

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3325

E PĀ ANA KI
CONCERNING

te Treaty of Waitangi Act 1975

Ā,
AND

te Climate Change Priority
Inquiry

HE PĀNUI WHAKAHAU A TE MANA WHAKAHAERE

*MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER RECORDING THE
PANEL'S DECISION ON DIRECTIONS SOUGHT BY NGĀ TOKI WHAKARURURANGA
REGARDING THE UNITED STATES AND NEW ZEALAND CRITICAL MINERALS
FRAMEWORK NEGOTIATIONS*

6 Māehe 2026

Purpose

1. This memorandum-directions records my response to the directions sought by Annette Sykes and Sam Vincent, counsel for the Climate Change (Ngā Toki Whakarururanga) (Wai 3395) claim, regarding the United States and New Zealand critical minerals framework negotiations.

Procedural history

2. On 27 January 2026, the Tribunal received a memorandum from Ms Sykes and Mr Vincent on behalf of the Wai 3395 claimants, filing United States President Donald Trump's Proclamation regarding critical minerals (Wai 3325, #3.2.259, #3.2.259(a)).

Anette Sykes and Co. submissions

3. Counsel, in their memorandum, explain the significance of the Proclamation for New Zealand and the Climate Change Priority Inquiry, noting that President Trump had directed the Secretary of Commerce and the US Trade Representative to "jointly pursue negotiation of agreements or continue any current negotiations" with foreign trading partners (Wai 3325, #3.2.259 at [6]).
4. Counsel advise that claimant expert witness Professor Jane Kelsey had concerns that New Zealand may be approached in negotiations following the stand-alone Critical Minerals Framework Agreement between the United States and Australia and 'the New Zealand Government's recent promotion of critical minerals mining' (Wai 3325, #3.2.259 at [9] - [10]).
5. Counsel submit that the New Zealand Government has not said whether it has been approached by the United States to negotiate such an agreement. Counsel accordingly sought that the Tribunal urgently seek information from the Crown to establish whether a critical minerals agreement is being negotiated with the United States Government.

Crown submissions

6. On 2 February 2026, the Tribunal received a memorandum from counsel for the Crown, Jeremy Prebble, Grace Seeley, Nixon Fong and Larissa Tucker, in response to Ms Sykes and Mr Vincent's submissions dated 27 January 2026 (Wai 3325, #3.2.254).
7. Counsel for the Crown advise that the New Zealand Government is currently in negotiations with the United States Government regarding a framework relating to critical minerals.
8. Further, counsel state that negotiations are expected to be concluded before the Crown gives evidence in March and that Crown witness Evangelos Vitalis would be available to provide an update at the upcoming Crown hearing week in March 2026 (Wai 3325, #3.2.254 at [4.3]).
9. Counsel advise that the Crown has engaged with Ngā Toki Whakarururanga, the Federation of Māori Authorities and Te Taumata regarding the proposed framework and have since received feedback. Counsel note that confidentiality obligations apply to this engagement and feedback (Wai 3325, 3.2.254 at [4.2]).
10. Finally, counsel for the Crown advise that negotiations are confidential and ongoing. Therefore, the Crown is not currently in a position to divulge the draft text of the framework (Wai 3325, 3.2.254 at [4.4]).

Further submissions from Annette Sykes and Co.

11. On 3 February 2026, via an email from the Registrar, I instructed Ms Sykes and Mr Vincent to file any submissions in response to the Crown's submissions above by 9 February 2026.
12. On 3 February 2026, counsel filed:
 - (a) a memorandum in response to the Crown's memorandum dated 3 February 2026 (Wai 3325, #3.2.260); and
 - (b) the US Department of State's Joint Statement on the New Zealand-United States Strategic Dialogue' (press release, 2 February 2026) (Wai 3325, #3.2.260(a)).
13. Counsel acknowledge the information provided by the Crown at [6] to [10] above, however, noted that the information was limited. Counsel accordingly sought that the Tribunal urgently seek further information from the Crown (Wai 3325, #3.2.260 at [4]).
14. On 12 February 2026, the Tribunal received a further memorandum from Ms Sykes and Mr Vincent (Wai 3325, #3.2.261), filing:
 - (a) a joint statement from the Ministry of Foreign Affairs and Trade (MFAT) updating New Zealand's current strategic dialogue with the United States (Wai 3325, #3.2.261(a) at [2] – [3]); and
 - (b) a blog post covering the United States Critical Minerals Ministerial, held in Washington D.C. on 4 February 2026 (Wai 3325, #3.2.261(a) at [4] – [9]).
15. Counsel, in their memorandum, reiterate the claimants' previous requests for the Tribunal to seek information and emphasised possible risks posed by New Zealand developing a Memorandum of Understanding (MoU) with the United States around critical mineral extraction (Wai 3325, #3.2.261 at [8] and [11]).
16. Counsel sought that the Tribunal seek information from the Crown regarding the approach being adopted by MFAT and the Ministry of Business, Innovation and Employment in preparing any such MoU.

Decision

17. On 13 February 2026, via an email from the Registrar, I confirmed that the Tribunal had considered the memoranda set out above, including the directions sought by the Wai 3395 claimants in their submissions dated 3 February 2026 (Wai 3325, #3.2.260 at [4]).
18. I indicated that it was the Tribunal's view that the information sought by the claimants could be provided by Mr Vitalis during his presentation at the upcoming Crown hearing.
19. I also noted that while the panel in this inquiry has heard evidence relating to the negotiation of international agreements on climate change, there are other Tribunal inquiries which would deal directly with the issues of negotiation of international treaties, including this framework agreement, such as the Tomokia ngā tatau o Matangireia: Constitutional (Wai 3300) inquiry, and mining of critical minerals in the Economic Development (Wai 3550) or the Natural Resources and Environmental Management (Wai 3450) inquiries.
20. I accordingly confirmed that this Tribunal will maintain its focus primarily on core climate change issues.

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki ērā ki te rārangi whakamōhio mō Wai 3325, the Climate Change Priority Inquiry.

The Registrar is to send this direction to all those on the distribution list for Wai 3325, the Climate Change Priority Inquiry.

WHAKAPŪMAUTIA ki Kirikiriroa i te 6 o te Māehe 2026



Kaiwhakawā Stephanie Milroy
Te Mana Whakahaere

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI