Appendix A: Te Tiriti o Waitangi Framework

1. As descendants of signatories to te Tiriti, the claimants hold their own interpretation of te Tiriti, based on kōrero tuku iho and their understanding of the application of te Tiriti today. Their understanding of te Tiriti underpins how they govern their tribal affairs, their relationship with the Crown, and their participation in this inquiry.

2. Central to the claimants' Tiriti understanding is that they do not support any treaty interpretation which seeks to limit, balance, or qualify their rangatiratanga based on an incorrect view that kāwanatanga/sovereignty was ceded under te Tiriti. Further, the passage of time, and the assumptions the Crown now holds in relation to the scope of its kāwanatanga/sovereignty today, do not change their position.

3. In *The Oranga Tamariki (Section 7AA) Urgent Inquiry Report,* the Tribunal said that the Crown does not have a unilateral right to redefine or breach te Tiriti o Waitangi:[1]

> … once Ministers are sworn in and the government is formed, the executive so constituted are responsible for meeting the Crown's obligations to Māori under the Treaty of Waitangi. It is a Treaty of Waitangi, not a proclamation of Waitangi, and the Crown does not have a unilateral right to redefine or breach its terms. The obligation is to honour the Treaty and act in good faith towards the Treaty partner.

The right to exercise rangatiratanga

4. The claimants support the Tribunal's findings in *He Whakaputanga me Te Tiriti*[2] regarding the nature of the agreements reached under te Tiriti o Waitangi in 1840 which include:[3]

   (a) The rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain. That is, they did not

[1] Waitangi Tribunal, *The Oranga Tamariki (Section 7AA) Urgent Inquiry Report* (Wai 3350, 29 April 2024), at 13.
[2] Waitangi Tribunal, *He Whakaputanga me te Tiriti: The Declaration and the Treaty* [Wai 1040, October 2014].
[3] At xxii.

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cede authority to make and enforce law over their people or their territories;

(b) Rangatira agreed to share power and authority with Britain. They agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests;

(c) The rangatira consented to the treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis;

(d) The rangatira agreed to enter land transactions with the Crown, and the Crown promised to investigate pre-treaty land transactions and to return any land that had not been properly acquired from Māori; and

(e) The rangatira appear to have agreed that the Crown would protect them from foreign threats and represent them in international affairs, where that was necessary.

The right to rangatiratanga

5. Article 2 of te Tiriti guaranteed tino rangatiratanga to Māori.[4]

6. In *Ngā Mātāpono,* the Tribunal described tino rangatiratanga as "the mana or full chiefly authority over properties and people within a particular kinship group, all that is treasured, and access to resources."[5]

[4] At 11. See also: Waitangi Tribunal, *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 22 December 2022), at 70-71; Waitangi Tribunal, *The Takutai Moana Act 2011 Urgent Inquiry Stage 1 Report* (Wai 3400, 12 September 2024), at 12-13.
[5] Waitangi Tribunal, *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 22 December 2022), at 70.

7. As mentioned above, the rangatira who signed te Tiriti in February 1840 did not cede their sovereignty to the Crown; that is, they did not cede authority to make and enforce law over their people and territories.[6] Rather, in accordance with te Tiriti, Māori rangatiratanga or authority was to be recognised and respected, and rangatira were to continue to exercise their rights and responsibilities to their hapū in accordance with their tikanga.[7]

8. In *Tino Rangatiratanga me te Kāwanatanga* the Tribunal emphasised that to understand rangatiratanga under te Tiriti, it is crucial to first understand He Whakaputanga o te Rangatiratanga o Nu Tirini of 1835 ("He Whakaputanga").[8]

9. He Whakaputanga was signed by Māori to sustain and guarantee those rights and responsibilities that their hapū possessed and practised prior to the signing of te Tiriti.[9]

10. The Tribunal found that He Whakaputanga undoubtedly amounted "to an assertion of their authority to make and enforce laws, and therefore, of their sovereignty".[10] It was an "unambiguous declaration that hapū and rangatira authority continued in force and that Britain had a role in making sure that state of affairs lasted" as the contact between Māori and foreigners increased.[11]

11. In *Tino Rangatiratanga me te Kāwanatanga* the Tribunal emphasised:

    (a) Te Tiriti was a continuation of the affirmations in He Whakaputanga and "in fact, strengthened tino rangatiratanga rights and responsibilities";[12]

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[6] Waitangi Tribunal, *He Whakaputanga me te Tiriti: The Declaration and the Treaty* [Wai 1040, October 2014], at 529.
[7] See also: Waitangi Tribunal, *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 22 December 2022), at 84.
[8] For instance, see: Waitangi Tribunal, *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 22 December 2022), at 71.
[9] At 72.
[10] At 70.
[11] At 71.
[12] At 72.

(b) In accordance with te Tiriti, Māori were to have their authority in their sphere of influence equal to that of the Crown in its sphere, and where questions of relative authority arose, they were to be negotiated through discussion and agreement between the parties;[13] and

(c) The Crown's authority is expressly limited to its own sphere of influence. Alongside it, and equal to it, is te tino rangatiratanga of Māori.[14]

12. In respect of the Crown's duties around tino rangatiratanga, the Tribunal went on to say:[15]

> The duty of the Crown was (and is) to foster tino rangatiratanga (Māori autonomy), not to undermine it, and to ensure its laws and policies were just, fair, and equitable, and would adequately give effect to treaty rights and guarantees, notably those affecting hapū autonomy and tikanga, and hapū retention and management of their lands and resources.

13. In *Ngā Mātāpono*, the Tribunal said that the Crown's guarantee of tino rangatiratanga in exchange for the granting of an authority to exercise kāwanatanga created two spheres of authority, and:[16]

> Where there is an overlap or intrusion into the rangatiratanga sphere contemplated by Crown action or policies, open dialogue and engagement with Māori is required. This constitutional positioning of the Treaty/te Tiriti Māori-Crown relationship means that the Crown is required to engage with Māori on such important policies and to recognise and give effect to the guarantee of tino rangatiratanga in statute law.

14. The Tribunal added that "any changes that impact either the Treaty/te Tiriti itself or the Treaty/ te Tiriti relationship *must* be decided by both parties to that agreement", otherwise the Crown "risks undermining its

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[13] At 84, 189.
[14] At 76.
[15] At 84.
[16] Waitangi Tribunal, *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Wai 3300, 15 August 2024), at 71.

own legitimacy, as it is on the granting of kāwanatanga by rangatira who signed the Treaty/te Tiriti, that its legitimacy rests".[17]

The principle of good government

15. The Treaty/te Tiriti principle of good government or 'good governance' applies to the Crown's exercise of kāwanatanga when proposing legislation that affects Māori interests. Deriving from article 3 of the Treaty/te Tiriti, this principle 'requires the Crown to keep its own laws' and 'holds the Crown wholly responsible for complying with its own laws, rules and standards.'[18]

16. In *Ngā Mātāpono,* the Tribunal considered the principle of good government and said that if the Crown's policies impact on the constitutional status of the Treaty/te Tiriti, it must produce "robust well-designed transparent policy forged in partnership". The Tribunal went on to say that "the constitutional status of the Treaty/te Tiriti should not be undermined by poorly designed, unjustifiable policies as that would be inconsistent with the principle of good government."[19]

17. Accordingly, the Tribunal said on matters of constitutional significance, "the Crown must consult with Māori to obtain their free, prior, and informed consent before policy proposals are developed, not after.[20]

The right to partnership

18. The Tribunal in *Tino Rangatiratanga me te Kāwanatanga* held the principle of partnership is a right derived directly from the treaty and means, as treaty partners, Māori and the Crown are to move forward together and beside each other. They are to negotiate and manage

[17] Waitangi Tribunal, *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Wai 3300, 15 August 2024), at 135.
[18] At 73.
[19] At 74.
[20] Waitangi Tribunal, *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Wai 3300, 15 August 2024), at 136.

their respective spheres of authority, as well as shared spheres when the two intermingled.[21]

19. In *Ngā Mātāpono*, the Tribunal described partnership as "central" among the Treaty principles the courts and Tribunal have developed, and in addressing the constitutional significance of the Treaty partnership said that as "a founding relationship for a nation, the partnership does not have an expiry date and creates enduring obligations."[22]

20. In *Tino Rangatiratanga me te Kāwanatanga,* the Tribunal said that the Crown cannot unilaterally decide what Māori interests are or what the sphere of tino rangatiratanga encompassed, that is for Māori to negotiate with the Crown. Instead, in the spirit of partnership, the Crown has a duty to engage with Māori (rather than merely consult) on how it should recognise rangatiratanga and, where agreed, give effect to it in New Zealand law. Likewise, the Crown is obliged to include Māori in decision-making around the operation of law in Māori communities, or in cases where Māori are impacted.[23]

21. In *The Māori Wards and Constituencies Urgent Inquiry Report,* the Tribunal said that this duty places proactive responsibilities on the Crown, and that the failure to protect Māori interests is as much a breach of te Tiriti and its principles as a positive act that removes rights.[24]

22. The duty to actively protect Māori interests applies to all interests guaranteed to Māori under the treaty and extends to intangible

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[21] Waitangi Tribunal, *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 22 December 2022), at 85. See also: Waitangi Tribunal, *The Takutai Moana Act 2011 Urgent Inquiry Stage 1 Report* (Wai 3400, 12 September 2024), at 7-10.
[22] Waitangi Tribunal, *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Wai 3300, 15 August 2024), at 75.
[23] Waitangi Tribunal, *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 22 December 2022), at 76.
[24] Waitangi Tribunal, *The Māori Wards and Constituencies Urgent Inquiry Report* (Wai 3365, 17 May 2024), at 18.

properties, including political representation. It is connected to the Crown's duty to consult and to make informed decisions.[25]

23. In *The Takutai Moana Act 2011 Urgent Inquiry Stage 1 Report*, the Tribunal said that where an "unparalleled resource and taonga interest" is concerned (such as the takutai moana), the measure of consultation is elevated to "the highest possible standard and raises questions of policy co-design as a likely Treaty consistent outcome."[26]

24. The Tribunal noted that where Crown consultation has left Māori feeling disempowered and trapped in processes that offer a shadow of participation rather than substance, it has not met the test of partnership.[27]

The right to mutual recognition and respect

25. The Tribunal in *Tino Rangatiratanga me te Kāwanatanga* says te Tiriti was founded on the relationship between Māori and Crown. This relationship was based on mutual recognition and respect which "are vital qualities in the treaty relationship"[28]

26. The Tribunal described the extent of the Crown's duty to recognise and respect Māori as follows:[29]

> In our view, it was the duty of the Crown at the outset to recognise and respect mana, tikanga, kawa, mātauranga, kaitiakitanga, and te reo Māori. At the heart of Māori values and the Māori way of life was and is tikanga. The Crown must recognise and respect tikanga Māori values and Māori systems of law.

27. In discussing tikanga, the Tribunal stated further that tikanga "still lies at the heart of Māori society, is unique to each iwi, and is dynamic".[30] Therefore, to understand and recognise tikanga, the Crown has a duty

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[25] At 18.
[26] Waitangi Tribunal, *The Takutai Moana Act 2011 Urgent Inquiry Stage 1 Report* (Wai 3400, 12 September 2024), at 10.
[27] Waitangi Tribunal, *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 22 December 2022), at 76.
[28] At 85.
[29] At 78.
[30] At 78.

to engage with hapū and iwi in accordance with their tikanga as it adapts and changes.

28. The Tribunal goes further to say that the Crown's recognition and respect of hapū communities and their authority over their lands and waters, and taonga, should be evident in the importance it places on the treaty guarantee of tino rangatiratanga.[31]

The right to active protection

29. The Tribunal has long held that the principle of active protection is inclusive of the Crown's duty to protect Māori interests and their exercise of rangatiratanga.[32]

30. In *Tino Rangatiratanga me te Kāwanatanga* the Tribunal stated that the duty of active protection did not arise from the Crown's sovereign authority. Instead, it is a duty which requires the Crown to help restore balance to the relationship with Māori that became unbalanced as the Crown assumed an authority far beyond the bounds understood by te Tiriti.[33] Accordingly, the duty of active protection stems from the Crown's breaches of the treaty.

31. The Tribunal stated further that the Crown duty of active protection "calls for active effort from the Crown jointly to realise the potential of the treaty as a living, evolving agreement".[34]

32. The Tribunal found that the principle of mutual recognition and respect should take precedence over that of active protection as it better reflects the partnership envisioned by te Tiriti. However, the Tribunal also said that active protection remains a useful measure by which Crown actions and omissions can be assessed, and for reminding the

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[31] At 85.
[32] At 79. See also: Waitangi Tribunal, *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Wai 3300, 15 August 2024), at 77; Waitangi Tribunal, *The Takutai Moana Act 2011 Urgent Inquiry Stage 1 Report* (Wai 3400, 12 September 2024), at 10-12.
[33] Waitangi Tribunal, *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 22 December 2022), at 86.
[34] At 81.

Crown of its obligations where such actions and omissions have caused prejudice to Māori.[35]

The right to mutual benefit and the right to development

33. The right to mutual benefit and development stems from the understandings upon which te Tiriti was signed.[36]

34. Consistent with the principle of partnership discussed above, the Tribunal in *Tino Rangatiratanga me te Kāwanatanga* recognised that Māori entered the treaty with the understanding and expectation that they would develop and grow alongside British settlers in New Zealand.[37]

35. The Tribunal noted that the treaty intended that Māori would both contribute to, and benefit from, the economic development of the colony in New Zealand, alongside settlers.[38]

36. To give effect to this, the Tribunal stated that the Crown was required to make specific efforts to help Māori become 'equal in the field' with settlers.[39]

37. In discussing the right to development, the Tribunal stated:[40]

> The Crown's duty was to ensure that Te Raki hapū each retained the lands and resources that they wished to retain or would need to engage with the new economy and benefit from the treaty and from colonisation. Clearly Māori had the right to take part in new opportunities and commercial ventures, and the further right to positive assistance (such as Government funding) to do so.

[35] At 81.
[36] At 82.
[37] At 82.
[38] At 82.
[39] At 82.
[40] At 82.

38. The Crown also had a duty to assist Māori by providing suitable land titles which would enable them to borrow using their collectively held land as security.[41]

The right to equity and equal treatment

39. Article 3 of the Treaty guaranteed Māori equitable treatment, and citizenship rights and privileges, and the Crown undertook to provide both.[42]

40. The principle of equity requires the Crown to act fairly between Māori and non-Māori citizens, and to remove the many longstanding barriers (especially barriers of the Crown's own creation) that prevent Māori from having a "genuinely level playing field with non-Māori."[43] It also requires the Crown to focus attention and resources to address the social, cultural, and economic requirements and aspirations of Māori.

41. In its provision of equity, the Crown is to ensure that measures are developed and implemented in partnership with Māori and are both culturally and legally appropriate.[44]

42. The Tribunal in *Tino Rangatiratanga me te Kāwanatanga* stated that "providing the same or similar service across Māori and non-Māori population groups may be quite unlikely to satisfy the principle of equity". Accordingly, satisfying the principle of equity requires fair treatment, not just treatment that is equal or the same.[45]

43. The Crown has a duty to "actively address inequities experienced by Māori" and this duty is heightened if inequities are especially stark.

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[41] At 82.
[42] At 82. See also: See also: Waitangi Tribunal, *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Wai 3300, 15 August 2024), at 77-78; Waitangi Tribunal, *The Māori Wards and Constituencies Urgent Inquiry Report* (Wai 3365, 17 May 2024), at 19.
[43] Waitangi Tribunal, *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Wai 3300, 15 August 2024), at 78.
[44]Waitangi Tribunal, *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 22 December 2022), at 82.
[45] At 82.

44. In addition, the Crown is obligated to "positively promote equity", and "[w]here Māori have been disadvantaged, under the principles of active protection and equity, the Crown is required to take measures to restore the balance".[46]

The right to redress

45. The principle of redress derives from the Crown's obligation to act reasonably and in good faith. It requires the Crown to remedy Treaty/te Tiriti breaches and prejudice arising from them.[47]

46. In *Ngā Mātāpono,* the Tribunal said that if the Crown's policies were to result in legislation that inhibits or takes away access to justice, that legislation would be inconsistent with the principle of redress. This principle would also be engaged if Crown policy can be shown to inhibit Māori in the exercise of their tino rangatiratanga and negatively impact the partnership between Māori and the Crown. Such impacts would have the effect of denigrating the honour of the Crown in the Treaty/te Tiriti relationship.[48]

47. The Tribunal went on to say:[49]

> Providing meaningful redress is a way for the Crown to restore this honour and begin to repair any damage in the Treaty/te Tiriti relationship. The provision of any redress should … be agreed between the Treaty/te Tiriti partners and be developed in good faith.

[46] Waitangi Tribunal, *He Aha I Pērā Ai? The Māori Prisoners' Voting Report* (Wai 2870, 9 August 2019), at 14.
[47] Waitangi Tribunal, *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Wai 3300, 15 August 2024), at 78.
[48] Waitangi Tribunal, *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Wai 3300, 15 August 2024), at 79.
[49] At 79.