

IN THE WAITANGI TRIBUNAL

**WAI 3300
WAI 2797**

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

Tomokia ngā tatau o Matangireia:
the Constitutional Kaupapa Inquiry
(Wai 3300)

AND

IN THE MATTER OF

A claim by Te Rangikaiwhiria
Kemara on behalf of Ngaa Hapuu
Maha O Maniapoto (Wai 2797)

**STATEMENT OF REPLY TO CROWN STATEMENT OF POSITION
DATED 20 FEBRUARY 2026**

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Waitangi Tribunal

20 Feb 26

Ministry of Justice
WELLINGTON

STATEMENT OF REPLY TO THE CROWN'S POSITION

1. My name is Te Rangikaiwhiria Kemara, claimant for Wai 2797 on behalf of Ngaati Maahuri, Ngaati Werawera (ki Marokopa), Ngaati Kahinga, Ngaati Tauhunu, Ngaati Kahumoana, Ngaati Tuwaikoea, the descendants of Puukauae, known collectively as Ngaa Hapuu Maha O Maniapoto.
2. I have read the Crown's statement of position.¹ I have considered its contents carefully. I acknowledge the Crown has engaged with the seven themes. I also acknowledge the Crown has set out its constitutional principles and I acknowledge the Crown has listened across the waananga.
3. The Crown states that "Te Tiriti established ... a dynamic, on-going relationship ... with mutuality and reciprocity at its core".² The Crown goes on to acknowledge that questions of sovereignty and constitutional issues "are of fundamental importance to claimants",³ while reiterating its continued disagreement with previous Tribunal findings related to issues of sovereignty and constitutional matters⁴. In its presentation of its statement of position, the Crown acknowledges "fundamental disagreements" about whether sovereignty was ceded and the legitimacy of Crown sovereignty.⁵ The Crown affirms its position that "constitutional arrangements ought to be consistent with the Crown's obligations under the Treaty / te Tiriti".⁶
4. We accept these statements as the Crowns genuinely held beliefs.
5. It is our view that acknowledgment of disagreement requires mechanisms to resolve disagreement. Good faith consequently requires structures that give effect to mutuality and reciprocity. Consistency with Te Tiriti obligations therefore requires concrete arrangements.
6. I therefore put forward the following proposals as the minimum necessary to give effect to the Crown's stated position:
7. First, I propose that the Crown initiate proceedings in the Supreme Court to challenge and overturn the 1877 Supreme Court judgment of *Wi Parata v Bishop of Wellington* and the 1941 Privy Council decision of *Hoani Te Heuheu Tukino v Aotea District Maaori Land Board*. These decisions hold that the Treaty is a nullity with no legal effect unless incorporated by statute. These decisions are wrong. They are founded on racist assumptions about Maaori capacity and sovereignty. They have poisoned New Zealand's constitutional foundation for nearly one hundred and

¹ Wai 3300, #B14(c).

² Wai 3300, #B14(c) at [22].

³ Wai 3300, #B14(c)5 at [33].

⁴ Wai 3300, #B14(c) at [35].

⁵ Wai 3300, #4.1.14 at 13.

⁶ Wai 3300, #B14(c) at [54].

fifty years. The Crown has the power to test them. The Crown has the resources to bring the question before the highest court. If the Crown is serious about Treaty consistency it must be willing to have the foundational legal obstacles examined and removed.

8. Second, following the overturning of these decisions, my statement of position already proposes that the Crown introduce binding legislation entrenching, by supermajority, Te Tiriti as a foundational constitutional instrument. The legislation must require that all governmental decisions and all legislation comply with Te Tiriti. It must grant the courts jurisdiction to enforce compliance. It must provide that the Waitangi Tribunal's recommendations become binding decisions enforceable against the Crown. The Crown says that Parliament's inability to bind future Parliaments is necessary to "[allow] Parliament to respond to changing democratic will."⁷ I accept that. But "democratic will" must operate within limits.
9. Te Tiriti is the limit.
10. Third, I propose that the Crown recognise a Maaori ruunanga of hapuu as the Treaty partner for constitutional purposes. The Crown currently deals with Maaori through multiple channels: individual Maaori voters, Maaori electorates, iwi authorities, Post-Settlement Governance Entities. These channels are fragmented. They are created by the Crown or they operate within Crown frameworks. None of them can speak with the authority of hapuu collectively. He Whakaputanga of 1835 established a Confederation of Chiefs. That confederation was recognised by the Crown. That confederation exercised sovereign authority. I propose a modern equivalent: a ruunanga drawn from hapuu throughout the country, inclusive of all who hold authority by whakapapa and tikanga. The ruunanga cannot be created by Crown statute. It would derive its authority not from Crown delegation but from hapuu. Rangatira would hold the sovereignty that was never ceded. The ruunanga would sit with the Crown, together as the envisioned Treaty partners.
11. Fourth, our statement of position already recommends that Te Ohaakii Tapu be given formal constitutional recognition. Te Ohaakii Tapu is the sacred accord of 1885 negotiated between Te Rohe Pootae and the Crown. It established terms of engagement. It acknowledged our autonomy. It acknowledged our boundaries including the twenty-miles of moana. The Crown never honoured it, but it remains as a living agreement awaiting fulfilment. We have recommended that Te Ohaakii Tapu be recognised in legislation as a constitutional accord. We have recommended that our twenty-mile rohe moana be placed under the control of Te Rohe Pootae coastal hapuu, free from territorial legislation and free from the assertion that local authorities are not bound by the Treaty. The Crown contends that local authorities are not part of the Crown and are not directly subject to the

⁷ Wai 3300, #B14(c) at [61.1].

Treaty.⁸ This position makes our moana claim urgent. If local authorities control our moana and are not bound by Te Tiriti then our moana is governed by bodies with no Treaty obligation. Recognition of Te Ohaakii Tapu will resolve this.

12. Fifth, I propose that these arrangements be brought together in a constitutional accord between equals. Partnership requires two parties able to speak and act with authority. The ruunanga of hapuu would be one party. The Crown would be the other. The accord would set out how they interact. It would provide for dispute resolution without either party imposing its will on the other. It would recognise that two constitutional orders exist, the Tino Rangatiratanga of Hapuu, and the grant of Kawanatanga, and that both must be accommodated.
13. Te Ohaakii Tapu itself provides the model. It was negotiated. It was agreed. It can be fulfilled.
14. The Crown states that constitutional change requires public discussion and broad support.⁹ I agree that discussion is necessary. I also note that Te Tiriti itself already has broad support. It was signed by more than five hundred rangatira. It was taken to nearly every part of the country. It was explained and debated and agreed. The discussion needs to move past whether Te Tiriti should be honoured and on to how it should be enacted.
15. The Crown “acknowledges claimants’ concerns about ... majority decision-making [affecting] Māori as a minority”.¹⁰ Our proposals address those concerns directly. A ruunanga of hapuu gives Maaori a voice which is not dependent on majority will. Entrenched Treaty provisions protect Maaori rights from majority override. Te Ohaakii Tapu recognition secures our regional autonomy.
16. In this response, I am requesting the Crown to engage with these proposals as seriously as I have engaged with its statement of position, demonstrating genuine openness.
17. If the Crown is truly open to reconsideration, it must recognise that reconsideration without action is koorero only, without progress. I have put forward five proposals that flow directly from the Crown’s own principles. Overturn the foundational cases. Entrench Te Tiriti with binding force. Recognise a ruunanga of hapuu. Honour Te Ohaakii Tapu as already recommended. Establish a constitutional accord between equals.
18. The talking points accompanying the Crown’s presentation concludes with the suggestion that the inquiry focus more on the present.¹¹ I would remind the Crown that we are still in the present time of 1840, and we cannot move forward

⁸ Wai 3300, #B14(c) at [86].

⁹ Wai 3300, #B14(c) at [5].

¹⁰ Wai 3300, #B14(c) at [63].

¹¹ Wai 3300, #B14(d) at [76].

until the shattered Treaty is pieced back together and two split realities become one.

19. These are the minimum necessary to begin sewing back together what should never have been torn apart.
20. We await the Crown's response. We await the judicial conference. We await the next phase of this inquiry. And we remain as our tuupuna remained: unwavering in our authority, unwavering in our truth, and unwavering in our commitment to the sovereignty that was never ceded.

Te Rangikaiwhiria Kemara 20/02/2026

