

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 WHAKAHAU A KAIWHAKAWĀ MATUA DR C L FOX

*MEMORANDUM-DIRECTIONS OF CHIEF JUDGE DR C L FOX ADDRESSING INQUIRY
SCOPE AND CONCLUSION OF THE WĀNANGA Ā-ROHE PHASE*

24 Huitānguru 2026

Purpose

1. This memorandum-directions:
 - (a) addresses whether the timing of the Crown's acquisition of practical sovereignty in the Te Raki district sits within the scope of Tomokia ngā tatau o Matangireia – the Constitutional (Wai 3300) Kaupapa Inquiry;
 - (b) confirms the process for the completion of the wānanga ā-rohe report; and
 - (c) addresses filing matters following Te Wānanga Tuaono and the Crown's presentation of its statement of position.

The issue of when practical sovereignty was acquired by the Crown

Te Paparahi o Te Raki (Northland) Inquiry (Wai 1040)

He Whakaputanga me te Tiriti: The Declaration and Treaty Report

2. On 14 November 2014, the Waitangi Tribunal released *He Whakaputanga me te Tiriti: The Declaration and the Treaty*, the Stage 1 report of the Te Paparahi o Te Raki Inquiry (Wai 1040). Regarding the issue of sovereignty, Judge Coxhead concluded in the report's letter of transmittal:¹

... in February 1840 the rangatira who signed te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor. They agreed to a relationship: one in which they and Hobson were to be equal – equal while having different roles and different spheres of influence. In essence, rangatira retained their authority over their hapū and territories, while Hobson was given authority to control Pākehā.

... as part of the Treaty agreement, the rangatira may well have consented to the Crown protecting them from foreign threats and representing them in international affairs if necessary. If so, however, the intention of signatory rangatira was that Britain would protect their independence, not that they would relinquish their sovereignty.

3. Importantly, *He Whakaputanga me te Tiriti: The Declaration and the Treaty* addressed the meaning and effect of te Tiriti o Waitangi in 1840. It did not make findings in respect to claims, nor did it make recommendations. Judge Coxhead explained that the report:²

[...] makes no conclusions about the sovereignty the Crown exercises today. Nor does it say anything about how the Treaty relationship should operate in a modern context.

Tino Rangatiratanga me Kāwanatanga Report

4. On 22 December 2022, the Tribunal released the pre-publication version of part 1 of *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry (Wai 1040)*. The final published version was delivered to parties on 9 December 2025.

¹ Waitangi Tribunal *He Whakaputanga me te Tiriti: The Declaration and the Treaty* (Wai 1040, 2014) at xxii.

² Waitangi Tribunal *He Whakaputanga me te Tiriti: The Declaration and the Treaty* (Wai 1040, 2014) at xxii – xxiii.

5. In the letter of transmittal, Judge Coxhead advised:³

In this report, we have not identified precisely when the sovereignty the Crown holds and exercises today was acquired, nor have we considered its legitimacy in a contemporary context – those questions may feature in the Waitangi Tribunal's forthcoming kaupapa inquiry into constitutional issues.

Practical sovereignty and legitimacy within the Constitutional (Wai 3300) Inquiry

Te Wānanga Tuaono

6. We convened Te Wānanga Tuaono of the wānanga ā-rohe phase from 1 to 4 December 2025, at Te Tii Marae Waitangi, Te Tai Tokerau.
7. A major point of discussion during that wānanga centred around the clarification of when precisely practical sovereignty in Te Raki was acquired by the Crown.
8. This question was raised most notably by the claimants who presented on behalf of Matakīrea as part of the Constitutional (Wakefield & Others) (Wai 3389) claim (Wai 3300, #B83).
9. Brandon Edwards focused on the issue of legitimacy during his presentation. Mr Edwards said 'the single most important issue in this inquiry is whether or not the Crown, including the government and its three branches of legislature, executive and judiciary, has ever legitimately acquired sovereignty in this country' (Wai 3300, #4.1.13 at [47]).
10. Claimant Nicki Wakefield echoed this. Ms Wakefield said the claimants seek a Tribunal finding on the acquisition of sovereignty in part to further the broader cultural shift occurring in common discourse that surrounds He Whakaputanga and te Tiriti o Waitangi in Aotearoa. She further argued it is difficult to measure breaches of te Tiriti o Waitangi if there is not an understanding of the starting point. Ms Wakefield stated: '... [i]f the starting point is not legitimate, acquisition of sovereignty, then let that be it' (Wai 3300, #4.1.13 at [70]).
11. Mr Edwards concluded that the issue with determining when the Crown acquired sovereignty 'is the barrier preventing us to get to the end destination, so we need to remove that barrier so we can live freely and fully exercise our tino rangatiratanga without limit and without constraint' (Wai 3300, #4.1.13 at [76]).

Decision

12. As noted above, the question of when precisely the Crown acquired practical sovereignty in Te Raki was raised by many claimants across the four days of Te Wānanga Tuaono. I acknowledge this issue is of particular importance to claimants in Te Paparahi o Te Raki. I remind parties that the claims participating in this inquiry are being heard as part of a broader national inquiry into all claims concerning the constitution, local government, and the electoral system.
13. Accordingly, this Tribunal does not have sufficient evidence to be able to answer appropriately the question of if, how and when practical sovereignty in Te Raki was acquired by the Crown. The Wai 1040 panel has heard and reported on a wide range of historical issues in its report. I therefore determine that this issue is to be referred back to the Wai 1040 panel for consideration.

³ Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki inquiry* (Wai 1040, 2023) vol 1 at xxiv – xxv.

14. I further determine that all other relevant constitutional issues raised by Ngāpuhi claimants, including the legitimacy of the current constitutional arrangements, will be dealt with in this inquiry by the Wai 3300 panel.

Wānanga ā-rohe report

Judicial conference

15. In my memorandum-directions commencing the wānanga ā-rohe phase, I confirmed this Tribunal would, following the conclusion of the wānanga phase, produce a report that captures the principles, themes, and issues raised that remain to be heard. This report will then be added to the record of inquiry to inform an inquiry tūāpapa, or foundation (Wai 3300, #2.6.19 at [28] – [29]).
16. On 6 November 2025, I confirmed the Tribunal will convene a judicial conference on 30 March 2026 to discuss the draft wānanga ā-rohe report and next steps for the broader inquiry. I have indicated that the draft report will be distributed to parties approximately two weeks prior to the planned judicial conference (Wai 3300, #2.6.76 at [11] – [13]).
17. I can now confirm that the draft wānanga ā-rohe report will be distributed on **13 March 2026**.
18. I remind parties that the above judicial conference is an opportunity to discuss and comment upon the draft report (Wai 3300, #2.6.19 at [31]). Parties are invited to provide feedback to the Tribunal on the way their kōrero has been presented in the report, including by providing corrections to any inaccuracies such as misspellings, typographical errors or missing words. I ask that parties only provide feedback relating to the representation of their own kōrero, not the kōrero of others. Any written feedback on the draft report should be filed prior to the judicial conference, and by no later than **5 pm, Tuesday 24 March 2026**.
19. Parties will also have an opportunity at the judicial conference to seek and/or confirm any agreement reached between the inquiry parties on the provisions of any solutions or relief considered necessary to resolve thematic or claim issues (Wai 3300, #2.6.19 at [31]).
20. I confirm the judicial conference will commence at **9 am, Monday 30 March 2026**, and that participation will be via audio-visual link (AVL) only.

Expert panel wānanga

21. I now confirm that, once feedback arising from the judicial conference has been considered for incorporation into the report, the Tribunal will convene, via AVL, a panel of pou tikanga to wānanga the draft report and tikanga principles raised during the wānanga ā-rohe phase.
22. This kōrero will then comprise the final section of the final wānanga ā-rohe report.
23. The fixture will be held on a day to be confirmed in May 2026 and participation will be limited to the pou tikanga and Tribunal panel. Parties will be able to view the discussion by livestream.

Outstanding filing following Te Wānanga Tuaono

Post-wānanga filing

24. On 27 January 2026, the Tribunal received post-wānanga filing following Te Wānanga Tuaono from Rox Soriano and Richard Gayfer on behalf of several claims represented by

Mahony Horner Lawyers, including the Walls Bay Reserve Environmental Degradation (Wai 2424) claim (Wai 3300, #3.2.379).

25. Counsel advise they have been unable to obtain a digital copy of the PowerPoint presentation and speaking notes of Maiki Marks, who presented on behalf of Wai 2424 on 4 December 2025 (Wai 3300, #B59). Counsel note that hard copies of these documents were distributed to the panel, Tribunal staff, and Crown counsel at the wānanga (Wai 3300, #379 at [5]).
26. Counsel further advise they will endeavour to file these documents should the Tribunal require them (Wai 3300, #379 at [5]).

Decision

27. I confirm counsel for Wai 2424 should proceed to file electronic versions of Ms Marks' PowerPoint presentation and speaking notes by no later than **5 pm, Wednesday 25 February 2026**.

Matters arising following presentation of the Crown's statement of position

28. On 13 February 2026, the Crown presented its statement of position for the wānanga ā-rohe phase.
29. During the presentation, I asked the Crown whether Sir Kenneth Keith's essay *On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government* (2023) forms part of the Cabinet manual.
30. I further asked the Crown whether, in its view, the principle of the rule of law extends to the New Zealand government following the directions and recommendations of international bodies to which New Zealand has committed to adhere to.
31. The Crown should provide written answers to the questions at [29] and [30] as soon as possible.
32. Finally, at the conclusion of the Crown's presentation, I invited parties to respond to the Crown's statement of position by no later than **5 pm, Friday 20 February 2026**. This invitation was communicated via e-mail from the Waitangi Tribunal's Registrar.

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 24 o te Huitānguru 2026



Kaiwhakawā Matua Dr C L Fox
Tumuaki

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI