BEFORE THE WAITANGI TRIBUNAL

WAI 3325
WAI 3395

IN THE MATTER OF	the Treaty of Waitangi Act 1975
AND	
IN THE MATTER OF	the Climate Change Priority Inquiry (**WAI 3325**)
AND	
IN THE MATTER OF	a claim by **Pita Tipene, Moana Maniapoto, George Laking, India Logan-Riley, Donna Kerridge, Aroha Te Pareake Mead,** and **Maria Bargh** for and on behalf of **Ngā Toki Whakarururanga** (**WAI 3395**)

QUESTIONS OF CROSS-EXAMINATION FOR VICTORIA HALLUM

Dated on this 29th day of January 2026

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ANNETTE SYKES & Co.
barristers & solicitors

8 – Unit 1 Marguerita Street
Rotorua, 3010
Phone: 07-460-0433
Counsel Acting: Annette Sykes, Sam Vincent
Email: asykes@annettesykes.com; sam@annettesykes.com

QUESTIONS OF CROSS-EXAMINATION FOR VICTORIA HALLUM

1. These questions relate to the following points in the Brief of Evidence of Victoria Hallum:

    1.1 The role of states in multilateral processes;

    1.2 The claimed prerogative power of the Crown to enter treaties;

    1.3 The treaty making process and engagement of Māori in this process; and

    1.4 The International Court of Justice's advisory opinion.

Sovereign states in the international domain and Crown prerogative of treaty making

2. The following questions relate to sovereign states in the international domain and Crown prerogative of treaty making.

    2.1 In [9] you say that sovereign states have the exclusive right to negotiate and conclude treaties and historically have been the primary actors in multilateral negotiations and international organisations.

    2.2 Would you agree that historically ngā rangatira exercised their sovereignty on behalf of their hapū to treat with other polities, whether they were other hapū or foreign states, and that Te Tiriti o Waitangi is an example of the exercise of that mana or sovereignty?

    2.3 Professor Kelsey cites evidence from Dr Moana Jackson that ngā rangatira could never, and did never, cede their mana or sovereignty to treat with other nations, to another state. Do you agree or disagree with that?

    2.4 Where do you say the Crown derives the exclusive prerogative power of treaty making from?

    2.5 You refer to the Waitangi Tribunal reports Wai 262 and Wai 1040 as acknowledging the Executive's foreign affairs prerogative as part of kāwanatanga. Have you read the entirety of those reports?

    2.6 Starting with Wai 1040 Te Paparahi o te Raki, in [17] you quote "*The rangatira appear to have agreed that the Crown would protect them from foreign threats and represent then in international affairs, where that was necessary"*. But that's not the complete quote. The Tribunal's

next sentence said "*If so"* - note the "if" - *however, the intention of signatory rangatira was that Britain would protect their independence, not that they would relinquish their sovereignty."* That was repeated by the Stage 2 tribunal. So you have been very selective. Do you now accept that the Tribunal said there was **not** a transfer of independence or sovereignty to the Crown in the international domain?

2.7 How do you reconcile that statement by the Tribunal, and the continued exercise of tino rangatiratanga in the international domain, with the Crown's claim to exclusive prerogative powers to make international treaties?

2.8 Moving to Wai 262, you would agree that the Wai 262 report was published in 2011, three years before the Stage 1 report in Wai 1040 definitively found that Māori never ceded sovereignty to the Crown and made the above statement about sovereignty in international matters? As a result, the Wai 262 tribunal did not have the advantage of the Wai 1040 Tribunal's finding?

2.9 Even setting that context aside, your quotes from the Wai 262 report in [16], [18] and [19] again seem to be selective and omit an extremely important caveat. Your footnote 10 says the Tribunal referred to the UN Declaration on the Rights of Indigenous Peoples and the Convention on Biological Diversity as examples where Māori interests were so central they "required more than consultation". What the Tribunal actually said was *"there are times when the Crown's position on matters of core importance to Māori must be developed by consensus, and - preferably - by a negotiated agreement with Māori*." And: "*There may even be times when the Māori interest is so overwhelming, and other interests by comparison so narrow or limited, that the Crown should contemplate delegation of its decision-making powers, or delegation of its role as New Zealand's 'one voice' in international affairs."* So you would accept that this is much more than consultation, and refers to power sharing, including the exercise of rangatiratanga internationally on matters of overwhelming importance to Māori?

2.10 Can you give any examples where the Crown has given effect to that power relationship in either the climate treaty space or the trade treaty space?

2.11 Moving back to your [9], you say that sovereign states hold the exclusive right to negotiate and conclude treaties. You would agree that

those sovereign states may have different constitutional makeup? And that, despite their different internal configurations, those states are still able to speak externally with one voice?

2.12 And you would agree that the internal configuration of a state is a matter for that state to determine as a domestic constitutional matter?

2.13 So, there is nothing in the requirement for a state to speak with one voice internationally that would prevent a constitutional reconfiguration in Aotearoa New Zealand that accurately reflects the rangatiratanga/kāwanatanga relationship promised in Te Tiriti o Waitangi?

The treaty making process and engagement with Māori

3. The following questions relate to the international treaty making process and engagement with Māori:

3.1 In [32] you say MFAT is committed to acting as a Tiriti partner. Can you explain how you understand the power relationship between rangatiratanga and kāwanatanga as Tiriti partners?

3.2 In [30] you describe seven opportunities you say exist for Māori involvement in all phases of the international treaty making process. All of these are controlled by the Crown and none vest any authority in Māori. How do you describe that as a Tiriti partnership?

3.3 According to [28] the international treaty process was introduced in 1997, made permanent in 2000, and has not been changed since 1998. But you would agree that the scope and impact of international trade and investment treaties and rules have expanded massively since then, as have their implications for domestic policy?

3.4 Sir Kenneth Keith says in the Cabinet Manual that more and more law is made through international processes that are currently the prerogative of the executive. Don't you see the continuation of a process dating back to 1998 as a problem?

3.5 You would also agree that the reports of the Waitangi Tribunal, especially Wai 1040, have deepened the understanding of Te Tiriti o Waitangi from that which informed the Crown's position in 1998?

MFAT's review of international treaty making

4. The following questions relate to MFAT's review of international treaty making:

4.1 In your position as the Deputy Secretary Legal in charge of international treaty making were you also responsible for the review of international treaty making conducted by MFAT from 2021 to 2023?

4.2 You will be aware there have been proposals, even from a former Clerk of the House and the Law Commission, to reform the international treaty process, and that other former British colonies have made significant changes to their processes, including Australia?

4.3 It was decided that review would not revisit the Crown prerogative. Why was that?

4.4 You knew, to quote the Cabinet paper, that it was *"likely that the changes proposed in this paper will not fully meet the expectations of some Tiriti partners who advocate for systemic constitutional change."* So you were aware that Māori would see this review as a further denial of tino rangatiratanga. Were you deliberately trying to avoid opening up that constitutional discussion?

4.5 Was it a conscious decision to keep this review secret and not to engage with Māori, outside those who work from the Crown, or even to inform them the review was being conducted? Did not consider the review was significant enough to involve them at the earliest possible stage, rather than only giving an opportunity to comment once Cabinet had decided what changes it would accept? Again, how is that Tiriti consistent?

4.6 We can presume that you are aware of the Mediation Agreement between the Crown and Wai 2522 claimants, represented by Ngā Toki Whakarururanga, correct?

4.7 And that [6.1] and [6.2] of the Mediation Agreement has a commitment from MFAT to "*engage with authenticity and integrity to continue to build a genuine and respectful mutually beneficial relationships between the claimants and Aotearoa New Zealand's international trade policy and practices*" and to be "*open and honest*". Do you believe that the process of this review meets that standard?

4.8 In [42] you describe this secretive approach as an "orthodox policy process". As this review directly impacts on Māori, how does that process reflect a Tiriti partnership?

Cabinet Strategy for Engagement with Māori on International Treaties

5. The following questions relate to the Crown's strategy for engagement with

Māori on international treaties:

5.1 Are you aware that several Waitangi Tribunals and the Trade for All Advisory Board report have criticised the 2001 Cabinet Strategy for Engagement with Māori on international treaties and called for change?

5.2 Yet the 2001 Strategy was incorporated unchanged in the International Treaty Making: Guidance for Government Agencies in 2021. Were you involved in the decision not to update it?

5.3 Te Puni Kokiri (TPK) was also dealing with international treaty making as part of Te Pae Tawhiti. They pressed hard for a commitment to a priority review of the 2001 strategy to be included in the Cabinet paper on the review of treaty making. Why did MFAT block that and only propose some possible review some time in the future?

5.4 As a consequence of MFAT's advice, and the Cabinet paper not being presented, the 2001 Strategy remains unchanged despite repeated criticisms that it fails to meet the Crown's Tiriti obligations. Do you consider that acceptable and if so, why?

Select committee failure to review treaty examination process

6. The following questions relate to the Foreign Affairs Defence and Trade Committee's failure to review the treaty examination process:

6.1 Turning now to the Standing Orders Committee recommendation for a review of Parliament's treaty examination process, presumably the responsibility for MFAT's advice in relation to that falls within your role as the head of MFAT's legal division?

6.2 You will be aware that multiple reviews have been conducted in governmental and parliamentary systems of countries that are derived from English colonial systems? For example, the Australian Parliament's specialist Joint Standing Committee on Treaties has conducted multiple reviews. The latest in May 2024 recommended improved transparency, accountability, and oversight in the negotiation process. The International Agreements Committee of the House of Lords has condicted a series of reviews, most recently in September 2025. So why does MFAT oppose such an inquiry here? It seems very self-serving, doesn't it?

6.3 In [22.6] you refer to select committee consideration of treaties that have been negotiated and signed by the Executive. As you know, the

select committee controls that process. It may choose to call for submissions or not. It routinely gives individuals 5 minutes and groups 10 minutes to present submissions on an agreement that may have 20-30 chapters. It must report within 15 sitting days of presentation to the House unless it seeks more time. Its report may or may not be discussed in Parliament. How is that process Tiriti compliant?

6.4 Professor Kelsey's evidence says that MFAT advised the Foreign Affairs Defence and Trade committee that the treaty examination process was fit for purpose and did not need the review recommended by the Standing Orders Committee. Were you involved in giving that advice?

6.5 Did you consider the Tiriti consistency of the current process when giving that advice?

The ISDS Protocol

7. The following questions relate to the ISDS protocol:

7.1 You were the MFAT legal official in charge of drafting the protocol for an ISDS dispute that might involve the Treaty of Waitangi exception, correct?

7.2 Would you agree that all the power over decisions relating to the Treaty of Waitangi exception under that protocol remains with the Crown?

7.3 Going back to the Wai 262 Report that you rely on for the authority of the Crown, would you not agree that a decision on whether to invoke the Treaty of Waitangi Exception and the arguments to be presented, by whom is, to quote the tribunal, a matter "*when the Māori interest is so overwhelming, and other interests by comparison so narrow or limited, that the Crown should contemplate delegation of its decision-making powers, or delegation of its role as New Zealand's 'one voice' in international affairs",* or at the very least is a "*time when the Crown's position on matters of core importance to Māori must be developed by consensus, and - preferably - by a negotiated agreement with Māori*"?

The ICJ Advisory Opinion

8. The following questions relate to the Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change:

8.1 You said in your brief you were not in a position to comment on the details of the ICJ Advisory Opinion, but presumably you have read it quite closely given your role in MFAT, correct?

8.2 Noting the following to paragraphs of the Advisory Opinion, which is on the Tribunal's record:

(i) Paragraph [374] quotes from the Preamble to the Paris Agreement that:

> *Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on ... the rights of indigenous peoples ...*

(ii) Paragraph [382], which recalls that premable, observes that:

> *Climate change may also impair the enjoyment of the rights of women, children and indigenous peoples.*

(iii) Paragraph [384] further observes that:

> *The IPCC has found that women and indigenous peoples may be more severely affected by the impacts of climate change. ... The Court therefore considers that the enjoyment of human rights by such groups is at risk of being affected by the adverse effects of climate change.*

Would you accept that the Advisory Opinion anticipates the Crown should and would accept a special obligation to Indigenous Peoples in developing and implementing climate change policies, irrespective of Te Tiriti o Waitangi, but especially because of it?