

**IN THE WAITANGI TRIBUNAL
TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI**

WAI 3300

WAI 3351

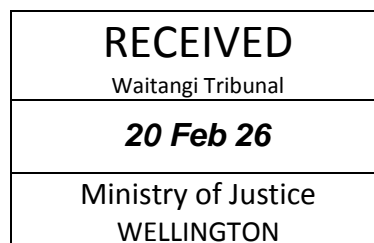
IN THE MATTER The Treaty of Waitangi Act 1975

AND

IN THE MATTER of a claim to the Waitangi Tribunal by Lady Tureiti Moxon regarding the Constitution, including the passing, administering and applying of laws to Māori.

MEMORANDUM IN REPLY TO CROWN STATEMENT OF POSITION

DATED 20 FEBRUARY 2026



Counsel
RN Smail, Barrister
PO Box 78 399
Torbay
Auckland 0742
Telephone 021 061 7085
Email roimata@smail.nz

ROIMATA SMAIL Ltd



MAY IT PLEASE THE TRIBUNAL

1. This memorandum is filed on behalf of the Wai 3351 claimant Lady Tureiti Moxon (**the claimant**) in reply to the Crown statement of position (**Crown SOP**)¹ as directed by the Presiding Officer, Chief Judge Fox on 13 February 2026.
2. The claimant rejects many of the assertions made throughout the Crown SOP. However, counsel understands the purpose of this reply is only to inform the wānanga a rohe report which in turn will inform inquiry planning. In addition, the wānanga a rohe report is to be released within the next month and therefore counsel expects that the Tribunal is not seeking detailed responses to all assertions set out in the Crown SOP.
3. The claimant therefore only replies at a broad level on the Crown's constitutional principles, as counsel understands it is primarily these that need to be settled at this stage in order to complete the wānanga a rohe report.
4. The claimant reserves her right to respond more fully and to respond to any other assertions in the Crown SOP as part of the inquiry proper.

Broad statements in reply

5. Te Tiriti of Waitangi is mentioned in the Crown SOP but is completely unconnected to the Crown's six constitutional principles (**Crown principles**).
6. The Crown principles read as if te Tiriti does not exist. They reflect the most minimalist definition of democracy where parliament supremacy is unfettered by any obligations to the people beyond regular elections. The Crown principles reflect a British Westminster system that no longer even exists in Britain: the Crown acknowledged that pre-Brexit, British lawmaking was fettered by commitments to the European Union.² For the Crown principles to claim unfettered parliamentary

¹ Wai 3300 #B14 and B14(a-d).

² Transcript Wai 3300 #4.1.014, page 41, line 11.

power as they do is entirely inappropriate in a country founded on te Tiriti and funded by Māori land.³ It is not for the Crown to take or leave te Tiriti and an equal partnership with Māori.

7. The Crown principles are inappropriate:

7.1. in principle: As described the Crown principles are at odds with what was agreed in te Tiriti; and

7.2. in practice: The Crown principles harm Māori.

8. This is set out at a broad level in the table below. The “Parliamentary powers” Crown principle is listed first as all of the other Crown principles are significantly modified by the assertion of unfettered parliamentary lawmaking:

CROWN PRINCIPLE⁴	BROAD REPLY
<p>Parliamentary powers: <i>parliament has full power to make laws. parliament’s legitimacy stems from its democratic mandate derived from periodic elections. The executive may only tax, borrow, or spend public money under an Act of parliament, ensuring democratic accountability for resource decisions.</i></p>	<p>In principle: In te Tiriti, the Crown and Māori only agreed to kāwanatanga of the Crown over British people in Aotearoa. parliament lawmaking over Māori is inconsistent with that agreement. Periodic elections do not change this.</p> <p>In practice: Māori have never been able to choose who controls parliament and makes laws. Māori have been disenfranchised in every election:⁵ <i>1853 New Zealand’s first election</i> used property qualifications that largely excluded Māori men (the majority) because they held land communally <i>1867 Māori men limited to four seats</i> (versus 72 European seats), despite Māori being a third of the population at that time</p>

³ Counsel considers that this is non contentious, but can update the claimant’s document Wai 3300 #B8(a) of relevant established facts. See for example the Deed of Settlement between Ngāti Pāhauwera and the Crown (17 December 2010) https://whakatau.govt.nz/assets/Treaty-Settlements/FIND_Treaty_Settlements/Ngati-Pahauwera/DOS_documents/Ngati-Pahauwera-Deed-of-Settlement-17-Dec-2010.pdf which sets out the Crown was selling land for more than fifty times what it paid Ngāti Pāhauwera: “2.22 By the time the Crown paid its final instalment to Ngati Pahauwera it had already on-sold a couple of small areas within the Mohaka block to settlers for 10 shillings (or 120 pence) per acre. The £800 Ngati Pahauwera received for the entire block was approximately 2.25 pence per acre.”

⁴ B14(c) paragraph 24.

⁵ See for example Te Ara Encyclopedia of New Zealand, [Voting rights](#) (2012); New Zealand History, [Setting up the Māori seats](#) (2024); New Zealand History, [First ‘one man one vote’ election](#) (n.d.); Te Ara Encyclopedia of New Zealand, [Māori population change](#) (n.d.); New Zealand History, [Māori and European population numbers 1838–1901](#) (2024).

	<p>1890 one-man-one-vote but Crown-controlled immigration had changed Māori from the overwhelming majority to a tiny minority (5-10%)</p> <p>1893 Māori women could vote but like men were a minority</p> <p>Today Māori seats are based on population, so cannot have more than one fifth of parliament i.e. cannot choose the party/coalition controlling parliament which controls lawmaking</p> <p>Māori are being further disenfranchised Māori are over imprisoned by the Crown and cannot vote in prison. Māori are more likely to enrol on voting day which has now been banned.</p> <p>The history of law making in Aotearoa is overwhelmingly of law making harming Māori, including laws to separate Māori from their lands, laws enabling the over-imprisonment of Māori and laws allowing the taking of Māori children and babies from their families.</p> <p>Annexed and marked A is the claimants complaint to the United Nations Committee on the Elimination of Racial Discrimination which gives examples.</p>
<p>Representative government – democracy: <i>Democracy is the underlying principle of New Zealand’s key constitutional conventions. Elected representatives have a mandate to make decisions that bind everyone and they are electorally accountable to everyone. Ministers are Members of parliament, elected through periodic, free and fair elections. Through representative government, the government seeks to balance diverse interests and perspectives across the whole population while remaining accountable to the electorate.</i></p>	<p>In principle: Again, periodic elections do not change that parliament lawmaking over Māori is inconsistent with what was agreed in te Tiriti, i.e. that the Crown would only have kāwanatanga over British people in Aotearoa.</p> <p>In practice: Again, Māori have been disenfranchised in every election, and the history of law making in Aotearoa is overwhelmingly of law making harming Māori.</p>
<p>Rule of law <i>Everyone, including the Government, is subject to the law. All those who have powers, including Ministers and public officials, must use them in accordance with the law and be accountable for their actions. Law should be clear, constitutionally sound, and accessible. There should be an independent and impartial judiciary. All New Zealanders have access to justice and can pursue their legal rights.</i></p>	<p>In principle: Again, the Government claiming to be subject to the law does not change that it was never agreed in te Tiriti that parliament could make laws over Māori.</p> <p>In practice: The assertion that the government is subject to the law is undermined by the Crown’s claim that parliament has full power to make laws, and the Crown has regularly legislated to overturn judicial decisions which favour Māori (eg Foreshore and Seabed/Takutai Moana).</p>
<p>Responsible government: <i>The executive is selected from and must retain the confidence of the legislature to which it is accountable. Ministers</i></p>	<p>In principle: Appointment of the executive from parliament/legislature does not change that it was never agreed in te Tiriti that the executive could</p>

<p><i>must be democratically elected Members of parliament. The executive is accountable to the legislature through parliamentary questions, debates, and select committees, and the legislature is accountable to the electorate through periodic elections.</i></p>	<p>have power over Māori. Te Tiriti guaranteed Māori would retain their tino rangatiratanga.</p> <p>In practice: The executive is a subset of Members of parliament chosen by parliament, and Māori have been disenfranchised in every election in Aotearoa so cannot chose the party/coalition controlling parliament.</p> <p>Parliamentary questions and debates are controlled by the Speaker of the House who is from the party/coalition controlling parliament.</p> <p>Select Committees are controlled by the party/coalition controlling parliament.</p> <p>The history of executive action in Aotearoa is overwhelmingly policies and practices harming Māori, including policies to separate Māori from their lands, Police action to over-imprison Māori and Oranga Tamariki (and predecessor Ministries) action to take Māori children and babies from their families.</p> <p>Annexed and marked A is the claimants complaint to the United Nations Committee on the Elimination of Racial Discrimination which gives examples.</p>
<p>Separation of powers – principle of non-interference: <i>The three branches of government – the legislature, executive, and judiciary – have distinct roles. The legislature’s role includes making laws. The executive’s role includes developing policy and governing within laws set by parliament and the courts. The judiciary’s roles include interpreting and applying statutory law and applying and developing the common law (i.e. judge-made law). The courts may determine whether decision-makers have acted within the scope of their statutory powers. The courts may also review executive action involving non-statutory powers and constitutional conventions. The courts do not intrude on parliamentary process and cannot invalidate legislation. Each branch of government contributes to accountability through checks and balances on the others, while recognising parliament’s power to make laws.</i></p>	<p>In principle: The separation of kāwanatanga into three branches does not change that Māori only agreed to kāwanatanga of the Crown over British people. Te Tiriti guaranteed Māori would retain their tino rangatiratanga.</p> <p>In practice: Again, Māori cannot choose the party/coalition controlling parliament.</p> <p>Therefore they cannot choose the executive which is a subset of parliament.</p> <p>The judiciary are chosen by the Attorney General who is a member of the party/coalition controlling parliament.⁶</p> <p>Parliament has repeatedly interfered in the judiciary contrary to the separation of powers by legislating to overturn judicial decisions in favour of Māori (eg Foreshore and Seabed/Takutai Moana).⁷</p> <p>Senior member of the coalition currently controlling parliament, Hon Paul Goldsmith has also pre-emptively asserted that parliament will legislate to overturn future judicial decisions that it disagrees with. As well as being contrary to the</p>

⁶ <https://www.dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/4-ministers-law-and-inquiries/attorney-general>

⁷ 1News, “Govt ignored advice against overturning marine title rulings.” (14 October 2025).

	separation of powers, this is contrary to the rule of law. ⁸
<p>Fundamental human rights: <i>Fundamental human rights uphold the inherent dignity of people as human beings. They help define the acceptable limits of public power and the core functions of the state. In New Zealand, human rights are affirmed primarily by legislation such as the New Zealand Bill of Rights Act 1990 (NZBORA), which protects rights including freedom from discrimination. Human rights obligations are also found in international instruments.</i></p>	<p>In principle: Vague allusion to fundamental human rights does not alter the Crown's assertion of unfettered power of parliament which was not agreed in te Tiriti.</p> <p>In practice: Māori human rights are not upheld. In December 2025, the United Nations Committee on the Elimination of Racial Discrimination expressed particular concern about the overall weakening of the institutional framework to stop racial discrimination.⁹ The concluding observations of the Committee are annexed and marked B.</p>

9. The Crown claims that the context for the Crown principles is that New Zealand is a modern liberal democracy. With respect, this is not context. It is a transparently circular argument that “the way we do things today is justified by fact that this is the way we do things today”.
10. Actual consideration of the context of Aotearoa would include recognition that, for example:
 - 10.1. Parliamentary, executive and judicial power are all fettered by Māori tino rangatiratanga guaranteed in te Tiriti;
 - 10.2. Repeated Crown breaches of te Tiriti through laws, policies and actions have harmed Māori;
 - 10.3. Repeated Crown breaches of te Tiriti have separated Māori from almost 97% of their lands or over 60 million acres;
 - 10.4. Māori land funded the establishment of parliament/legislature, the executive and the judiciary and continues to fund them/government today through taxes related to land; and

⁸ RNZ “[Justice Minister Paul Goldsmith warns government prepared to remove tikanga Māori from court rulings.](#)” (27 September 2025).

⁹ Committee on the Elimination of Racial Discrimination Concluding observations on the twenty-third and twenty-fourth periodic reports of New Zealand CERD/C/NZL/CO/23-24 (5 December 2025) at paragraph 9.

- 10.5. Māori have never agreed to parliamentary, executive or judicial power over them. Indeed they have consistently pushed back, as the claimant said in her statement of position:¹⁰

In te Tiriti the Crown promised our tino rangatiratanga would not be disturbed. It has broken that promise repeatedly between 1840 and today, but that is a relatively short part of this country's history. During this period we have continued to assert our tino rangatiratanga and mana motuhake, despite Crown interference ...

... I do not agree that the Crown has acquired sovereignty over Māori sometime between 1840 and now. Māori never discussed or agreed giving up our sovereignty then and we never have since.

The Crown has simply acted on its own assumption of sovereignty over us.... The Crown may be rich and powerful today, but that does not mean it has a right to that power or wealth or that Māori have agreed to that.

11. The claimant rejects absolutely the Crown principles as appropriate for this inquiry and says that they are disrespectful to Māori, te Tiriti o Waitangi and this Tribunal. They have been articulated entirely without consideration of the Crown's obligations under te Tiriti o Waitangi or the contribution Māori have made to Aotearoa, particularly through their land. The references to te Tiriti o Waitangi in the Crown SOP are shown to be empty words by the complete lack of incorporation of te Tiriti into the Crown principles. The claimant is troubled by the Crown's choice to describe the Crown principles as "constitutional principles that serve all New Zealanders".¹¹ This rhetoric is divisive and as already set out above, untrue. Māori have been repeatedly harmed by unfettered parliamentary lawmaking, executive power and judicial decision making. This is not in any way controversial, and in the past two years that harm has been escalating, drawing the attention of the international community. The United Nations Committee on the Elimination of Racial Discrimination in December 2025 raised numerous concerns and expressed particular concern about the overall weakening of the institutional framework to stop racial discrimination.¹²

¹⁰ Wai 3300 #B8 at paragraph 4-6.

¹¹ B14(c) paragraph 24.

¹² Committee on the Elimination of Racial Discrimination Concluding observations on the twenty-third and twenty-fourth periodic reports of New Zealand CERD/C/NZL/CO/23-24 (5 December 2025) at paragraph 9.

12. Finally, the insistence of the Crown of continuing to oppose the findings of the Waitangi Tribunal more than a decade ago in *He Whakaputanga me te Tiriti*¹³ stretches credulity. That report was supported by evidential hearings and a review of all the leading scholars for a generation or more.¹⁴ It all pointed to the common-sense conclusion that Māori never ceded sovereignty in te Tiriti o Waitangi. The notion that 70-90,000 Māori agreed to give away their power to 2-2,500 non-Māori smacks of a belief in racial superiority that the claimant does not expect to be promoted in 2026 by government officials before this Tribunal.
13. The claimant says that Māori are tangata whenua. Te Tiriti o Waitangi allowed every other person to live in Aotearoa. Te Tiriti is the foundation of our country and must be reflected in every principle of constitutionalism on which this inquiry is based.

Date: 20 February 2026



R N Smail
Counsel for the claimant

¹³ B14(c) paragraph 35.

¹⁴ He Whakaputanga me te Tiriti The Declaration and the Treaty The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry (Waitangi Tribunal 2014) page xxii “While some may see our conclusions as radical, they are not. In truth, our report represents continuity rather than dramatic change. Leading scholars – both Māori and Pākehā – have been expressing similar views for a generation or more. When all of the evidence is considered, including the texts as they were explained to rangatira, the debates at Waitangi and Mangungu, and the wider historical context, we cannot see how other conclusions can be reached.”