
KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 3325

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF the Climate Change Priority Inquiry

MEMORANDUM OF COUNSEL FOR THE CROWN

12 Māehe | March 2026



**Te Tari Ture
o te Karauna**
Crown Law

Pouaka Poutāpeta PO Box 2858
Te Whanganui-a-Tara Wellington 6140
Waea Tel: 04 472 1719

Whakapā mai: Contacts:

Nixon Fong / Grace Seeley
nixon.fong@crownlaw.govt.nz / grace.seeley@crownlaw.govt.nz

Barrister instructed:

Jeremy Prebble
jeremy.prebble@hawkestone.co.nz

MAY IT PLEASE THE TRIBUNAL:

1. In this memorandum, the Crown provides an update on the Treaty clause review as relevant to this priority inquiry.
2. This update is in response to the direction for the Crown to file a memorandum as soon as possible regarding any significant policy or legislative developments should, or as they occur, and to do so on an ongoing basis.¹

Treaty clause review

3. The Crown has endeavoured to keep the Tribunal updated on relevant developments throughout this inquiry.
4. In the Crown memorandum filed on 24 November 2025, Crown counsel provided an update on the Treaty clause review.² In that memorandum, counsel noted that in September 2024, Cabinet decided on a review of legislation containing references to Treaty/te Tiriti principles, including s 3A of the Climate Change Response Act 2002 (**CCRA**). At that time, no decisions on amendments to legislation had been made.
5. Counsel are instructed that decisions have now been taken that are relevant to s 3A of the CCRA. On 23 February 2026 Cabinet agreed that Treaty references within the CCRA should be amended so that where a Treaty standard is needed, which indicates the strength or nature of the Treaty obligation, no higher standard than 'take into account' should be used. Cabinet also agreed that, to standardise Treaty provisions, a reference to both the Treaty of Waitangi and Te Tiriti o Waitangi should be used and provisions should retain references to Treaty principles. Counsel are still taking instructions on the release of the Cabinet material.
6. Section 3A of the CCRA is a descriptive Treaty clause that provides mechanisms by which the principles of the Treaty are given effect. The

¹ Memorandum-directions of the Presiding Officer following hearing four of the priority inquiry and other matters arising, dated 3 November 2025 (Wai 3325, #2.6.17) at [58].

² Memorandum of counsel for the Crown, 24 November 2025 (Wai 3325, #3.2.230).

provision will accordingly require amendment to reflect the Cabinet decisions above.

7. Counsel also note that the Minister of Justice has also been authorised, in consultation with the Ministerial Oversight Group, and the Minister responsible for each Act, to make further decisions in line with the policy decisions agreed by Cabinet, where necessary. The Minister of Justice has also been authorised to make further decisions, in line with the policy decisions agreed by Cabinet, on any minor and technical issues that arise during drafting of a Bill for the Treaty clause review. These decisions mean it is possible that further changes to section 3A of the CCRA may be made during the drafting of a Bill. Any changes made will be in line with the policy decisions Cabinet has made.
8. Counsel do not have instructions as to the timeline for amendment.

12 Māehe | March 2026



J Prebble / N Fong / G Seeley / L Tucker
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal

AND TO: Claimant Counsel