

**IN THE WAITANGI TRIBUNAL**

**WAI 3060**

**WAI 2143**

**WAI 1911**

**WAI 2949**

**WAI 2139**

**WAI 3073**

**WAI 3163**

**IN THE MATTER  
AND**

of the Treaty of Waitangi Act 1975

**IN THE MATTER  
AND**

of Te Rau o te Tika: Justice System Inquiry (Wai 3060)

**IN THE MATTER  
AND**

of a claim by Aaron Smale on behalf of tamariki Māori (Wai 1911)

**IN THE MATTER  
AND**

of a claim by Timothy Tukapua and Dennis Greenland on behalf of Muaūpoko Tribal Authority (Wai 2139)

**IN THE MATTER  
AND**

of a claim by Steven Wilson and Karen Pointon on behalf of Tāngata Turi (Māori Deaf) (Wai 2143)

**IN THE MATTER  
AND**

of a claim by Emilie Rākete on behalf of People Against Prisons Aotearoa (PAPA) (Wai 2949)

**IN THE MATTER  
AND**

of a claim filed by Tania Kingi on behalf of Te Roopu Waiora Trust (Wai 3073)

**IN THE MATTER**

of a claim by Anne Waapu and Te Raukura O'Connell Rapira on behalf of rangatahi Māori of today and future generations (Wai 3163)

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**MEMORANDUM OF COUNSEL**

Dated: 7 November 2025

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<b>RECEIVED</b> Waitangi Tribunal
<b>7 Nov 25</b>
Ministry of Justice WELLINGTON

**BENNION  
LAW**

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**MAY IT PLEASE THE TRIBUNAL:**

1. This memorandum of counsel is filed in response to the memorandum-directions dated 25 September 2025,<sup>1</sup> on behalf of:
  - a) Wai 1911, a claim by Aaron Smale on behalf of tāmariki Māori;
  - b) Wai 2139, a claim by Timothy Tukapua and Dennis Greenland on behalf of Muaūpoko Tribal Authority;
  - c) Wai 2143, a claim by Steven Wilson and Karen Pointon on behalf of Tāngata Turi (Māori Deaf);
  - d) Wai 2949, a claim by Emilie Rākete on behalf of People Against Prisons Aotearoa (PAPA);
  - e) Wai 3073, a claim filed by Tania Kingi on behalf of Te Roopu Waiora Trust; and,
  - f) Wai 3163, a claim by Anne Waapu and Te Raukura O'Connell Rapira on behalf of rangatahi Māori of today and future generations.

(together “the claimants”).

**Kaikōrero yet to be heard in He Rau Kōrero-ā-Tara Whare**

2. As set out in claimant counsel memorandum dated 14 February 2025,<sup>2</sup> the Wai 3163 claimants are working on rangatahi involvement in He Rau Kōrero-ā-Tara Whare. If further wānanga are confirmed, the claimants will continue this work with the view of having a rangatahi panel presentation.

**Sites, programmes and courts that should be prioritised for panel visits**

3. With regard to the proposed panel visits, the claimants wish to highlight the large body of work that already exists, documenting the conditions and treatment of people who are detained, largely via the means of unannounced inspections.

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<sup>1</sup> Wai 3060, #2.6.48. Extension to file by 7 November granted via an email from the Registrar dated 13 October 2025.

<sup>2</sup> Wai 3060, #3.2.311.

4. Te Kāhui Tika Tangata | the Human Rights Commission coordinates independent bodies to monitor sites of detention under the Optional Protocol to the Convention Against Torture (OPCAT), which has a primary focus on preventing abuse, torture and inhumane treatment.
5. As a state party to OPCAT, Te Kāhui Tika Tangata annually reports to the United Nations on Aotearoa's compliance.
6. The four independent bodies tasked with regularly visiting places where people are detained to monitor conditions and treatment are:
  - a) The Ombudsman: inspection of prisons, health & disability places of detention including privately run aged care facilities, immigration premises, children & young persons' residences, public protection order residences, and court facilities.
  - b) Independent Police Conduct Authority: policy custody including court facilities.
  - c) Mana Mokopuna / Children's Commissioner: visit places where mokopuna are detained, which includes five youth justice residences; four care and protection residences; one special purpose facility run by Barnardos; eleven youth justice community remand homes; five youth mental health facilities; three of these are in-patient youth facilities; and two are youth forensic mental health units.
  - d) Inspector of Service Penal Establishments: charged with monitoring New Zealand Defence Force (NZDF) detention facilities.
7. In our submission this body of work, particularly findings and recommendations attached to unannounced inspections, should supplement the observations of any Tribunal planned site visits.
8. The Ombudsman's reports<sup>3</sup> are available [online](#) and the monitoring reports prepared by the Children's Commissioner are also available on their [website](#).<sup>4</sup>

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<sup>3</sup> The Ombudsman, *Resources and Publications*. Available online: <https://www.ombudsman.parliament.nz/resources?f%5B0%5D=category%3A1993&page=0>

<sup>4</sup> Mana Mokopuna / Children's Commissioner, *Reports*. Available online: <https://www.manamokopuna.org.nz/publications/reports/>

9. Sitting alongside this is reporting from the Office of the Inspectorate that also carries out inspections of prisons; investigate complaints from prisoners and from offenders in the community; investigate all deaths of people who are in Corrections' custody; carry out other investigations where necessary and monitor situations where there are concerns.
10. We also note that the UN Subcommittee on Prevention of Torture visited a dozen prisons around New Zealand in September 2025, making the following observations:<sup>5</sup>

*New Zealand must take action to reduce its rising prison population and better take advantage of its independent monitoring mechanism by adequately funding it and implementing its recommendations.*

*Prison population forecasts in New Zealand over the next ten years paint a concerning picture. At present, forward planning appears to focus primarily on building new prison facilities rather than expanding the use of alternatives to detention.*

*We are particularly concerned about the potential impact on Māori and Pasifika communities, who are already disproportionately represented in the prison population.*

*The Subcommittee will submit a confidential report to the Government of New Zealand with its observations and recommendations on preventing torture and ill-treatment of people deprived of liberty. As with all other States parties, it encourages New Zealand to make this report public following the visit.*

11. It would be beneficial for the Crown to provide the Tribunal with a copy of this report, in line with the UN Subcommittee's encouragement to make this report public.
12. Should the need remain for the Tribunal to undertake planned site visits, the claimants request that the Tribunal undertake these with particular attention to:
  - a) Youth justice residences, and the issue of rangatahi in the criminal justice system.
  - b) Whānau Hauā and Tāngata Turi in places of detention, including prisons. The complexity of need for Tangata Turi is likely to be greater and less

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<sup>5</sup> UN Subcommittee on Prevention of Torture Press Release, *New Zealand needs to cut prison population and strengthen oversight, UN torture prevention body says* (2 October 2025). Available online: <https://www.ohchr.org/en/press-releases/2025/10/new-zealand-needs-cut-prison-population-and-strengthen-oversight-un-torture>

likely to be supported by authorities. For example, Tangata Turi have difficulty accessing information and miss out on key messages that are conveyed through the P.A. system, intercom or on noticeboards. Access to rehabilitation or education programmes may also be limited due to the insufficient availability of resources and interpreters in New Zealand Sign Language (NZSL).

**Dated** at Te Whanganui-a-Tara this 7<sup>th</sup> day of November 2025

Handwritten signatures in blue ink of Tom Bennion, Emma Whiley, and Kudrat.

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**Tom Bennion / Emma Whiley / Kudrat**  
Counsel for the claimants