

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 REGARDING THE NEXT
STEPS ON THE PROPOSED EVIDENCE FROM HE POU A RANGI CLIMATE CHANGE
COMMISSION*

13 Māehe 2026

Purpose

1. This memorandum-directions records submissions received in response to claimant coordinating counsel's ('coordinating counsel') request to file new evidence from He Pou a Rangi Climate Change Commission ('the Commission'), and directs further submissions be filed on the matter.

Coordinating counsel's request to file new evidence

2. On 13 February 2026, the Tribunal received a memorandum from counsel for the Crown, Jeremy Prebble, Nixon Fong, Grace Seeley and Larissa Tucker regarding inquiry planning matters (Wai 3325, #3.2.262).
3. On 17 February 2026, the Tribunal received a memorandum from claimant coordinating counsel, Bryce Lyall, Michael Sharp and Tania Te Whenua, in response to the Crown's submissions above (Wai 3325, #3.2.263).
4. Coordinating counsel submit that, among other matters (Wai 3325, #3.2.263 at [8]):
 - (a) claimant counsel were in discussions with the Commission regarding evidence being provided for this inquiry, with the extent of such evidence currently being worked through;
 - (b) 11 hours was anticipated for hearing of reply evidence; and
 - (c) claimants may wish to file updated evidence in light of recent changes to climate change policy and extreme weather events.
5. On 18 February 2026, via an e-mail from the Waitangi Tribunal's Registrar ('the Registrar'), I informed coordinating counsel that the Tribunal required further information on the matter and accordingly directed counsel to confirm the details below by 24 February 2026:
 - (a) when the proposed evidence would likely be filed and whether it would be filed in time for Crown witnesses to respond during hearing weeks six or seven;
 - (b) the extent of the proposed evidence; and
 - (c) counsel's reasonings for providing the Tribunal with a late indication that they wish to call evidence from the Commission.
6. On 24 February 2026, the Tribunal received a further memorandum from coordinating counsel advising that counsel for the Commission would respond to coordinating counsel's request for information by the end of the week. Counsel accordingly sought leave to file the information at [5] above by 27 February 2026 (Wai 3325, #3.2.265 at [4] – [5]).
7. On 26 February 2026, I granted this request via an e-mail from the Registrar, and confirmed this information should be provided by 27 February 2026.

Submissions in response

Memorandum of counsel for the Commission

8. On 27 February 2026, counsel for the Commission, Sarah Leslie and Joanna Judge, filed a memorandum in response to coordinating counsel's submissions dated 17 February 2026 (Wai 3325, #3.2.269).
9. Ms Leslie and Ms Judge submit that the Commission was not consulted in advance of coordinating counsel's memorandum of 17 February 2026 in which counsel proposed the Commission file evidence in these proceedings (Wai 3325, #3.2.269 at [7]).
10. Counsel advises the Commission is an independent Crown entity under the Crown Entities Act 2004. Counsel also submits that the courts have recognised the Commission's independence from the Crown and expertise in recent litigation (Wai 3325, #3.2.269 at [12]).
11. Counsel advises that while the Commission does not believe it holds information within the scope of this inquiry, it is willing to assist if the Tribunal believes otherwise. Counsel states that, should this be the case, the Commission would participate independently of the Crown.

Memorandum of coordinating counsel

12. On 2 March 2026, coordinating counsel filed a memorandum in reply to counsel for the Commission (Wai 3325, #3.2.270).
13. Coordinating counsel contends that the narrative of events submitted by counsel for the Commission is not accurate. Counsel further states that the claimants consider the Commission's functions are central to the Tribunal's issues for inquiry (Wai 3325, #3.2.270 at [2]).
14. Coordinating counsel see benefit in the Tribunal asking the Commission to provide evidence, and seeks a direction that the Tribunal set down a judicial conference to discuss the process and parameters for the provision of this evidence.

Memorandum of Annette Sykes & Co.

15. On 2 March 2026, counsel for the Climate Change (Ngāruahine) (Wai 3382) claim, Annette Sykes and Sam Vincent, filed a memorandum in reply to the Commission's submissions dated 27 February 2026 (Wai 3325, #3.2.271).
16. Alongside their memorandum, counsel filed an amended statement of claim (ASOC), which adds the disestablishment of the Commission's Ohu Iwi/Māori business group and related failure to adequately engage with Māori on climate policy as further allegations against the Crown¹.
17. Ms Sykes and Mr Vincent advise that the Wai 3382 claimants also seek that the Commission provide evidence to the Tribunal. Counsel clarify that the claimants do not seek to present further evidence, however, they do seek the opportunity to cross-examine a representative from the Commission (Wai 3325, #3.2.271 at [4]).
18. Ms Sykes and Mr Vincent submit that the proposed evidence provided by the Commission should be regarded as Crown evidence on the basis that acts done by the

¹ Amended statement of claim for Wai 3382 filed on 2 March 2026.

Commission are acts done by the Crown pursuant to s 6 of the Treaty of Waitangi Act 1975 (Wai 3325, #3.2.271 at [13] & [16]).

19. Counsel advises that they support coordinating counsel's request for a judicial conference to discuss this issue further.

Memorandum of counsel for the Crown

20. On 9 March 2026, counsel for the Crown filed a memorandum regarding the proposed evidence from the Climate Change Commission (Wai 3325, #3.2.279).
21. Counsel for the Crown submits that the Commission is an independent Crown entity under the Crown Entities Act 2004, established to provide independent advice to the Government, and accordingly is not part of the Crown (Wai 3325, #3.2.279 at [19] – [21]).
22. Counsel for the Crown draws the Tribunal's attention to two situations in which the Minister may direct the Commission to have regard to Government policy and highlights that the obligation of the Commission is to 'have regard to' such policies, not 'comply with' or 'give effect to'. Counsel for the Crown notes that neither issue is in the memoranda filed by coordinating counsel and accordingly submits that the Tribunal has no jurisdiction to inquire into the Commission's actions in this context (Wai 3325, #3.2.279 at [22] – [24]).
23. Counsel for the Crown also note the late timing of the Commission's proposed involvement in this inquiry and emphasises that there has been sufficient time to raise such evidential matters prior to 'this late stage' of proceedings (Wai 3325, #3.2.279 at [25] – [27]).

Further memorandum of counsel for the Commission

Submissions regarding participation in this inquiry

24. On 9 March 2026, counsel for the Commission, Andrew Irwin, Ms Leslie and Ms Judge, filed a memorandum in response to Annette Sykes & Co's submissions on behalf of the Wai 3382 claimants as outlined above at [15] – [19] (Wai 3325, #3.2.280).
25. Counsel submits that the Commission does not seek join this inquiry, or an opportunity to present evidence (Wai 3325, #3.2.280 at [2.1]). Counsel reaffirms the Crown's position at [21] above, and says the Commission is an independent Crown entity and that its actions are not of the Crown for the purposes of the Treaty of Waitangi Act 1975 or otherwise (Wai 3325, #3.2.280 at [2.3]).
26. Counsel maintains that the Commission is open to assisting the Tribunal and requests Tribunal staff to liaise directly with counsel for the Commission if this is the case (Wai 3325, #3.2.280 at [2.7]).
27. Counsel advises they are available to appear at any judicial conference to address this matter (Wai 3325, #3.2.280 at [2.8]).

Submissions regarding the Wai 3382 ASOC

28. In response to the Wai 3382 ASOC, Counsel for the Commission submit that the Commission's disestablishment of its Ohu Iwi/Māori business group was not an act done by the Crown, as the Commission is not the Crown for the reasons outlined above at [2]5], and is therefore not capable of being made the subject of a claim under the Treaty of Waitangi Act 1975 (Wai 3325, #3.2.280 at [2.3]).

29. Counsel for the Commission submits that counsel for the Wai 3382 claimants sought information from the Commission under the Official Information Act 1982 in August 2024 and subsequently sought that coordinating counsel approach the Commission seeking evidence in this inquiry (Wai 3325, #3.2.280 at [8.1] & [8.2]).
30. Counsel state that, in November 2025, the Commission received a request for a meeting with coordinating counsel, noting that counsel for the Crown was the only other invited party. Counsel submit that at this meeting coordinating counsel asked for evidence on various matters before advising the Tribunal of their written request for evidence by memorandum on 27 February 2026. Counsel observe that the Wai 3382 claimants filed their ASOC one day after the Commission responded to coordinating counsel's request for evidence (Wai 3325, #3.2.280 at [8.2] & [8.3]).
31. On the basis of above, counsel submit 'it is difficult to escape the conclusion that the filing of the claim and factual allegations about the Commission were planned sometime in advance' (Wai 3325, #3.2.280 at [9]).
32. Referring to natural justice implications, counsel submit that the Commission should not have been approached and asked to provide evidence and a witness for cross-examination without the allegations in the Wai 3382 ASOC having been disclosed prior (Wai 3325, #3.2.280 at [9]).
33. Counsel note that Wai 3382 claimants have not yet sought urgency or priority for the new claim to be heard by this panel. Counsel submit that the Commission would seek the opportunity to make full submissions on whether the Tribunal has jurisdiction to inquire into the claim if the Tribunal were to entertain an inquiry into the new claim (Wai 3325, #3.2.280 at [2.5] & [2.6]).

Next steps

34. I have considered counsel's submissions above and now invite counsel for the Wai 3382 claimants, Ms Sykes and Mr Vincent, to file any submissions in reply to the submissions of the Crown and Commission dated 9 March 2026 by no later than **5pm, Friday 27 March 2026**.
35. I will further address this matter by way of memorandum-directions following receipt of the submissions above.

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 13 o te Māehe 2026



Kaiwhakawā Stephanie Milroy
Te Mana Whakahaere

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI