

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3300

E PĀ ANA KI
CONCERNING

te Treaty of Waitangi Act 1975

Ā,
AND

Tomokia ngā tatau o Matangireia
– the Constitutional Kaupapa
Inquiry

HE PĀNUI WHAKAHĀU A TE MANA WHAKAHAERE

*MEMORANDUM-DIRECTIONS OF CHIEF JUDGE DR C L FOX CONCERNING THE
RESEARCH PROGRAMME*

13 Huitanguru 2026

Purpose

1. This memorandum-directions:
 - (a) responds to submissions from parties on research matters;
 - (b) sets out the Tribunal's decision on the research programme for Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa (Wai 3300) inquiry; and
 - (c) notifies parties of the researchers to be commissioned.

Background

2. In August 2025, I notified parties of the three research reports I intend to commission for this inquiry and invited submissions on further research matters (Wai 3300, #2.6.63).
3. In October 2025, I addressed the Crown's concerns regarding the Tribunal's jurisdiction to commission research regarding parliamentary sovereignty, parliamentary practices, and constitutional convention (Wai 3300, #3.2.299). I found that we can commission research on these matters, and doing so is important even if only as a contribution to the background or context for the issues to be heard during this inquiry (Wai 3300, #2.6.75).
4. The Tribunal received a total of seven submissions from counsel for the claimants and interested parties.

Submissions regarding research matters

Submission filed by Woodward Law

Submission

5. On 13 November 2025, the Tribunal received a submission from Donna Hall, Darshini Dorn, and Hilary Royds on behalf of the Constitutional (New Zealand Māori Council) (Wai 3352) claim (Wai 3300, #3.2.325).
6. Counsel submit that in addition to the research proposed, the Tribunal should commission research into how indigenous self-governance, autonomy, and self-determination is exercised in jurisdictions beyond Aotearoa.
7. Issues of focus for this additional research could include:
 - (a) how other jurisdictions incorporate recognition of indigenous people in their constitutional framework, whether written or unwritten;
 - (b) how other indigenous people create their own self-government models and autonomy;
 - (c) how governance arrangements in other countries operate to share authority with their indigenous peoples within nation-state boundaries; and
 - (d) how other jurisdictions recognise and adhere to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Decision

8. The Tribunal will commission an expert brief of evidence to address these issues, subject only to any resource constraints.

Submission filed by Tamaki Legal

Joint submission

9. On 13 November 2025, the Tribunal received a joint submission from Darrell Naden and Hugo Fletcher on behalf of the following claims: Wai 2377, Wai 762, Wai 2894, Wai 1716, Wai 2382, Wai 3131, Wai 1862, and Wai 2604 (Wai 3300, #3.2.326).
10. Counsel submit that in addition to the research reports already planned, the Tribunal should also include in the research programme a literature review of relevant research reports, tangata whenua evidence, submissions, Waitangi Tribunal deliberations, and findings across all inquiries since 1975. Research should also include texts and other commentaries both historical and political in relation to:
 - (a) Māori not consenting to a cession of sovereignty;
 - (b) the Crown's use of force (or fear of force) to oppress Māori to Crown sovereignty; and
 - (c) the Crown's regime instituting oppressive practices, including germ warfare, financial penalties, and cultural suppression to acquire de facto sovereignty.
11. Counsel also submit that the Tribunal should commission research reports focusing on:
 - (d) the additional steps taken by the Crown in addition to the events of 1840, such as the signing of te Tiriti, Hobson's proclamations, and the publication of those proclamations in the London Gazette; and
 - (e) the Crown's overarching approach to the acquisition of sovereignty in Aotearoa, including: Cook's discovery of Aotearoa in 1769; the Crown's intent and support for Hongi Hika; the Crown's intent with the drafting of He Whakaputanga and te Tiriti; and the application of the settlement doctrine.

Decision

12. Regarding the literature review, as indicated previously, Tribunal staff will prepare a bibliography of material relevant to the themes of the inquiry (Wai 3300, #2.6.63). This bibliography is in addition to the review of relevant research completed for other Tribunal inquiries prepared by Tribunal staff in 2023 (Wai 3300, #6.2.1).
13. Regarding research reports that should be commissioned, the Tribunal will not commission further historical research on these issues, as there will be sufficient material for the parties and the Tribunal to be able to utilise once the literature review and bibliography are completed. In particular, points 11(d) and (e) have already been addressed in the Te Paparahi o te Raki (Wai 1040) evidence and stage 1 report.

Submission filed by Te Whenua Law

Submission

14. On 13 November 2025, the Tribunal received a memorandum of counsel from Tania Te Whenua on behalf of The Constitutional (Panoho and Kerr) (Wai 3349) claim (Wai 3300, #3.2.327).
15. Counsel suggest that the Tribunal commission additional research regarding the constitutional relationship between Crown capability to deliver on te Tiriti obligations and the role of kaimahi Māori within the public sector.

Decision

16. The Tribunal considers this is a matter best addressed by the Crown, not the Tribunal or a Tribunal-commissioned researcher.
17. The memorandum also provided a list of material for inclusion in the bibliography project.
18. Tribunal staff will collate into the bibliography all the material counsel and claimants have suggested and make this available to all parties once completed.

Submission filed by Black Law

Submission

19. On 13 November 2025, the Tribunal received a memorandum of counsel from Lisa Black on behalf of the Justice System (Te Whare Ariki o Tūroa) (Wai 3135) claim (Wai 3300, #3.2.328).
20. The claimants advise they intend to file, as part of their evidence, the doctoral thesis of Mr Hayden Turoa (in development) which is due to be submitted for examination in March 2027. The thesis will explore the deviation in New Zealand's legal system represented by the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 which provides a framework that integrates kawa in New Zealand's water laws and policies (Wai 3300, #3.2.328).

