has been to listen to claimants' kōrero.

Proposed themes for inquiry

16. Prior to the first wānanga, to assist discussion, the Tribunal released a background paper that proposed themes for the inquiry.¹³ Many of the claimants centred their contributions around these themes during the wānanga.
17. These themes evolved throughout the wānanga. In particular:
 - 17.1 The Tribunal initially identified international treaty-making as a separate theme for inquiry,¹⁴ but later confirmed it would be considered as a subset of tino rangatiratanga and kāwanatanga, focusing on the constitutional power and process for international treaty-making.¹⁵
 - 17.2 In response to claimant proposals, the Tribunal confirmed that climate change will not be included as a theme, rather, the Tribunal will consider rights and obligations to the environment as a subset of tino rangatiratanga and kāwanatanga.¹⁶
 - 17.3 The Tribunal has clarified that this inquiry will not address Treaty settlements, ouster clauses, or mandates. As they are out of scope, the Tribunal directed parties not to cover such matters in their statements of position.¹⁷ The Tribunal also directed that it will not be revisiting the findings made by the Wai 1040 Tribunal panel on the issue of sovereignty and constitutional issues (in the stage one and stage two Wai 1040 reports) as those findings pertain to claimants in that inquiry.¹⁸

¹³ Wai 3300, #6.2.18.

¹⁴ Wai 3300, #2.6.26 at [10].

¹⁵ Wai 3300, #2.6.61 at [22].

¹⁶ Wai 3300, #2.6.61 at [21].

¹⁷ Wai 3300, #2.6.76 at [10].

¹⁸ Wai 3300, #2.3.2 at [17].

18. Prior to the fifth wānanga, the Tribunal confirmed the following update to the proposed inquiry themes:¹⁹
- 18.1 **Theme one:** Mana motuhake, tino rangatiratanga, autonomy and self-government, tikanga.
 - 18.2 **Theme two:** Kāwanatanga, constitutional legitimacy and sovereignty, parliamentary sovereignty and systems, ngā ture pākehā.
 - 18.3 **Theme three:** ‘Dual Governance’ – the relationship between kāwanatanga and te mana Māori motuhake including the way the two forms of government inform each other.
 - 18.4 **Theme four:** Electoral rights and systems.
 - 18.5 **Theme five:** Local government and the Treaty of Waitangi / te Tiriti o Waitangi.
 - 18.6 **Theme six:** Human rights and the Treaty of Waitangi / te Tiriti o Waitangi.
 - 18.7 **Theme seven:** Citizenship rights.

Crown approach

19. To assist the Tribunal in scoping the issues for the inquiry, this statement of position takes the following approach:
- 19.1 the Crown outlines its understanding of the issues emerging under each proposed theme from claimants’ contributions during the wānanga ā-rohe phase; and
 - 19.2 the Crown outlines its position in relation to each theme and, where relevant, outlines the applicable constitutional principles the Crown considers apply.
 - 19.3 matters best addressed by legal submission will be engaged with as the inquiry develops and the Crown does not seek here to

¹⁹ Wai 3300, #2.6.73(b).

comprehensively address all specific points raised by claimants or provide detailed responses to propositions for constitutional evolution and change. The Crown will engage with these matters as the inquiry develops and evidence is presented.

20. This exercise has required the Crown to respond to claimants' positions which outline tikanga principles that underpin Māori notions of constitutionality. The Crown does not attempt to reproduce claimants' definitions of tikanga principles. Rather, the Crown outlines its current understanding of the constitutional themes emerging from discussion.
21. The Crown has sought to capture common issues arising for the purpose of its response and does not attempt to summarise all claimant positions exhaustively.

CROWN POSITION ON CONSTITUTIONAL ARRANGEMENTS

22. **The Treaty of Waitangi / Te Tiriti o Waitangi** is a founding document of government in New Zealand and one of the sources of New Zealand's constitution.²⁰ The Treaty / te Tiriti established, and for some continued, a dynamic, on-going relationship between the Crown and Māori, with mutuality and reciprocity at its core, intended not to fossilise a status quo but to provide a direction for future growth and development.²¹ The Treaty / te Tiriti affects, in various ways and to varying extents, how public power is exercised in New Zealand and informs the application of other constitutional principles.
23. Since 1840, as the Crown's role has evolved and representative democracy has developed, the nature of the Treaty relationship has also evolved. The Crown has various relationships with Māori which are underpinned by the Treaty / te Tiriti, and these relationships operate alongside Māori

²⁰ Sir Kenneth Keith 'On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government', in the Cabinet Manual (2023), at 1; the Cabinet Manual (2023) Appendix A: The Treaty of Waitangi/Te Tiriti o Waitangi at 155.

²¹ Waitangi Tribunal *Motunui-Waitara Report* (Wai 6, 1983) at p 61, cited in *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA), per Casey J at 715. See also the more recent Supreme Court citation of *Lands in Paki v Attorney-General* [2014] NZSC 118.

participation in New Zealand's wider constitutional arrangements through democratic institutions and processes.

24. The Crown's position is that New Zealand's constitutional arrangements ought to be consistent with the Crown's obligations under the Treaty / te Tiriti and maintain the following constitutional principles that serve all New Zealanders:²²

24.1 **Representative government – democracy:** Democracy is the underlying principle of New Zealand's key constitutional conventions.²³ Elected representatives have a mandate to make decisions that bind everyone and they are electorally accountable to everyone. Ministers are Members of Parliament, elected through periodic, free and fair elections. Through representative government, the government seeks to balance diverse interests and perspectives across the whole population while remaining accountable to the electorate.

24.2 **Rule of law** Everyone, including the Government, is subject to the law. All those who have powers, including Ministers and public officials, must use them in accordance with the law and be accountable for their actions. Law should be clear, constitutionally sound, and accessible. There should be an independent and impartial judiciary. All New Zealanders have access to justice and can pursue their legal rights.

24.3 **Responsible government:** The executive is selected from and must retain the confidence of the legislature to which it is accountable. Ministers must be democratically elected Members of Parliament. The executive is accountable to the legislature through parliamentary questions, debates, and select

²² These principles were previously set out in the Crown's first statement of position (Wai 3300, #B14) and the Crown addendum on equality (Wai 3300, #B14(b)).

²³ Sir Kenneth Keith 'On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government', in the Cabinet Manual, at p 3.

committees, and the legislature is accountable to the electorate through periodic elections.

- 24.4 **Separation of powers – principle of non-interference:** The three branches of government – the legislature, executive, and judiciary – have distinct roles. The legislature’s role includes making laws. The executive’s role includes developing policy and governing within laws set by Parliament and the courts. The judiciary’s roles include interpreting and applying statutory law and applying and developing the common law (i.e. judge-made law). The courts may determine whether decision-makers have acted within the scope of their statutory powers. The courts may also review executive action involving non-statutory powers and constitutional conventions. The courts do not intrude on parliamentary process and cannot invalidate legislation. Each branch of government contributes to accountability through checks and balances on the others, while recognising Parliament’s power to make laws.
- 24.5 **Parliamentary powers:** Parliament has full power to make laws. Parliament’s legitimacy stems from its democratic mandate derived from periodic elections. The executive may only tax, borrow, or spend public money under an Act of Parliament, ensuring democratic accountability for resource decisions.
- 24.6 **Fundamental human rights:** Fundamental human rights uphold the inherent dignity of people as human beings. They help define the acceptable limits of public power and the core functions of the state. In New Zealand, human rights are affirmed primarily by legislation such as the New Zealand Bill of Rights Act 1990 (NZBORA), which protects rights including freedom from

discrimination.²⁴ Human rights obligations are also found in international instruments.²⁵

25. In addition, the following fundamental value of **equality** also shapes New Zealand's constitutional arrangements. All people are equal before the law and have equal rights to participate in civic and political life. This is reflected in Article 3 of the Treaty / te Tiriti, which guaranteed Māori the same rights and privileges as British subjects. The value is expressed through universal suffrage and the equal application of the law. Achieving substantive equality may require differential treatment to address existing inequities, as recognised in NZBORA and international human rights instruments.²⁶
26. The Crown acknowledges that Article 3 of the Treaty / te Tiriti sits alongside Article 2, which provides for Māori rights and interests. How the Treaty / te Tiriti operates within New Zealand's representative democracy and how Articles 2 and 3 are reflected in current constitutional arrangements will be issues for this inquiry.

THEMES ONE, TWO AND THREE

Themes one, two and three

27. Themes One to Three address fundamental questions about the source, nature, and exercise of authority within New Zealand's constitutional arrangements.
28. The Crown addresses these themes together and as organised around three key constitutional issues proposed by the Tribunal:
- 28.1 **Sovereignty and legitimacy:** This section addresses claimant positions on the source of constitutional authority, the meaning

²⁴ Section 19 of NZBORA. See also relevant common law, such as *Simpson v Attorney General [Baigent's case]* [1994] 3 NZLR 667 and *Attorney-General v Taylor* [2018] NZSC 104, [2018] 1 NZLR 213.

²⁵ Such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

²⁶ Section 19(2) of NZBORA, and international instruments including article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 4 of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 of the Convention on the Rights of Persons with Disabilities.

of tino rangatiratanga and kāwanatanga, and whether sovereignty was ceded or is otherwise legitimate.

28.2 Māori autonomy and self-government: This section addresses claimant positions on mana motuhake, whether current constitutional arrangements adequately provide for Māori autonomy and self-government, and how Māori autonomy and self-government should operate including the role of tikanga and positions relating to separate spheres of authority.

28.3 Parliamentary sovereignty and systems: This section addresses claimant positions on current parliamentary powers and systems.

Sovereignty and legitimacy

29. The Tribunal background paper provided the following descriptions of relevant themes:²⁷

Tino rangatiratanga

Article 2 of te Tiriti o Waitangi guaranteed Māori the right to exercise tino rangatiratanga in respect of their lands, villages, forests, fisheries and other taonga. In *Ko Aotearoa Tēnei* (Wai 262), the Tribunal considered that this meant ‘the highest chieftainship over all their treasured things’.

The *Te Rohe Pōtae* (Wai 898) Tribunal stated that tino rangatiratanga:

[...] at a minimum, was the right to self-determination and autonomy or self-government in respect of their lands, forests, fisheries, and other taonga for so long as they wished to retain them. That authority or self-government included the right to work through their own institutions of governance, and apply their own tikanga or system of customs and laws.

Tino rangatiratanga is a claim issue that appears in the majority of claims lodged with the Waitangi Tribunal. The Wai 3300 Tribunal considers there is significant overlap between the themes of tino rangatiratanga, autonomy, and self-government. Wānanga participants may wish to discuss these and other definitions.

...

²⁷ Wai 3300, #6.2.18.

Kāwanatanga

Article 1 of te Tiriti o Waitangi conferred the Crown with kāwanatanga, which is the right to govern and to make laws for the ‘good order and security’ of the country.

Kāwanatanga may also refer to the Crown’s broader responsibilities and authority, for example in passing delegated legislation during the COVID-19 pandemic, in the role played by Te Puni Kōkiri as the lead Ministry for Māori Development, and in the imposition and collection of tax by the Inland Revenue Department. The exercise of kāwanatanga could also encompass the setting and implementation of immigration policy.

...

Constitutional legitimacy and sovereignty

Balancing tino rangatiratanga and kāwanatanga raise correlated issues of a constitutional nature. A significant proportion of claims submitted to the Wai 3300 inquiry allege breaches related to the constitutional legitimacy of the Crown in the ascertainment and assertion of sovereignty over Māori.

The Stage 2 Te Paparahi o Te Raki (Wai 1040) Tribunal did not comment on precisely when the Crown acquired the sovereignty it exercises over Te Raki Māori today. It considered that this was a matter that was likely to feature in the Constitutional Kaupapa Inquiry.

Claimant positions

30. Common themes emerging from claimant positions regarding sovereignty and legitimacy included:
 - 30.1 Māori were sovereign prior to Te Tiriti and this pre-existing sovereignty was affirmed by He Whakaputanga and guaranteed by Te Tiriti.²⁸
 - 30.2 Māori did not cede sovereignty under Te Tiriti.²⁹ In particular:
 - 30.2.1 The English text of Te Tiriti was often described as illegitimate and the Māori text should be preferred where differences arise.³⁰

²⁸ See for example: Wai 3300, #B1 at [3]-[4], [20]; #B19 at [5]; #B32 at [6]; #B33 at [18]-[19]; #B34 at [2.4]; #B52 at [35]; #B75 [8]-[12]; #B50, at [12]-[16]; #B82(a), at [14]; #B66 at [2]; #B83 at [14].

²⁹ See for example: Wai 3300, #B1 at [18]; #B12 at [22], [49]; #B20 at [7]-[14]; #B31 at [4]; #B33 at [18]; #B63 at [2.6]; #B67 at [8].

³⁰ See for example: Wai 3300, #B6(a) at [21]-[22]; #B16 at [7]-[9]; #B12 at [17]-[19]; #B19 at [8]; #B20 at [7]-[8]; #B52 at [42].

30.2.2 Tino rangatiratanga was often equated to sovereignty and was said to encompass the right of Māori to govern themselves according to tikanga and exercise authority over whenua, natural resources, taonga, culture, and people.³¹

30.2.3 Kāwanatanga was distinguished from sovereignty and was often described as limited Crown governorship or administrative authority over Pākehā settlers to maintain peace and good order.³²

30.2.4 Te Tiriti established dual spheres of authority: Crown kāwanatanga and Māori tino rangatiratanga.³³ Claimants often said these two authorities should work together as equal partners requiring shared governance.³⁴

30.3 Since the signing of Te Tiriti, Māori have not ceded their sovereignty, with claimants referring to historical and contemporary expressions of Māori sovereignty and tino rangatiratanga.³⁵

30.4 The sovereignty the Crown asserts today was acquired illegitimately, or is otherwise illegitimate.³⁶

31. Claimants said that constitutional legitimacy requires structures that honour He Whakaputanga and Te Tiriti, respect Māori authority to exercise governance according to their own tikanga and values, and reflect genuine power-sharing rather than Crown dominance.³⁷

³¹ See for example Wai 3300, #B1 at [22], #B4 at [12]; #B13 at [6]-[7]; #B22 at [10]; #B23 at [5]-[8]; #B30 at [11]; #B35 at [20]; #B51 at [6].

³² See for example: Wai 3300, #B1 at [17], [22], [27]; #B10 at [22]; #B12 at [19]; #B13 at [26]; #B20 at [24]-[27]; #B30 at [21]; #B34 at [3.1]; #B51 at [7]; #B52 at [47]; #B76 at [74]; #B75 [32]-[34]; #B83 at [14].

³³ See for example: Wai 3300, #B24 at [9]-[12]; #B33 at [16]-[17]; #B62 at [2.10]; #B74 at [7]; #B52 at [59]-[61]; #B80 at [5](b).

³⁴ See for example Wai 3300, #B1 at [17]-[18]; #B13 at [26]-[27]; #B30 at [22]; #B75 at [35].

³⁵ See for example: Wai 3300, #B1 at [28]-[44]; #B5 at [11]; #B8 at [5], [7]-[8]; #B33 at [10]-[12]; #B37 at [3], [19]; B34 at [2.5], [3.2].

³⁶ See for example: Wai 3300, #B30 at [24]; #B34 at [3.2]; #B35 at [9]; #B31 at [4]; #B33 at [15], [21]; #B39 at [12]; #B83 at [6], [9]; #B52 at [51]-[58], [66]; #B65 at [5]-[9]; #B73 at [4]-[8].

³⁷ See for example: Wai 3300, #B21 at [8]; #B30 at [24]-[26]; #B33 at [28]-[29]; #B13 at [31]; #B83 at [15]; #B52 at [40]-[41]; #B66 at [10]-[14].

32. Claimants often referred to the findings of the Te Paparahi o Te Raki (Northland) (Wai 1040) Inquiry concerning sovereignty in support of their positions.³⁸

Crown position

33. The Crown acknowledges that questions about the source of constitutional authority, the place of He Whakaputanga / the Declaration of Independence and the Treaty / te Tiriti in constitutional arrangements, the meaning and constitutional implications of kāwanatanga and tino rangatiratanga, and issues related to sovereignty are of fundamental importance to claimants.
34. As noted above, the Tribunal has directed that it will not be revisiting the findings made by the Wai 1040 Tribunal panel on the issue of sovereignty and constitutional issues (in the stage one and stage two Wai 1040 reports) as those findings pertain to claimants in that inquiry.³⁹
35. For completeness, and without seeking to revisit the Tribunal's stage one Wai 1040 report, the Crown notes that it did not agree with some of the findings in that report. The Crown's current position on those findings remains that as set out in the Crown's submissions in stage two of that inquiry.⁴⁰
36. The Crown sees this inquiry as an opportunity for the Tribunal, claimants and the Crown to focus on claims concerning New Zealand's current constitutional arrangements.
37. The Crown's position is that the constitutional principles outlined by the Crown above must also inform the Tribunal's consideration of these issues.
38. The Crown's governing authority today is exercised through representative democracy and responsible government under the rule of law. Parliament's legitimacy, and its power to make laws, stem directly from its

³⁸ See for example: Wai 3300, #B4 at [14]; #B9 at [4]; #B29 at [4]; #B39 at [8]; #B41 at [8]; #B83 at [3]-[5].

³⁹ Wai 3300, #2.3.2 at [17].

⁴⁰ See Wai 1040, #3.3.402, Closing submissions of the Crown on Issue 1 (Tino Rangatiratanga, Kāwanatanga and autonomy: political engagement between Māori and the Crown), 20 September 2017 at [48]-[71].

democratic credentials through periodic elections in which all citizens participate equally.

39. As discussed above, New Zealand today is a modern liberal democracy. There is an ongoing discussion about exactly how the Treaty / te Tiriti, and tino rangatiratanga, are and may be expressed within our constitutional arrangements, but that discussion takes place within the context of New Zealand being a modern liberal democracy.

Māori autonomy and self-government

40. The Tribunal background paper provided the following descriptions of the relevant themes:⁴¹

Mana motuhake

Mana motuhake can be defined as autonomy, self-government, self-determination, independence, sovereignty, or authority.

Professor Margaret Mutu describes mana motuhake as ‘distinct power and authority derived from the gods’, and mana Māori motuhake as ‘an overarching term, which emphasises that the mana of the Māori people is distinct and ensures [Māori] always remain the tangata whenua, the original people of the land’.

The New Zealand Māori Council has described the ‘overall philosophy’ of mana motuhake as the ‘right to special recognition, to control our own affairs, and to determine our own future’. The Tribunal has previously defined mana motuhake as at least ‘Māori self-government and autonomy’. Wānanga participants may wish to discuss these and other definitions.

The Wai 3300 Tribunal initially included this theme alongside the broader element of tino rangatiratanga but was decoupled following kōrero at the inquiry planning judicial conference held in April 2024 which noted that, while related, these terms have distinct meanings.

Autonomy and self-government

In its inquiry into the Crown’s reforms of the Māori Community Development Act 1962 (Wai 2417), the Tribunal found that the exercise of tino rangatiratanga included the right to exercise autonomy and self-government.

The Central North Island (Wai 1200) Tribunal considered the guarantee of tino rangatiratanga extends to Māori the right to:

- (b) constitutional status as the first people (tangata whenua);
- (c) manage their own policy, resources, and affairs within the minimum parameters necessary for the operation of the State;

⁴¹ Wai 3300, #6.2.18.

(d) enjoy cooperation and dialogue with the Government; and

(e) regulate autonomously their own internal affairs according to their tikanga, and to establish, maintain, and develop their own legal and political institutions.

Discussions on how tino rangatiratanga can be realised in practice may encompass national models of self-government including the Kīngitanga, the Kotahitanga movement, and organisations such as the Iwi Chairs Forum, the New Zealand Māori Council and the Māori Women's Welfare League.

Tikanga

In *Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law*, Justice Tā Joe Williams explains that tikanga denotes law, and that it was a 'system by which correctness, rightness or justice is maintained'. This system also includes 'customs or behaviours that might not be called law but rather culturally sponsored habits.

Tā Hirini Moko Mead has defined tikanga in *Tikanga Māori: Living by Māori Values* as:

[...] the ethical and common law issues that underpin the behaviour of members of whānau, hapū, and iwi as they go about their lives and especially when they engage in the cultural, social, ritual, and economic ceremonies of their society.

Wānanga participants may wish to discuss the expression of tikanga in a constitutional context, including the exercise of authority, the rules governing the regulation of power, and the principles and values that should underpin decision-making.

Ngā Ture Pākehā

The interplay of ture Pākehā and tikanga Māori, including the position of tikanga Māori in Aotearoa's constitutional structure and the position of Western legal systems in relation to tikanga Māori.

41. The Tribunal also said an additional theme of Dual Governance would discuss the relationship between kāwanatanga and te mana Māori Motuhake including the way the two forms of government inform each other.⁴²

⁴² Wai 3300, #2.6.73(b).

Claimant positions

42. Claimants provided various definitions of mana motuhake, commonly describing it alongside tino rangatiratanga as closely related concepts concerning Māori self-determination and autonomy.⁴³
43. Mana motuhake was described as the inherent authority to self-governance free from Crown or external interference and grounded in whakapapa and connection to whenua.⁴⁴
44. Claimants said the Crown has misused kāwanatanga to erode Māori autonomy and self-government and to assimilate Māori into its own political system.⁴⁵
45. Claimants said current constitutional arrangements fail to provide for Māori autonomy and self-government. Key concerns included:
- 45.1 Inadequate recognition of Māori as a distinct political identity with autonomous rights as tangata whenua.⁴⁶
- 45.2 Lack of genuine Māori involvement in decision-making at all stages, particularly at formative stages.⁴⁷
- 45.3 Insufficient resources to exercise Māori autonomy, compounded by historical Crown conduct that separated Māori from their land and resources.⁴⁸
- 45.4 Suppression or non-recognition of historical and contemporary expressions and models of Māori self-government and related initiatives.⁴⁹
- 45.5 Erosion of community-level (i.e. hapū/iwi) autonomy through historical and contemporary Crown engagement with larger

⁴³ See for example: Wai 3300, #B32 at [8]; #B23 at [9]; #B71 at [7]; #B53 at [9].

⁴⁴ See for example: Wai 3300, #B21 at [4]; #B22 at [6]; #B30 at [7]; #B13 at [4]; #B36 at [6]; #B41 at [12]; #B42 at [7]; #B23 at [10]; #B62 at [4.14](a); #B69 at [6]; #B64(b) at [10]-[11].

⁴⁵ See for example: Wai 3300, #B8 at [11]; #B13 at [27]; #B30 at [22]; #B33 at [23]; #B36 at [17]; #B70 at [23]; #B76 at [75].

⁴⁶ See for example: Wai 3300, #B6(g) at [65]-[66]; #B18 at [14]; #B13 at [13].

⁴⁷ See for example: Wai 3300, #B16 at [13]-[14]; #B12 at [8]; #B13 at [30]; #B78 at [12]; #B56 at [24]; #B81 at [11], [16]; #B71 at [15].

⁴⁸ See for example: #B13 at [5], [11], [40]; #B12 at [24]; #B32 at [11]; #B22 at [3]; #B78 at [8].

⁴⁹ See for example: Wai 3300, #B8 at [13]-[13.5]; #B22 at [7]; #B30 at [13]; #B32 at [32]-[33].

Māori groupings.⁵⁰ Claimants said hapū should be recognised as the primary level of Māori authority for decision-making and representation.⁵¹

- 45.6 Failure to enable Māori to exercise their kaitiaki role over natural resources and the environment, which is fundamental to Māori autonomy and way of life.⁵² Claimants said constitutional arrangements should prioritise environmental wellbeing including through recognising legal personhood for significant environmental sites.⁵³
46. Claimants described a power imbalance between the Crown and Māori that resulted in wide-ranging harm including inequitable socio-economic and health outcomes, cultural suppression, and political disenfranchisement.⁵⁴
47. Claimants said that constitutional arrangements providing for genuine Māori autonomy and self-government are essential to addressing these concerns and the resulting inequities described.⁵⁵
48. Claimants often framed Māori autonomy and self-government in terms of different spheres of influence:
- 48.1 Claimants described Te Tiriti as establishing a relationship between two distinct Crown and Māori spheres of influence and often referred to the Te Paparahi o Te Raki (Northland) (Wai 1040) inquiry findings.⁵⁶
- 48.2 Claimants said constitutional arrangements should recognise separate Māori and Crown spheres of authority, with Māori empowered to govern their own affairs within their sphere.

⁵⁰ See for example: Wai 3300, #B6 at [46]; #B6(g) at [47]-[56]; #B56 at [23]-[27].

⁵¹ See for example: Wai 3300, #B6 at [22]; #B6(g) at [68]; #B30 at [15]; #B33 at [36]-[37]; #B78 at [20], [21]; #B6(h) at [6], [22].

⁵² See for example Wai 3300, #B13 at [5]; Wai 3300, #B15 at [7]-[9]; #B30 at [32]; #B35 at [16]-[18]; #B56 at [40]-[47].

⁵³ See for example: Wai 3300, #B59 at [3], [12], [15]-[16], [18].

⁵⁴ See for example: Wai 3300, #B3 at [10]; #B12 at [43], [45]; #B13 at [11], [28], [58]; #B30 at [25]; #B72 at [7]; #B70 at [49]; #B78 at [8]; #B46 at [11]-[12]; #B59 at [8].

⁵⁵ See for example: Wai 3300, #B3 at [11]-[12]; #B24 at [6]-[8]; #B22 at [22]-[23], [25]; #B70 at [28], [41]-[42]; #B59 at [10].

⁵⁶ See for example: #B24 at [9] #B32 at [7]; #B33, at [16], [31]; Wai 3300, #B9 at [4].

Where spheres intersect, or on matters of shared concern, arrangements should provide for equal Māori participation in decision-making and genuine power-sharing between Treaty partners.⁵⁷

49. Claimants suggested various approaches to Māori autonomy and self-determination. These included independent Māori parliamentary structures including an upper house or separate Māori Parliament, guaranteed Māori representation at all levels of government, and dual legal systems where tikanga-based law would operate alongside ture Pākehā. Some pointed to models like Matike Mai Aotearoa. Others said that co-governance represents progress but falls short of achieving hapū rangatiratanga.⁵⁸
50. Claimants described tikanga as the first law of the land and described its living, local and contextual nature.⁵⁹
51. The following common themes emerged in terms of the role of tikanga in New Zealand's constitutional arrangements:
- 51.1 Past and current constitutional arrangements are inconsistent with, or otherwise displace, tikanga and associated Māori principles and values.⁶⁰
- 51.2 Tikanga should be constitutionally recognised as a source of law and guide Māori autonomy over Māori affairs including decision-making, dispute resolution, governance structures, law-making, and environmental management.⁶¹
- 51.3 Tikanga should have equal status to ture Pākehā.⁶²

⁵⁷ See for example: Wai 3300, #B24 at [9]-[11]; #B33 at [15]; #B52 at [16], [59]-[61], [65]; #B76 at [76]-[77], [80], [84] #B6(h) at [32].

⁵⁸ See for example: Wai 3300, #B20 at [31]-[35]; #B31 at [12]-[34]; #B64(b) at [12]; #B6(h) at [23]-[27]; #B78 at [19]-[20]; #B66 at [12]-[14]; #B80 at [12](c); #B57 at [8]-[9]; #B30 at [30].

⁵⁹ See for example: Wai 3300, #B7 at [8]; #B20 at [22]; B30 at [18]; #B34 at [2.11]; #B36 at [15], [22]; #B37 at [20]; #B12 at [15]-[16]; #B16 at [20].

⁶⁰ See for example: Wai 3300, #B15 at [10]-[11]; #B16 at [24]; #B30 at [19]; #B70 at [24]; Wai 3300, #B69 at [23]-[26].

⁶¹ See for example: Wai 3300, #B30 at [20]; #B13 at [21]-[22]; #B33 at [23]; #B6(g) at [19]-[20], [67]; #B34 at [2.13]; #B69 at [32]-[33]; #B74 at [22]; #B78 at [23]; #B70 at [44]-[46]; #B6(h) at [47]-[48]; #B53 at [5]-[6].

⁶² See for example: Wai 3300, #B30 at [28]; #B33 at [23]; #B13 at [22]; #B78 at [19]; #B70 at [59]; #B76 at [83].

- 51.4 The Crown does not adequately understand or acknowledge how tikanga operates within Māori communities.⁶³
52. Claimants highlighted various perceived tensions between tikanga and ‘Western’ constitutional values.⁶⁴ While acknowledging the diversity of views, common themes included:
- 52.1 **Collective vs individual focus:** Tikanga emphasises collective responsibility and interdependence, whereas Western values were perceived to prioritise individual rights.⁶⁵
- 52.2 **Relational focus:** Tikanga is relationship-based and emphasises intergenerational and collective relationships grounded in whakapapa which was often contrasted with Western values’ perceived focus on individual rights.⁶⁶
- 52.3 **Locus of authority:** Tikanga provides that customary authority resides at the whānau, hapū or iwi level, and that these entities should exercise authority independently within their own spheres.⁶⁷
- 52.4 **Connection to land and environment:** Tikanga emphasises people’s spiritual and relational connection to land and imposes ongoing obligations to protect the environment for future generations which claimants said the Crown has failed to do.⁶⁸
- 52.5 **Diverse and local:** Tikanga varies across different rohe and communities and should not be forced into a uniform national model.⁶⁹

⁶³ See for example: Wai 3300, #B22 at [17]; #B16 at [12].

⁶⁴ The Crown understands claimants used ‘Western’, and related terms, to refer to constitutional, legal, and governance systems derived from Westminster parliamentary traditions and English common law.

⁶⁵ See for example: Wai 3300, #B30 at [34]; #B6(c) at [3]-[6], [30]; #B16 at [23]; #B24 at [22]; #B69 at [36]-[37]; #B70 at [24].

⁶⁶ See for example: Wai 3300, #B6(g) at [21]; #B42 at [7]; #B32 at [21]; #B34 at [7.3]; #B6(c) at [8]-[9].

⁶⁷ See for example: Wai 3300, #B6 at [22]; #B13 at [10]; #B24 at [11]-[12];, #B33 at [20]-[21], [29], [31]; #B6(g) at [41]; #B52 at [35].

⁶⁸ See for example: Wai 3300, #B13 at [5], [9]; #B15 at [8], [15]; #B34 at [3.5]; #B6(b) at [8]; #B76 at [5]-[6]; #B48 at [11], [19]-[20]; #B69 at [21]-[26].

⁶⁹ See for example: Wai 3300, #B12 at [15]-[16]; #B16 at [20].

Crown position

53. The Crown acknowledges claimant positions including concerns that current constitutional arrangements fail to adequately provide for Māori autonomy and self-government, and that tikanga should have greater constitutional recognition and application.
54. The Crown's position is that New Zealand's constitutional arrangements ought to be consistent with the Crown's obligations under the Treaty / te Tiriti and maintain constitutional principles that serve all New Zealanders. This suggests our constitutional arrangements should:
- 54.1 be consistent with the rights and interests Māori have under the Treaty / te Tiriti;
 - 54.2 ensure all New Zealanders have equal rights to participate in civic and political life;
 - 54.3 maintain democratic accountability through representative government and universal suffrage; and
 - 54.4 protect the rule of law.
55. The Crown acknowledges tikanga is fundamental to Māori society and collective wellbeing. The Supreme Court recently held that tikanga forms part of the law of New Zealand and is recognised in the development of the common law where relevant.⁷⁰
56. In the same way that the Court observed that the intersection between tikanga and the common law is not straightforward,⁷¹ the Crown notes the intersection of tikanga with constitutional arrangements is not straightforward. Just as tikanga values may be difficult to reconcile with existing common law principles, tikanga values may be difficult to reconcile with the constitutional principles discussed in this statement of position, requiring careful weighing.⁷² Giving practical effect to that intersection

⁷⁰ *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239 (SC) at [19].

⁷¹ *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239 at [179] and [182] per Winkelmann CJ, [267] per Williams J.

⁷² *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239 at [179] and [182] per Winkelmann CJ, [267] per Williams J.

should be the subject of broad public discussion and support, as with all proposed constitutional change.⁷³

PARLIAMENTARY SOVEREIGNTY AND SYSTEMS

57. The background paper provided the following description of this theme:⁷⁴

The doctrine of parliamentary sovereignty holds that Parliament can enact or repeal any law, and its legal authority is not bound by any other body such as the judiciary or previous parliaments. Wānanga participants may wish to discuss the implications of Parliament's ability to pass legislation of any sort on te Tiriti o Waitangi / the Treaty of Waitangi, including laws which may be contrary to its principles or text.

Claimant positions

58. Claimants said current parliamentary powers are inconsistent with the Treaty / te Tiriti. Key concerns included:

58.1 There are no enforceable mechanisms requiring Parliament to honour the Treaty / te Tiriti. Claimants suggested the Treaty / te Tiriti or indigenous rights should form the basis of a written constitution, be entrenched, or otherwise bind Parliament.⁷⁵

58.2 The courts or another accountability mechanism should have greater powers to check Parliament's power to ensure laws are made in accordance with Treaty obligations.⁷⁶

58.3 Parliament can make laws affecting Māori without meaningful Māori input, undermining Māori autonomy and interests.⁷⁷

59. In relation to parliamentary systems generally, the Crown understands the following key concerns emerged:

⁷³ See Wai 3300, #B14 at [28].

⁷⁴ Wai 3300, #6.2.18.

⁷⁵ See for example: Wai 3300; #B24 at [25(c)]; #B31 at [5], [17]; #B9 at [1]; #B29 at [1]; #B38 at [8]; #B39 at [5]; #B41 at [5]; #B33 at [27]; #B34 at [3.4]; #B72 at [11]-[13].

⁷⁶ See for example: Wai 3300, #B29 at [1]; #B38 at [8]; #B39 at [5]; #B41 at [5]; #B6(h) at [41].

⁷⁷ See for example: Wai 3300, #B13 at [36]-[40]; #B53 at [13](c).

- 59.1 The current parliamentary system is an imported colonial system that does not incorporate tikanga and this cultural disconnect marginalises Māori.⁷⁸
- 59.2 Māori movements that sought to create representative governing structures for Māori were not recognised by the Crown or actively suppressed.⁷⁹
- 59.3 Current parliamentary systems serve the majority, which disadvantages Māori as a minority population, and the balance between majority power and minority rights referred to in the Cabinet Manual has not been achieved.⁸⁰

Crown position

60. The Crown acknowledges claimant positions including concerns that parliamentary powers and systems are inconsistent with the Treaty / te Tiriti and do not adequately provide for Māori representation or protection of Māori interests.
61. The Crown's position is that parliamentary sovereignty and systems realise the constitutional principles outlined by the Crown above. In particular:
- 61.1 **Democracy:** Parliament's full power to make laws and control public finances ensures all New Zealanders retain ultimate authority through their elected representatives. One Parliament cannot bind subsequent Parliaments, allowing Parliament to respond to changing democratic will. Courts cannot invalidate legislation, ensuring elected representatives make fundamental policy choices.
- 61.2 **Representative government:** Parliament comprises elected members who represent different interests and remain accountable through periodic elections. Parliament plays a constitutional role in scrutinising government decisions,

⁷⁸ See for example: Wai 3300, #B10 at [10]; #B21 at [9]; #B36 at [21]; #B32 at [11]; #B74 at [19]; #B67 at [27].

⁷⁹ See for example: Wai 3300, #B32 at [32]-[33]; #B6(g) at [59]; #B13 at [10]-[20]; #B54 at [15]; #B53 at [23]-[24].

⁸⁰ See for example: Wai 3300, #B12 at [32]-[33]; #B22 at [19]; #B6(e) at [9].

representing alternative perspectives, and holding the government to account.

61.3 **Separation of powers - principle of non-interference:** The three branches of government have distinct roles. The legislature makes laws, the executive governs within those laws, and the judiciary interprets and applies the law. Parliamentary sovereignty maintains this constitutional separation and enables the legislature to go about its work free from impediments, to deal with challenges to its authority, and to discharge its constitutional functions effectively in the public interest.

62. From a structural perspective, our constitution has enabled the recognition of the Treaty / te Tiriti in the following ways:

62.1 Parliament has enacted legislation recognising Treaty rights, interests and obligations across numerous policy areas, incorporating Treaty commitments within democratically accountable processes. It is acknowledged that the power to pass such legislation comes with the power to review, amend and repeal such legislation.

62.2 Decision makers may have an obligation or a discretion to consider the Treaty / te Tiriti within certain relevant statutory frameworks. Compliance with such statutory provisions reflects the constitutional principle of the rule of law.

62.3 The Waitangi Tribunal has jurisdiction to inquire into whether Crown actions and Acts of Parliament are consistent with Treaty principles. This provides a mechanism for examining whether governmental actions and legislation are Treaty-consistent.

62.4 While the power is yet to be exercised, there is the capacity for Parliament to refer draft primary legislation, and for the executive to refer draft secondary legislation, to the Waitangi Tribunal to

determine whether the proposed legislation is contrary to Treaty principles.⁸¹

- 62.5 Māori electorates provide a specific mechanism for Māori representation in Parliament, giving Māori the option of being represented via either a Māori electorate or a general electorate
63. The Crown acknowledges claimants' concerns about how majority decision-making affects Māori as a minority population and anticipates this issue will be engaged with more fully as the inquiry develops through legal submissions and evidence.

International treaty-making

64. As noted above, the Tribunal initially identified international treaty-making as a separate theme for inquiry, but later confirmed it would be considered under tino rangatiratanga and kāwanatanga, focusing on the constitutional power and process for international treaty-making.
65. Key concerns raised by claimants included:
- 65.1 International treaties can significantly impact Māori interests including their autonomy, economic interests, and culture.⁸²
- 65.2 The Crown enters international treaties without adequately consulting Māori or obtaining free, prior and informed consent which undermines Māori rangatiratanga and self-determination.⁸³
- 65.3 Claimants said constitutional arrangements should ensure direct and meaningful Māori participation in negotiating international treaties that affect Māori rights and interests, including through formal mechanisms such as Indigenous delegations or veto rights.⁸⁴

⁸¹ Treaty of Waitangi Act 1975, s 8.

⁸² See for example: Wai 3300, #B32 at [63]-[71]; #B36 at [32]; #B13 at [59]-[60]; #B30 at [40]; #B72 at [8]; #B53 at [38]-[39].

⁸³ See for example: Wai 3300, #B32 at [63]-[71]; #B21 at [14]; #B36 at [32]; #B13 at [59]-[60]; #B12 at [46]-[48]; #B53 at [37].

⁸⁴ See for example: Wai 3300, #B36 at [33]-[34]; #B21 at [14]; #B13 at [59]-[60]; #B12 at [48]; #B30 at [41].

66. The Crown's position is that current arrangements for international treaty-making are consistent with the constitutional principles outlined by the Crown above. In particular:
- 66.1 The executive negotiates international agreements on behalf of all New Zealanders and is accountable to Parliament for its conduct of international relations.
- 66.2 International agreements have direct legal effect domestically only if incorporated into statute by Parliament, ensuring democratic accountability for New Zealand's international commitments.
67. These arrangements also reflect practical considerations concerning the nature of international negotiations including timing, confidentiality, coordination requirements, and the executive's ability to negotiate effectively while maintaining accountability to Parliament.

THEME FOUR: ELECTORAL RIGHTS AND SYSTEMS

68. The Tribunal's background paper said that this theme:⁸⁵

[M]ay encompass concerns regarding historical disadvantages to Māori in the electoral process including the requirement that voters own freehold property, the allocation of Māori seats in Parliament, and issues regarding switching from the general to Māori roll.

Claimant positions

69. Claimants raised concerns about Māori participation in national and local elections:
- 69.1 Claimants identified low Māori voter participation and attributed it to Māori disenfranchisement arising from historic and ongoing Crown conduct and colonial structures.⁸⁶

⁸⁵ Wai 3300, #6.2.18.

⁸⁶ See for example: Wai 3300, #B13 at [43]-[45]; #B6(a) at [34]-[37]; Wai 3300, #B32 at [27]-[33]; Wai 3300, #B77(a) at [8]-[10].

- 69.2 The prisoner voting ban disproportionately affects Māori due to higher incarceration rates.⁸⁷
- 69.3 The current voting age of 18 disproportionately impacts the Māori population due to its younger demographic profile and claimants expressed support for lowering the voting age to 16.⁸⁸
70. Claimants raised concerns about the electoral systems ability to represent the collective interests of Māori:
- 70.1 The current electoral system structurally disadvantages Māori and is built on majority rule and marginalises Māori.⁸⁹
- 70.2 Māori electorates do not provide adequate representation of Māori interests.⁹⁰
- 70.3 The urbanisation of Māori has led to Māori collective representation being absorbed by broader electorates that do not reflect whakapapa or rohe interests.⁹¹
71. Claimants said electoral reforms are needed to ensure fair and meaningful Māori representation and/or guaranteed Māori representation at all levels of government.⁹²
72. Concerns were raised that a shift from traditional five-yearly census to administrative data and smaller surveys threatens Māori data sovereignty and risks underrepresentation or misrepresentation of Māori.⁹³

Crown position

73. The Crown acknowledges claimant positions including concerns about low Māori voter participation and concerns that the current electoral system does not adequately represent collective Māori interests.

⁸⁷ See for example: Wai 3300, #B6(e) at [34]-[42]; #B49 at [26]-[27].

⁸⁸ See for example: Wai 3300, #B6(e) at [43]-[47]; Wai 3300, #B58 at [16].

⁸⁹ See for example: Wai 3300, #B22 at [19]-[20]; #B30 at [29]; #B34 at [4.1]; #B36 at [23]; #B76 at [86] – [87]; #B49 at [23]-[25]; #B39 at [27]; #B76 at [86].

⁹⁰ See for example: Wai 3300, #B32 at [29]; #B76 at [87](a).

⁹¹ See for example Wai 3300, #B32 at [30].

⁹² See for example: Wai 3300, #B21 at [10]; #B30 at [30]; #B36 at [24]; Wai 3300, #B58 at [17]; #B77 at [27](a).

⁹³ See for example: Wai 3300, #B6(e) at [10]-[23].

74. The Crown's position is that current electoral arrangements are consistent with the constitutional principles outlined by the Crown above.
75. Representative democracy requires that all citizens have equal rights to participate in elections through voting and standing for Parliament.
76. The electoral system includes dedicated Māori electorates, with Māori voters able to choose between rolls.
77. New Zealand's mixed member proportional (MMP) electoral system enhances representation in Parliament.
78. The Electoral Act entrenches key electoral provisions, requiring either a 75 percent parliamentary majority or a referendum to amend.⁹⁴ This reflects a recognition that these matters are fundamental to democracy.
79. The Crown acknowledges that representation is shaped by the level of electoral participation and that the historical development of New Zealand's democratic institutions forms part of the context for contemporary discussions about constitutional arrangements.

THEME FIVE: LOCAL GOVERNMENT

80. The Tribunal's background paper provided the following description of this theme:⁹⁵

This theme concerns the delegation of the Crown's responsibilities under te Tiriti o Waitangi / the Treaty of Waitangi to local government bodies and the limitations of those obligations under the Local Government Act 2002 and related laws, as well as representation of Māori in local government including Māori wards and electoral issues. Discussion on this theme may also concern the imposition of rates on Māori land and the ability for local government bodies to do so.

The Māori Wards and Constituencies Urgent Inquiry (Wai 3365) focused on the Crown's process to amend the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021 and its consequences but left broader constitutional issues of Māori representation in local government to be considered in this inquiry.

⁹⁴ Electoral Act 1993, s 268.

⁹⁵ Wai 3300, #6.2.18.

Claimant positions

81. Claimants raised concerns about the constitutional and structural framework for local government:
- 81.1 Local government systems were created by the Crown without Māori involvement and displaced traditional Māori local governance structures.⁹⁶
- 81.2 Lack of mechanisms to ensure that local authorities act in accordance with Treaty obligations and in accordance with tikanga.⁹⁷
82. Claimants highlighted the impact of local government on Māori interests including Māori ownership, occupation, and cultural connections to land and natural resources.⁹⁸
83. Claimants raised concerns about Māori representation and participation in local government. Key themes included:
- 83.1 Current systems do not provide for adequate Māori representation in local government.⁹⁹
- 83.2 Local government systems do not provide for meaningful Māori participation in decision-making processes.¹⁰⁰
- 83.3 Local government systems do not adequately protect Māori rights and interests.¹⁰¹
- 83.4 Local government lack the cultural competency to engage with Māori and consider their interests.¹⁰²

⁹⁶ See for example: Wai 3300, #B32 at [34]-[36]; #B6(a) at [41]; #B34 at [5.2]; #B53 at [25]-[27].

⁹⁷ See for example: Wai 3300, #B11 at [19]; #B32 at [45]; #B23 at [1]; #B41 at [25]; #B76 at [93].

⁹⁸ See for example: Wai 3300, #B16 at [15]-[16]; #B6(a) at [43]-[47]; #B30 at [31]-[33]; #B32 at [37]-[46]; #B41 at [26]-[28].

⁹⁹ See for example: Wai 3300, #B6(a) at [41]; #B23 at [1](d); #B34 at [5.1]; Wai 3300, #B13 at [50]-[52]; #B75 [49] – [50].

¹⁰⁰ See for example: Wai 3300, #B16 at [13]-[17]; #B13 at [50]-[54]; #B19 at [11]; #B23 at [1](b); #B32 at [40]-[52]; #B76 at [94]; #B49 at [31].

¹⁰¹ See for example: Wai 3300, #B6(a) at [41](d); #B32 at [45].

¹⁰² See for example: Wai 3300, #B13 at [51], [54].

83.5 Lack of adequate resourcing for hapū and/or iwi to participate in local government decision-making.¹⁰³

84. Concerns were raised about the historical conduct of local authorities, which alienated Māori land through rating systems, land use planning, and compulsory acquisition.¹⁰⁴

Crown position

85. The Crown acknowledges claimants' positions including concerns that local government systems do not adequately provide for Māori representation, participation, and protection of Māori interests.

86. The Crown's position is that local authorities are separate legal entities established by Parliament and not part of the Crown.¹⁰⁵ They are democratically elected by and accountable to their local communities. Parliament has vested particular powers and obligations, including certain Treaty obligations in local authorities through legislation.¹⁰⁶ Because they are not a part of the Crown, local authorities are not party to and therefore not directly subject to the Treaty.¹⁰⁷ The Crown's position is that consideration of claimant positions concerning local government should be informed by the Crown's constitutional principles and values outlined above. In particular:

86.1 **Rule of law:** Local authorities are established by statute and must act within the powers conferred by Parliament. Their powers are limited to specific functions including local infrastructure, services, resource management, and regulatory matters.

¹⁰³ See for example: Wai 3300, #B42 at [10]; #B32 at [46].

¹⁰⁴ See for example: Wai 3300, #B32 at [37]; #B34 at [5.2]; #B76 at [92]; #B75 [46]-[48].

¹⁰⁵ Local Government Act 2002, s 12.

¹⁰⁶ The Local Government Act 2002 provides various principles and requirements for local authorities in order to recognise and respect the Crown's responsibility to take appropriate account of Treaty principles and to maintain and improve opportunities: see the Local Government Act 2002, s 4 and Parts 2 and 6. The Local Electoral Act 2001 (ss 19Z-19ZH) allows Māori wards as a special representation mechanism.

¹⁰⁷ *Hart v Marlborough District Council* [2025] NZHC 47 at [54] citing C Mitchel and D Knight *Local Government* (online looseleaf ed, LexisNexis) at [LGA4.4]; C Mitchel, D R Knight *Laws of New Zealand Local Government* at [7-35]; *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2022] NZHC 1846 at [77(d)]; *Hanton v Auckland City Council* [1994] NZRMA 289 (PT) at 20; and *New Zealand Independent Community Pharmacy Group v Te Whatu Ora – Health New Zealand* [2023] NZHC 1486 at [236].

- 86.2 **Democracy and equality:** Local authorities are democratically elected and accountable to their communities through periodic elections. The principles of universal suffrage and equality apply at the local level. Local authorities represent and serve their entire communities. Local authorities are also accountable to Parliament and the executive through delegated powers and legislation.
87. The Crown also notes that statutory frameworks include specific mechanisms for Māori participation and consideration of Māori interests in local government.¹⁰⁸

THEME SIX: HUMAN RIGHTS

88. The Tribunal's background paper said that this theme 'may encompass human rights as they concern Māori and relate to rights and duties under te Tiriti o Waitangi / the Treaty of Waitangi' and referred to the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as relevant human rights instruments.¹⁰⁹

Claimant positions

89. Claimants raised concerns about the adequacy of New Zealand's human rights frameworks in relation to Māori rights, the Treaty / te Tiriti, and international indigenous rights. Key themes included:
- 89.1 The indigenous rights expressed in UNDRIP are not, and should be, reflected in New Zealand's constitutional arrangements.¹¹⁰
- 89.2 Key human rights legislation, including the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, has no or inadequate reference to Māori rights and the Treaty / te Tiriti.¹¹¹
- 89.3 New Zealand's human rights frameworks prioritise individual rights over collective rights, marginalising Māori collective

¹⁰⁸ See for example: Local Government Act 2002, ss 4, 14(1)(d), 77(c), 81 & Local Electoral Act 2001, ss 19Z-19ZH.

¹⁰⁹ Wai 3300, #6.2.18.

¹¹⁰ See for example: Wai 3300, #B12 at [38]-[39]; #B24 at [21]; #B30 at [36]; #B32 at [54]-[58] #B34 at [6.1]; #B6(c) at [63]-[65]; #B76 at [119], [122]; #B67 at [34].

¹¹¹ See for example: Wai 3300, #B12 at [37].

interests and tikanga.¹¹² In particular, protections for whānau hauā are provided through individual frameworks rather than collective frameworks that recognise whānau roles.¹¹³

89.4 Te Tiriti was framed as a human rights instrument that affirms collective rights to land, language, culture, and governance.¹¹⁴

Crown position

90. The Crown acknowledges claimant positions including concerns about the recognition of collective Māori rights and interests in current human rights frameworks.

91. The Crown's position is that human rights legislation and the Treaty / te Tiriti serve different constitutional functions: human rights legislation protects universal individual rights, while the Treaty / te Tiriti recognises distinct Māori rights and interests.

92. In New Zealand, human rights are affirmed through:

92.1 **Domestic legislation:** the New Zealand Bill of Rights Act 1990 (NZBORA) protects civil and political rights, including freedom from discrimination, but permits measures to assist groups disadvantaged by discrimination, recognising that equality may require differential treatment to address existing inequities. The Human Rights Act 1993 prohibits discrimination in specific areas and establishes the Human Rights Commission to promote and protect human rights in New Zealand.

92.2 **International obligations:** New Zealand is party to major international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). NZBORA was enacted to affirm New Zealand's commitment to the ICCPR.

¹¹² See for example: Wai 3300, #B30 at [34]; #B10 at [28]; Wai 3300, #B24 at [22]-[23].

¹¹³ See for example: Wai 3300, #B10 at [11]-[12].

¹¹⁴ See for example: Wai 3300, #B34 at [6.1]; #B30 at [35].

93. The Crown’s position is that the constitutional principles of democracy, the rule of law, and the separation of powers require that international instruments have direct legal effect domestically only through legislation enacted by elected representatives accountable to New Zealanders. Courts may consider international instruments when interpreting legislation, but Parliament retains lawmaking authority. This ensures the appropriate constitutional balance between the legislative and judicial functions.
94. In 2010, the New Zealand Government announced its support for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).¹¹⁵ This is a non-binding declaration. The 2010 statement of support noted that ‘where the Declaration sets out principles for indigenous involvement in decision-making, New Zealand has developed, and will continue to rely upon, its own distinct processes and institutions that afford opportunities to Māori for such involvement.’

THEME SEVEN: CITIZENSHIP RIGHTS

95. The background paper said this theme:¹¹⁶
- [M]ay encompass Māori rights to equal citizenship under te Tiriti o Waitangi / the Treaty of Waitangi. Article 3 in the English text promises to Māori the benefits of royal protection and full citizenship, while the Māori text gives Māori the same rights and duties of citizenship as the people of England (‘nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani’).
96. The Crown notes the Citizenship (Ruddock) Urgent Inquiry (Wai 3513) recently made findings as to whether the Citizenship Act 1977 and the current process to apply for citizenship for Māori whose parents were not New Zealand or Australian citizens by birth or grant/conferral is in breach of the Treaty / te Tiriti principles.
97. While that inquiry focused on the specific experiences of Māori applicants under the Citizenship Act and its processes, this inquiry addresses the broader constitutional implications of citizenship frameworks and how they interact with the Treaty / te Tiriti and Māori status as tangata whenua.

¹¹⁵ See [Supporting UN Declaration restores NZ’s mana | Beehive.govt.nz](#).

¹¹⁶ Wai 3300, #6.2.18.

Claimant positions

98. Claimants raised concerns about citizenship rights and discussed their relationship with Te Tiriti. Common themes included:
- 98.1 Western concepts of citizenship are incongruous with the status of Māori as tangata whenua and have been used by the Crown to assimilate Māori.¹¹⁷
 - 98.2 Article 3 of Te Tiriti cannot be interpreted in isolation from Article 2, and the citizenship guarantee in Article 3 cannot override the rangatiratanga guarantee in Article 2.¹¹⁸
 - 98.3 Māori have dual citizenship as citizens of both New Zealand and their iwi or hapū.¹¹⁹
 - 98.4 Membership of iwi and hapū, as the Māori equivalent to citizenship, is determined through whakapapa and in accordance with tikanga.¹²⁰
 - 98.5 Māori have suffered historical and systemic breaches of their citizenship rights with intergenerational impacts.¹²¹
 - 98.6 Māori born overseas have experienced immigration issues and should not be prevented from returning to their whenua.¹²²
99. Claimants said that constitutional arrangements should ensure Māori citizenship rights while also recognising Māori distinct status and customary rights as tangata whenua, and maintaining rangatiratanga.¹²³

Crown position

100. The Crown acknowledges claimant positions regarding citizenship frameworks including that they do not adequately recognise Māori distinct

¹¹⁷ See for example: Wai 3300, #B30 at [37]; #B36 at [30].

¹¹⁸ See for example: Wai 3300, #B6(a) at [52]; #B6(i) at [7], [8].

¹¹⁹ See for example: Wai 3300, #B6(a) at [52]; #B30 at [37]-[38].

¹²⁰ See for example: Wai 3300, #B6(a) at [54], [58]; #B6(g) at [42]; #B6(c) at [3], #B35 at [29].

¹²¹ See for example: Wai 3300, #B32 at [59]-[60]; #B34 at [7.1]-[7.6].

¹²² See for example: Wai 3300, #B32 at [61]; #B39 at [33]-[34]; #B6(i) at [5]-[8].

¹²³ See for example: Wai 3300, #B12 at [43]; #B13 at [57]; #B21 at [13]; #B36 at [31]; #B6(i) at [13], [16]; #B49 at [44]-[46].

status as tangata whenua and the rights and interests of Māori under Article 2 of the Treaty / te Tiriti.

101. The Crown's position in this inquiry is that citizenship and the Treaty / te Tiriti serve different constitutional functions. Citizenship provides a universal legal framework ensuring all citizens have equal legal rights and obligations before the law. The Treaty / te Tiriti recognises Māori as having distinct rights and interests.
102. The Crown's position is that consideration of citizenship must be informed by constitutional principles and values outlined by the Crown above. In particular:
- 102.1 **Equality:** All people are equal before the law and have equal rights to participate in civic and political life. This principle is reflected in Article 3 of the Treaty / te Tiriti, which guaranteed Māori the same rights and privileges as British subjects, and is expressed through non-discrimination protections.
- 102.2 **Rule of law:** Citizenship is a legal status defined and regulated by statute. Parliament has the power to determine citizenship criteria, which must be applied equally and consistently to all who meet them.
- 102.3 **Democracy:** Citizenship frameworks operate within representative democracy where Parliament, elected by and accountable to all citizens, determines citizenship criteria.
103. In the Citizenship (Ruddock) Urgent Inquiry, the Crown acknowledged that citizenship raises complex questions about nationhood and belonging, and that comprehensive review and consultation would be required for any changes to the Citizenship Act.
104. The broader constitutional questions raised by claimants in this inquiry concern how citizenship frameworks interact with the Treaty / te Tiriti, and how constitutional arrangements might accommodate Māori understandings of identity, belonging, and political status.

HISTORICAL ELEMENTS OF CLAIMANT POSITIONS

105. Throughout the wānanga ā-rohe, claimants raised concerns about historical Crown conduct and the continuing impact on Māori.
106. The Crown understands the purpose of this inquiry is to inquire into claims concerning New Zealand's current constitutional arrangements and, where it finds those claims to be well-founded, for the Tribunal to make practical recommendations for change. While historical context informs this consideration, the Crown understands the inquiry is focused on current and future constitutional arrangements rather than investigating specific historical grievances.

CONCLUSION

107. The Crown acknowledges the claimants' positions pose challenges to current constitutional arrangements and their legitimacy when assessed from their perspectives about the Treaty / te Tiriti.
108. The laws establishing our constitutional framework can change over time so that they remain effective and credible, but any changes need broad support so that they are seen to be legitimate. Constitutional change is often preceded by broad public discussion about the reasons for change and the possible alternatives.
109. As set out above, the Crown's position is that constitutional arrangements ought to be consistent with the Crown's obligations under the Treaty / te Tiriti and maintain constitutional principles that serve all New Zealanders. The Crown views this inquiry as an important contribution to the broader national conversation about how to achieve that balance.