Decision

21. The Tribunal would be grateful if Mr Turoa's thesis can be filed when finalised.

Submission filed by Mahony Horner Lawyers

Joint Submission

22. On 13 November 2025, the Tribunal received a joint memorandum of counsel from Rox Soriano, Richard Gayfer, Caitlin Fellowes, and Style Toleafoa on behalf of the following claims: Wai 58, Wai 605, Wai 1312, Wai 1662, Wai 1684, Wai 2124, Wai 2389, Wai 2424, Wai 2619, Wai 2945, Wai 3147, Wai 3149, and Wai 3434 (Wai 3300, #3.2.329).
23. Counsel reiterate the point made in the joint memorandum filed by Bennion Law on 18 September 2025 that it is difficult to inquire into issues such as electoral rights and local government without first inquiring into foundational issues relating to the Crown's asserted sovereignty (Wai 3300, #3.2.290).
24. Counsel further note the difficulty of the Tribunal conducting a constitutional inquiry without examining the foundational principle of parliamentary sovereignty. To not inquire into such fundamental constitutional principles would rob the inquiry and any report it produces of relevance and rigour. There is little point in inquiring into constitutional issues if the Crown does not have the ability to look at the basics.
25. Counsel submit that sovereignty was flagged for inclusion in the Wai 3300 inquiry as early as 2015, and against that background it is surprising that the Crown would now express doubts about the Tribunal's jurisdiction to inquire into such issues.
26. The statutory framework further supports the Tribunal commissioning the proposed research into parliamentary sovereignty.

Decision

27. See paragraph [3] above, summarising my decision that this Tribunal can commission research regarding parliamentary sovereignty, parliamentary practices, and constitutional convention (Wai 3300, #2.6.75).

Submission filed by Annette Sykes & Co.

28. On 14 November 2025, the Tribunal received submissions from counsel Annette Sykes and Maia Te Hira on behalf of the following claims: Wai 1194, Wai 1212, Wai 3342, Wai 2494, and Wai 2872 (Wai 3300, #3.2.331).

29. Counsel endorse the Tribunal's findings that the Tribunal can commission research on the topics of parliamentary sovereignty, parliamentary practices, and constitutional convention.

30. Counsel endorse the submissions made by Bennion Law on 18 September 2025 that it is difficult to inquire into issues such as electoral rights and local government without first inquiring into the more foundational issues relating to the Crown's asserted sovereignty (Wai 3300, #3.2.290). The claimants make the same point in regard to international treaty-making.

31. Counsel reiterate their support for the Tribunal's findings regarding its jurisdiction to inquire into matters concerning parliamentary sovereignty, parliamentary practices, and Cabinet conventions.

Submission filed by Bennion Law

Submission

32. On 17 November 2025, the Tribunal received a memorandum of counsel from Tom Bennion, Emma Whiley, and Kudrat on behalf of the following claims: Wai 3073, Wai 3389, Wai 3163, Wai 2143, Wai 2139, and Wai 1911 (Wai 3300, #3.2.332).

33. Counsel submit the first step in the research programme should be a literature review of the wealth of knowledge already in existence on Māori and constitutional transformation, including analysis and synthesis of existing literature.

34. Counsel submit additional details for each of the Tribunal's commissioned research reports to include, alongside a list of potential researchers that could be commissioned.

35. Counsel further submit that research projects should include a rangatahi and whānau hauā lens, including te ao Māori inclusive models of rangatahi and hauā expressions of rangatiratanga and an assessment of if, and how Māori and the Crown have considered these groups in constitutional arrangements.

Decision

36. Tribunal staff will prepare a bibliography of material relevant to the themes of the inquiry.

Decision confirming research programme

37. The Tribunal panel has conferred, and I can now confirm that the Tribunal intends to commission three research reports and one expert brief of evidence:

Report 1: Review and assess parliamentary sovereignty, parliamentary practices, and constitutional convention.

Report 2: Review the statutes associated with each inquiry theme to identify how they reference the Treaty of Waitangi, or how these laws provide for Māori.

Report 3: Review of electoral system from 1846 to the present day, to assess structure, representation, and provisions for Māori (Wai 3300, #2.3.3).

Expert Brief 1: How indigenous self-governance, autonomy, and self-determination are exercised in jurisdictions beyond Aotearoa.

38. In addition, a bibliography of material relevant to the inquiry will be prepared by Tribunal research staff.

39. The deadline for these commissioned research projects is December 2026. Therefore, Waitangi Tribunal research services staff are taking into the account the submissions filed and working quickly to finalise and circulate project briefs for party feedback.

40. Due to the limited time available to complete research for this inquiry, the project brief for Report 3 was circulated to parties for feedback by research services staff on 22 December 2025. This feedback was taken into consideration as the project brief was finalised.

41. On 30 January 2026, I commissioned Dr Josh King to prepare Report 3 (Wai 3300, #2.3.3).

Notification of researchers to be commissioned

42. I can now confirm that the Tribunal intends to commission:

- (a) Professor Andrew Geddis for Report 1;
- (b) Tai Ahu for Report 2; and
- (c) Dr Josh King for Report 3.

43. The Tribunal will advise parties of the relevant expert to be commissioned for Expert Brief 1 in due course.

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki ērā ki te rārangi whakamōhio mō Wai 3300, Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry.

The Registrar is to send a copy of this direction to all those on the distribution list for Wai 3300, Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry.

WHAKAPŪMAUTIA ki Te Whanganui-a-Tara i te 13 o te Huitanguru 2026



Kaiwhakawā Matua Dr C L Fox
Tumuaki

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI