

I TE ROOPUU WHAKAMANA I TE TIRITI O WAITANGI
IN THE WAITANGI TRIBUNAL

WAI 3300
WAI 2377
WAI 762
WAI 2894
WAI 2382
WAI 1531

KEI RARO I TE MANA O

te ture o te Tiriti o Waitangi 1975

IN THE MATTER

of the Treaty of Waitangi Act 1975

ME

AND

I TE TAKE O

te pakirehua Wai 3300 mō ngā
kerēme e pā ana ki te Tomokia ngā
tatau o Matangireia

IN THE MATTER OF

the Constitutional Kaupapa Inquiry
(Wai 3300)

RESPONSE TO CROWN STATEMENT OF POSITION

Dated 20 February 2026

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Waitangi Tribunal

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Ministry of Justice
WELLINGTON

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INTRODUCTION

1. This statement of position is filed on behalf of the following claimants involved in Wai 3300 - Tomokia ngā tatau o Matangireia - the Constitutional Kaupapa Inquiry (the “**Inquiry**”):
 - a. Bryce Peda-Aldridge for and on behalf of Nga Hapū o Whangaroa, Te Whānau ō Rataroa, Ngāti Pakahi, Ngāti Uru and Te Tahawai hapū (Wai 2377);
 - b. Te Urunga Aroha Evelyn Kereopa for and on behalf of herself, and members of Te Ihingārangi, a hapū of Maniapoto (Wai 762);
 - c. Malcolm Kingi for and on behalf of himself, his whānau and Ngai Tahu o Mohaka Waikare (Wai 2894);
 - d. Violet Eva Walker on behalf of herself, her whānau and Ngāti Rangi o Waiapu ki Tawhiti and Ngāti Kahu ki Whangaroa (Wai 2382); and
 - e. Te Enga Harris and Lee Harris on behalf of the Harris whānau (Wai 1531).

(the “**Claimants**”)

2. This statement of position is filed in response to:
 - a. the Crown statement of position following wānanga-ā-rohe dated 11 December 2025 (“**Crown SOP**”);¹
 - b. the Talking points for presentation of Crown statement of position dated 12 February 2026 (“**Talking Points**”);² and

¹ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c).

² *Talking points for presentation of Crown statement of position* dated 12 February 2026, Wai 3300, #B14(d).

- c. the answers and additional comments made by the Crown’s counsel and representatives during the sitting of the Waitangi Tribunal on Friday 13 February 2026, as recorded in the draft transcript.³

RESPONSES

Description of the Māori-Crown relationship

3. Te Tiriti is described in the Crown SOP as having:⁴

[...] established, and for some continued, a dynamic, on-going relationship between the Crown and Māori, with mutuality and reciprocity at its core, intended not to fossilise a status quo but to provide a direction for future growth and development.

4. Whilst the Crown may think it has or it has had a “dynamic, on-going relationship with Māori”, the history of that relationship, as it has been empirically documented by numerous Waitangi Tribunal historical inquiries, is fraught with angst, upset and prejudice for tangata whenua. To describe its relationship with Māori as a “dynamic” and “on-going” one is to ignore the reality of the Crown’s sordid, self-interested and at times violent treatment of tangata whenua down through the decades since the signing of te Tiriti.
5. The Claimants are concerned that unless the Crown confronts the reality of its historical relationship with Māori, it will be difficult to squarely and robustly address the key themes of the Inquiry. Accordingly, there must be a willingness from the Crown to make appropriate concessions in this regard.

³ *Draft transcript for the Wai 3300 - Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry Crown’s presentation of its statement of position for the wānanga ā-rohe phase held via AVL on Friday 13 February 2026* dated 18 February 2026, Wai 3300, #4.1.14.

⁴ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c), at [22].

Crown description of its own role

6. The Crown SOP notes that “as the Crown’s role has evolved and representative democracy has developed, the nature of the Treaty relationship has also evolved”.⁵ In doing so, the Crown makes the erroneous assumption that the “democracy” it practices in Aotearoa is “representative”.
7. The Crown will be aware that New Zealand was administered by the Executive Council from 1840 until 1852. Membership on the Executive Council was by appointment only. It was not a representative entity. The 1852 General Assembly excluded Māori representation and according to Professor Alan Ward, that exclusion caused the formation of the Kīngitanga and it ultimately led to war. The General Assembly was not representative. For most of the 19th century, voter enfranchisement was linked to property ownership.⁶
8. Since very few Māori satisfied the property criteria, there was no representative democracy at this point in time either.⁷ Although Māori gained four seats in Parliament in 1867, there were 70 seats in total that year.⁸ The futility of the Māori Parliamentary seats deterred Māori participation. Moreover, the chronic ignorance and / or mishandling of Māori issues by successive governments also deterred Māori from participating in the electoral process. There is now an entrenched legacy of non-participation by Māori.
9. Accordingly, the Crown’s claim about a “representative democracy” is misleading and once again betrays its desire to hide behind Westminster maxims rather than engage with the Inquiry themes authentically.

⁵ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c), at [23].

⁶ Waitangi Tribunal, *Māori Electoral Option Report*, (Wai 413, 1994), at 4.

⁷ V O'Malley, *Te Rohe Potae Political Engagement Report 1840-1863* dated December 2010, Wai 898, #A23, at 142.

⁸ Waitangi Tribunal, *Part I: Tino Rangatiratanga Me Te Kāwanatanga – Report on Stage 2 of the Te Paparahi o Te Raki Inquiry*, (Wai 1040, 2022), at 1643.

Refusal to embrace te Tiriti as a principle of Aotearoa's constitution

10. The constitutional principles outlined in the Crown SOP are:⁹
- a. representative government – democracy;
 - b. rule of law;
 - c. responsible government;
 - d. separation of powers – principle of non-interference;
 - e. Parliamentary powers; and
 - f. fundamental human rights.
11. As was noted by Dr Grant Phillipson during questioning,¹⁰ the Crown SOP does not highlight te Tiriti, nor any of its principles, as fundamental principles of Aotearoa's democracy. In this sense, the Crown misapprehends and waters down the significance of te Tiriti to New Zealand's constitution. Te Tiriti is not "a founding document".¹¹ It is *the* founding document of New Zealand's constitution, as has been acknowledged by Phillip Joseph.¹² Without te Tiriti, the Crown was without a legal foothold in New Zealand.
12. As such, the Crown's description of Aotearoa's constitutional principles mirrors that of the United Kingdom, and the Westminster system, too closely. Although New Zealand does operate in accordance with the Westminster system, the presence of Māori as Aotearoa's indigenous people and the significance of te Tiriti are essential to New Zealand's constitutional arrangement. It is inappropriate for the Crown to extol the

⁹ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c), at [24].

¹⁰ *Draft transcript for the Wai 3300 - Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry Crown's presentation of its statement of position for the wānanga ā-rohe phase held via AVL on Friday 13 February 2026* dated 18 February 2026, Wai 3300, #4.1.14 at p 35, line 2-5.

¹¹ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c), at [22].

¹² P Joseph, *Constitutional & Administrative Law in New Zealand, 3rd edition* (Wellington: Thomson Brookers, 2007), at 215.

importance of te Tiriti without acknowledging its practical relevance and power.

13. When dealing with an ‘unwritten’ constitution such as Aotearoa’s, it is all too easy to hide behind different terms of phrase when assessing different sources of power. The Crown appear to be engaging in this kind of wordplay in the present Inquiry, and this is one of the reasons that the Claimants will be seeking that te Tiriti be entrenched legislatively in order to pay proper regard to its constitutional importance.

Claim that te Tiriti affects how public power is exercised in Aotearoa

14. The Crown SOP asserts that:¹³

The Treaty / te Tiriti affects, in various ways and to varying extents, how public power is exercised in New Zealand and informs the application of other constitutional principles.

15. This statement is irresponsible in the way it grossly overstates te Tiriti’s impact on the law of Aotearoa. As the Crown has acknowledged, te Tiriti is not law unless incorporated into statute.¹⁴ Even where this does occur, te Tiriti’s power and effect is generally diluted, such as in section 8 of the Resource Management Act 1991, which simply requires that the principles of te Tiriti are “take[n] into account”.¹⁵
16. Accordingly (and echoing the comments earlier in this statement), the significance of te Tiriti should be enshrined using tangible mechanisms that ensure its influence on the exercise of public power in Aotearoa. Empty (and misleading) statements such as this from the Crown pay lip-service to te Tiriti without meaningfully incorporating it into Aotearoa’s contemporary constitutional arrangements.

¹³ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c), at [22].

¹⁴ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c), at [62.1].

¹⁵ Resource Management Act 1991, s 8.

Claim that constitution ought to be consistent with te Tiriti obligations

17. By stating “that New Zealand’s constitutional arrangements *ought to be* consistent with the Crown’s obligations under the Treaty / te Tiriti”,¹⁶ the Crown admits that its constitutional arrangements are not te Tiriti compliant. But then having admitted as much, the Crown claims that its obligation to “serve all New Zealanders” justifies te Tiriti non-compliance.¹⁷ The Crown’s attempt to justify the non-compliance of its constitutional arrangements with te Tiriti merely results in an affirmation of that non-compliance. And so, based on the Crown’s own admission, it is open for this Tribunal to find that New Zealand’s constitutional arrangements are not te Tiriti compliant.
18. The Claimants are aware of and understand the Crown’s need to “serve all New Zealanders”. However, the problem is that the Crown subjugates its te Tiriti obligations to its need to “serve all New Zealanders” all too readily. The Crown seems to frequently forget the debt it owes to the signatory chiefs and their uri for granting it a legal, technical foothold in Aotearoa. Without te Tiriti, the Crown had no legal standing whatsoever.
19. As has been set out in the Claimants’ statements of claim, the Crown unsuccessfully attempted to assert dominion over Aotearoa through at least five separate mechanisms. As these efforts were in vain, the only legal right for the Crown’s presence in Aotearoa is via and in accordance with te Tiriti. As such, the Crown does not have the right to recognise and dispense with te Tiriti as and when it pleases. It is the basis for the Crown’s authority and must be adhered to.
20. The Crown’s ‘serve all New Zealanders’ position is therefore untenable to the Claimants in light of what the Crown sought and gained by signing te Tiriti and in light of the subjugating consequence of that position on the Claimants’ rights and interests under te Tiriti. In these circumstances, the

¹⁶ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c), at [24] (emphasis added).

¹⁷ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c), at [24].

Crown's pronounced readiness to forego te Tiriti rights and interests in order to 'serve all New Zealanders' is mislaid.

Deficient acknowledgement of tikanga Māori by the Crown

21. Within the Talking Points, the Crown stated that:¹⁸

Regarding tikanga, the Crown acknowledges tikanga is fundamental to Māori society and collective wellbeing. The Supreme Court held tikanga forms part of New Zealand law and is recognised in the development of the common law. However, the intersection of tikanga with constitutional arrangements is not straightforward, and giving constitutional effect for that intersection may require broad public discussion and support, as with all constitutional change.

22. The Claimants note that in describing tikanga as being “fundamental to Māori society and collective wellbeing”, the Crown appear not to fully appreciate its legal standing within Aotearoa. As was noted by the Tribunal during questioning, the Crown have not made any reference to tikanga when defining the rule of law in relation to New Zealand.¹⁹

23. The Claimants consider that adopting this position reflects the Crown's desire to hide behind vague statements rather than confront the most integral aspects of the Inquiry. The Tribunal is one of the best-equipped bodies in the country to analyse the extent to which tikanga and western law can coexist in Aotearoa. By simply stating that tikanga is only relevant to the extent it is “captured in statute or is reflected in the position of courts”²⁰ represents an attempt to perpetuate the doctrine of unbridled

¹⁸ *Talking points for presentation of Crown statement of position* dated 12 February 2026, Wai 3300, #B14(d) at [43].

¹⁹ *Draft transcript for the Wai 3300 - Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry Crown's presentation of its statement of position for the wānanga ā-rohe phase held via AVL on Friday 13 February 2026* dated 18 February 2026, Wai 3300, #4.1.14 at p 40, line 4-8.

²⁰ *Draft transcript for the Wai 3300 - Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry Crown's presentation of its statement of position for the wānanga ā-rohe phase held via AVL on Friday 13 February 2026* dated 18 February 2026, Wai 3300, #4.1.14 at p 40, line 5-6.

Parliamentary sovereignty, rather than being open to a deeper discussion regarding New Zealand's constitutional framework.

24. The Claimants urge the Crown to acknowledge tikanga's relevance to *all* New Zealanders, and to engage meaningfully in this matter across the Inquiry.

Crown failure to acknowledge existence of any limits to parliamentary sovereignty

25. Drawing on the discussion above, the Crown's approach in this Inquiry appears to be to align Aotearoa with other Westminster systems by emphasising the doctrine of parliamentary sovereignty. Broadly, the doctrine of parliamentary sovereignty dictates that "Parliament enjoys unlimited and illimitable powers of legislation",²¹ a position of supremacy justified based on Parliament's democratic mandate and resulting in Courts appearing to play a subordinate role within the constitutional framework.²²
26. By contrast, the Claimants note that the arrival of English settlers and ultimately the Crown into Aotearoa's unique historical, geographical and socio-political context has meant that New Zealand's constitution and correlative approach to parliamentary sovereignty has taken on a distinctive form reflective of these circumstances. The result is that:²³

New Zealand's Constitution is termed "unwritten" since it is not sourced in a document (or series of documents) that is known as "the Constitution". The Constitution is located in a range of legal and extra-legal sources, including the statutes of the English, British and New Zealand Parliaments, the common law, constitutional convention, the law and custom of Parliament, the great legal commentaries (those of Blackstone, Dicey,

²¹ P Joseph, *Constitutional & Administrative Law in New Zealand, 3rd edition* (Wellington: Thomson Brookers, 2007), at 487.

²² P Joseph, *Constitutional & Administrative Law in New Zealand, 3rd edition* (Wellington: Thomson Brookers, 2007), at 488.

²³ P Joseph, *Constitutional & Administrative Law in New Zealand, 3rd edition* (Wellington: Thomson Brookers, 2007), at 1.

Erskine May, etc), customary international law, the principles of the Treaty of Waitangi, and a host of adopted Westminster understandings deriving from British constitutional history.

27. In *Ngā Mātāpono – 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* (“**Ngā Mātāpono**”), the Tribunal acknowledged the orthodox doctrine of parliamentary sovereignty, allowing Parliament to enact or repeal any law.²⁴ In addition, the Tribunal noted that evidence presented demonstrates that Māori treat te Tiriti as a kawenata tapu, or sacred covenant, between Māori and the Crown.²⁵ It follows for Māori, then, that a sacred compact could not be overridden by the orthodox sovereignty of Parliament.²⁶
28. In *Ngā Mātāpono*, the Tribunal outlined how New Zealand’s constitutional theory has diverged from that of Great Britain. Professor Andrew Geddis argued that the two can be distinguished, as New Zealand’s presumption of parliamentary sovereignty cannot directly rely upon England’s settled historical conflict placing Parliament above the will of the Crown and judiciary as the supreme lawmaker.²⁷
29. Professor Geddis’ contention that parliamentary sovereignty in Aotearoa possesses a different quality to that in Great Britain was supported by Dr Max Harris. He noted that section 1 of the English Laws Act 1858 (which has been applied by the Supreme Court in *Takamore v Clarke*)²⁸ only incorporates the laws of Great Britain “so far as is applicable to the

²⁴ Waitangi Tribunal, *Ngā Mātāpono – 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, 2024), at 27.

²⁵ Waitangi Tribunal, *Ngā Mātāpono – 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, 2024), at 28.

²⁶ Waitangi Tribunal, *Ngā Mātāpono – 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, 2024), at 29.

²⁷ Waitangi Tribunal, *Ngā Mātāpono – 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, 2024), at 30.

²⁸ *Takamore v Clarke* [2012] NZSC 116, [2013] 2 NZLR 733 at [73].

circumstances of the colony”.²⁹ It must then follow that the doctrine of parliamentary sovereignty would not necessarily be as untrammelled in New Zealand as it is in Great Britain.

30. However, Professor Geddis cautioned that Parliament is also compelled to adhere to some constraints that are legal in nature,³⁰ including our constitutional framework.³¹ He argued that while Parliament’s presumptive sovereignty rests in the democratic “will of the people”,³² constraints on core constitutional arrangements exist.³³ While he conceded that with a core document such as te Tiriti, the interpretation of these arrangements is left to Parliament,³⁴ he stated that Parliament does not have the power to fundamentally change or re-write these arrangements.³⁵

31. Given New Zealand’s unwritten constitution, Professor Geddis submitted that Aotearoa’s constitutional framework must therefore rely in a normative sense on te Tiriti as its founding accommodation. This means that Parliament does have limits on how it can act when interacting with that arrangement, even if those limits are not espoused explicitly in legislation.³⁶

32. Accordingly, the Claimants wish to emphasise their position that Aotearoa’s Parliament does not possess untrammelled sovereignty, and that the nuances and function of Parliament’s law-making powers should be a key component of this Inquiry, rather than regarded as a fait accompli.

²⁹ English Laws Act 1858, s 1; and English Laws Act 1908, s 2; the effect of these provisions is now preserved by s 5 of the Imperial Laws Application Act 1988. See also Waitangi Tribunal, *Draft transcript for the second urgent hearing of the Treaty Principles Bill Urgent Inquiry* held at the Waitangi Tribunal Offices on 4 October 2024 dated 11 October 2024, Wai 3300, #4.1.7, at 47.

³⁰ A Geddis, *Brief of Evidence of Professor Andrew Geddis* dated 29 April 2024, Wai 3300, #A19, at [19].

³¹ A Geddis, *Brief of Evidence of Professor Andrew Geddis* dated 29 April 2024, Wai 3300, #A19, at [20].

³² A Geddis, *Brief of Evidence of Professor Andrew Geddis* dated 29 April 2024, Wai 3300, #A19, at [17].

³³ A Geddis, *Brief of Evidence of Professor Andrew Geddis* dated 29 April 2024, Wai 3300, #A19, at [20].

³⁴ A Geddis, *Brief of Evidence of Professor Andrew Geddis* dated 29 April 2024, Wai 3300, #A19, at [20].

³⁵ A Geddis, *Brief of Evidence of Professor Andrew Geddis* dated 29 April 2024, Wai 3300, #A19, at [21].

³⁶ Waitangi Tribunal, *Ngā Mātāpono – 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, 2024), at 30.

Crown position on the Rule of Law

33. In response to the Crown's description of the rule of law at [24.2] of the Crown SOP, the Claimants emphasise that the notion that the Crown is subject to the rule of law is heavily qualified. In *Unbridled Power?*,³⁷ Sir Geoffrey Palmer critiqued New Zealand's Westminster-style system, highlighting the extreme concentration of power in the executive (Cabinet and Prime Minister).
34. Under the fused legislative-executive branches and parliamentary sovereignty, a majority government can dominate Parliament, pass laws rapidly (often under urgency), and face few formal checks—no upper house, no entrenched constitution, and limited judicial review of legislation. Palmer described this as dangerously "unbridled" executive power, enabling efficient but potentially overbearing governance with insufficient accountability or safeguards against abuse.
35. On the rule of law, Palmer viewed it as vulnerable in this setup. While New Zealand upheld rule-of-law principles through conventions, judicial independence, and statutes, the system's design allowed Parliament (effectively the executive) to override or ignore them via ordinary legislation. The executive is not meaningfully constrained by the rule of law in the same way as in systems with constitutional supremacy or stronger separations of power.
36. Palmer's fears with a largely unchecked executive branch were realised recently with the enactment of the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act 2025. The executive fabricated the need for legislative change with its claim that it was taking the legislation back to its 'original intent'. By doing so, the expanse of prospective Customary Marine Title grants has been severely curtailed thereby effecting the wholesale raupatu of the takutai moana without any compensation whatsoever. Crown officials' evidence before the Waitangi

³⁷ Palmer, Sir Geoffrey, *Unbridled Power? An Interpretation of New Zealand's Constitution and Government*. First published in 1979, with later editions.

Tribunal established that small Customary Marine Title grants were not the legislation's 'original intent'.³⁸

Crown position on responsible government

37. The Claimants also dispute the Crown's characterisation of 'responsible government' at [24.3] of the Crown SOP. The Crown cannot properly maintain the notion that the New Zealand government is 'responsible' and/or accountable. To the claimants, the Crown's claim in this respect is folly.

38. When push comes to shove on Māori issues, the notion of 'governmental responsibility' is compromised and often severely so. There is a well-documented, evidentially tested historical litany of government irresponsibility that has been found to have occurred in breach of te Tiriti by numerous Waitangi Tribunal historical inquiries including, but certainly not limited to:

- a. the failure to blunt the harmful consequences to Māori of infectious European diseases;
- b. the blatant deficiencies with the Crown's system for addressing the Old Land Claims;
- c. the Crown's role in igniting the Northern War of the mid-1840s;
- d. the institution of the destruction of a culture by way of the Education Ordinance 1847;
- e. the exclusion of Māori from the 1852 General Assembly;

³⁸ *Appendix E: Benesia Smith's responses to questions from claimant counsel*, Wai 2660, #B114(G). See also, *Te Arawhiti, Briefing – Further advice on options for section 58 of the Marine and Coastal Area (Takutai Moana) Act*, dated 27 May 2024, Wai 2660, at [32], and *Te Arawhiti, Briefing – Further advice on options for section 58 of the Marine and Coastal Area (Takutai Moana) Act*, dated 27 May 2024, Wai 2660, at [33].

- f. the igniting of the war in the Waikato, the raupatu of whenua Māori under the New Zealand Settlements Act 1863;
- g. the orchestration of large-scale Māori land loss by way of the Native Land Court legislation and the individualisation of Māori land title;
- h. the use of sharp Māori land purchasing tactics by the Crown;
- i. the 19th century political marginalisation of Māori through enfranchisement qualifications;
- j. the purposeful destruction of the Māori economy during that period;
- k. thereafter, the ongoing failure to properly address the yawning health disparities between Māori and non-Māori;
- l. the undermining of Māori leadership structures;
- m. the continued alienation of Māori land in the 20th century by way of, inter alia, the operation of the Māori Land Boards, the public works legislation, local government (rating) legislation, noxious weeds legislation and administrative legislation such as the Māori Affairs Amendment Act 1967;
- n. the ongoing failure to properly address the adequacy of Māori housing as a whole; and
- o. the ongoing failure to address the disparities with Māori unemployment, youth suicide, education achievement, gang enrolment, the prison incarceration rate, the comparative rates of drug and alcohol dependency and so and so on.

39. Furthermore, it is not as if the government has gotten any more responsible with regard to Māori issues. In fact, this most recent government has managed to effect a distinct decline in being 'responsible' by way of, inter alia, its attempt to enact the Treaty Principles Bill, the enactment of the Regulatory Standards Act, the repeal of s 7AA of the

Oranga Tamariki Act 1989, effecting the Treaty Clause Review, dis-establishing Te Aka Whai Ora, relegating the use and legitimacy of te reo Māori in the public sector, effecting the wide-scale raupatu of the foreshore and seabed and the diminution of Māori interests in resource management with the promulgation of the Natural Environment Bill and the Planning Bill.

Crown position on the Separation of Powers

40. The Claimants consider The Crown makes a mockery of itself with its claim at [24.4] of the Crown SOP that the separation of powers doctrine operates between the executive, legislature and the judiciary. As discussed above in the 'Rule of Law' section, the executive branch is a law unto itself. The recent amendment by the executive branch to section 58 of the Marine and Coastal Area (Takutai Moana) Act 2011 is illustrative. Unhappy with recent High Court and Court of Appeal findings on the meaning of section 58, the Crown interfered with the judicial process and changed the law, even going so far as to render certain Customary Marine Title grants null and void in retrospective fashion. The Crown's enactment of the Foreshore and Seabed Act 2004 is another, earlier instance of executive interference with the judicial process.

41. According to the United Nations there are 195 countries in the world and yet just 6 of these countries, including New Zealand, are without a written constitution.³⁹ In light of the Crown's gross mis-treatment of indigenes elsewhere prior to the colonisation of Aotearoa, in circumstances where there is a significant, relatively vulnerable, minority group and in light of its heavily documented and ongoing inability to operate as a 'responsible government' towards that significant minority (see below), a written constitution is required here.

³⁹ The other countries without a written constitution are the United Kingdom, Israel, Canada, Saudi Arabia and San Marino.

Crown claim as to Parliament's powers

42. At [24.5] of the Crown SOP, it is asserted that:

Parliamentary powers – 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.

43. The Claimants have discussed the Crown's unchecked law-making capacity elsewhere in this response. Aotearoa's history is replete with the infliction of well-documented law-making abuses by the Crown on tangata whenua.

44. The claim that 'Parliament's legitimacy stems from its democratic mandate' is questioned given democracy's patent shortcomings in a strongly bi-cultural society such as ours (see below). Democracy often works against the interests of the minority tangata whenua.

45. Periodic elections do not serve to legitimate Parliament in circumstances where tangata whenua remain objectionable to New Zealand's constitutional arrangements. The fact of the Wai 3300 inquiry manifests the continued objections. There are other manifestations. For example, the fact of the Wai 1040 Stage 1 inquiry, the Urewera Tribunal's historical inquiry into tino rangatiratanga and mana motuhake claims, the Taihape Tribunal's historical inquiry into claims concerning the retention of Māori sovereignty and the continuing sovereign practices of the Kīngitanga.

46. The ongoing objections to the Crown's assumption of sovereignty continue past objections such as those of tens of thousands of Kotahitanga adherents who all sought a Māori Parliament during the 1890s, and armed opposition to the Crown by numerous roopu Māori from the 1840s until the early 1870s. The maintenance of varying degrees of chiefly authority throughout many parts of the country for much of the 19th century is a further, past manifestation of the objection we speak of.

47. For the claimants, Parliament’s legitimacy remains at issue. Many of their filed amended statements of claim raise this very issue. In fact, they go so far as to say that Parliament is illegal, as opposed to being illegitimate. They contend that the New Zealand government is illegal because the Crown failed to acquire both de jure sovereignty and de facto sovereignty in 1840. Hobson’s own standard of ‘universal adherence’ by the hapū to the Crown’s assumption of sovereignty in 1840 went far from being achieved.
48. More importantly for present day purposes, the Crown remains without de jure sovereignty because its claim to dominion relies on the coercion of Māori rather than their popular support. Whilst the Crown possesses a form of de facto sovereignty, de jure sovereignty has not been acquired because in its attempts to gain such control, the Crown has readily resorted to the use of oppressive and undemocratic means including, but not necessarily limited to, the flagrant use of extreme violence, the deliberate destruction of the Māori economy, the pronounced exclusion of Māori from the administrative State, the undermining of chiefly authority, political marginalisation, under-education and chronic Māori health disparities that went unchecked. There was also the orchestrated suppression of Māori protest movements such as pupuri whenua, the Pai Marire, the Kīngitanga, the Ringatū faith, the Repudiation movement and Kotahitanga.

Crown demand for “broad public discussion and support” when dealing with minority rights

49. In the Crown SOP, representative government is highlighted as a principle of Aotearoa’s constitution:⁴⁰

⁴⁰ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c), at [24.1].

Representative government – democracy: 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.

50. In addition, by caveating that “giving precritical effect” to the intersection of tikanga and western law “should be the subject of broad public discussion and support”,⁴¹ the Crown have misconceived the appropriate manner of addressing minority rights.
51. The problem with democracy as a constitutional principle is that it subjects tangata whenua to majoritarian rule. The issue of majority rule is so stark that even the Crown “anticipates this issue will be engaged with more fully as the inquiry develops ...”.⁴²
52. Although the Crown anticipates that ‘this issue will be engaged with more fully’, we note that the Crown does not necessarily anticipate that the issue will be addressed. Disappointingly, all the Crown intends to do is engage. Whilst the Crown might infer that majoritarian rule is up for review in this inquiry, it’s need to ‘serve all New Zealanders’,⁴³ as briefly discussed above, also undoes the notion that the Crown is willing to actually address this most central of issues. The phrase ‘serve all New Zealanders’ is merely other speak for an emphasis on catering for the interests of New Zealand’s majority.
53. Such an emphasis becomes particularly acute when there is significant divide between Māori and non-Māori on a given issue, such as the recent amendment to section 58 of the Marine and Coastal Area (Takutai Moana) Act 2011, or the enactment of the Regulatory Standards Act

⁴¹ *Crown Statement of Position following Wānanga-ā-Rōhe* dated 11 December 2025, Wai 3300, #B14(c), at [56].

⁴² Crown Law Office, *Crown Statement of Position following Wānanga-a-Rohe*, Wai 3300, #C14(c), at [63].

⁴³ Crown Law Office, *Crown Statement of Position following Wānanga-a-Rohe*, Wai 3300, #C14(c), at [24].

2025,⁴⁴ the recent relegation of the use of te reo Māori in the public sector, or whether to maintain the Māori electoral seats or not.

54. The tension between minority rights and the democratic political system is well-traversed in academic and judicial writings, particularly in Aotearoa.⁴⁵

It arises from a misconception of democracy which is quite popular in New Zealand. The misconception is that democracy is rule by the majority and little more. Hart calls this fallacy “moral populism”. Democracy is rule by the people and, at its best, it represents a delicate balancing of interests. It recognises boundaries which even a majority cannot overstep as against a deeply affected minority.

55. The issue is not unique to New Zealand. B.V. Harris has noted that “[t]here is no perfect way of reconciling democratic theory and the protection of minority rights. The problem is being struggled with in many western democracies”.⁴⁶ The Court of Appeal has echoed this sentiment, noting that “the potential for a democracy to brook the tyranny of the majority is a concept well articulated in democratic theory”.⁴⁷ The Supreme Court went so far as to say that this vexed question stimulated the passage of legislation such as the New Zealand Bill of Rights Act 1990:⁴⁸

But, against that, a major purpose of a Bill of Rights (entrenched or otherwise) is to prevent minority interests from being overridden by an oppressive or overzealous majority.

⁴⁴ Regulatory Standards Act 2025, s 9(a)(iii).

⁴⁵ J Elkind, *Bill of Rights Auckland Seminar Commentaries* (New Zealand Law Journal, 230, 1985) at 230.

⁴⁶ B Harris, *A Changing Perception of the Law-Making Powers of Parliament?* (New Zealand Law Journal, 394, 1988) at 397.

⁴⁷ *Waitakere City Council v Lovelock* [1997] 2 NZLR 385; CA 152/96, at 418.

⁴⁸ *R v Hansen* [2007] 3 NZLR 1 [2007]; NZSC 7, at [107].

56. The Tribunal’s analysis in *Ngā Mātāpono* suggests that te Tiriti forms another protective measure against majoritarian rule.⁴⁹ Indeed, the Cabinet Manual 2023 states that “[t]he Treaty of Waitangi [...] may indicate limits in our polity on majority decision-making”.⁵⁰ These executive, judicial and academic pronouncements demonstrate the need to protect Māori interests so they are not unduly subordinated to that of the majority.⁵¹
57. In recent times, the “Indigenous Voice to Parliament” referendum in Australia saw the creation of a federal advisory body representing Australian First Nation peoples put to a state and federal referendum.⁵² The result was a landslide rejection of the proposal at both the national and state levels,⁵³ despite the proposed body being limited in its scope, operating in a purely advisory capacity and lacking any veto power.⁵⁴
58. Accordingly, the Claimants emphasise two points. The first being that requiring majority support is an inappropriate manner of addressing minority rights issues. Secondly, and linked to earlier discussion of te Tiriti, the Claimants emphasise that their rights as Māori are not linked to majoritarian democracy, but instead to the bargain struck in 1840. Te Tiriti is constitutive of the Crown’s role in Aotearoa, and must endure irrespective of the will of the majority. To leave minority rights to majority rule can have disastrous consequences, and fails to trace accurately the roots of Māori rights in Aotearoa.

⁴⁹ Waitangi Tribunal, *Ngā Mātāpono – 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, 2024), at 32.

⁵⁰ Cabinet Office Department of the Prime Minister and Cabinet, *Cabinet Manual 2023* at 2, accessed at <<https://www.dPMC.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual>>.

⁵¹ The Independent Working Group on Constitutional Transformation, *He Whakaaro Here Whakaumu Mō Aotearoa: Report of Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation* (2016), at 8.

⁵² T Graham, “Understanding Misinformation and Media Manipulation on Twitter During the Voice to Parliament Referendum” (Media International Australia, August 2024) at 2.

⁵³ B Worthington, “Australians reject Indigenous recognition via Voice to Parliament, referendum set for defeat” ABC, 14 October 2023, accessed at <<https://www.abc.net.au/news/2023-10-14/voters-reject-indigeneous-voice-to-parliament-referendum/102974522>>.

⁵⁴ B Worthington, “Australians reject Indigenous recognition via Voice to Parliament, referendum set for defeat” ABC, 14 October 2023, accessed at <<https://www.abc.net.au/news/2023-10-14/voters-reject-indigeneous-voice-to-parliament-referendum/102974522>>.

Crown claim regarding democratic elections

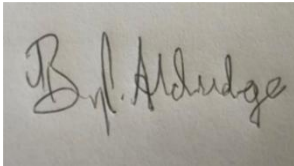
59. Furthermore, the Claimants note in response to [34.1] of the Crown SOP that despite acknowledging that majoritarian rule as an issue needs to ‘be engaged with’⁵⁵ and although, in effect, the Crown admits to subjugating its te Tiriti obligations to its obligation to ‘serve all New Zealanders’, here the Crown discusses how democracy operates as if it works just fine. If elections are ‘democratic’, the elected officials are mandated. If it’s a ‘democratic’ election, it must be ‘free and fair’.
60. But as discussed and as the Crown appears to agree,⁵⁶ democratic elections do not properly mandate and they are not fair because the Māori right to fair representation is forever subject to the tyranny of the majority.
61. Although democracy did not originate there, ancient Athens is widely regarded as the most influential and best-documented birthplace of the form of government we classically associate with the term ‘democracy.’ The first well-attested, fully articulated system of direct democracy emerged in Athens around the late 6th and early 5th centuries BCE. Notably however, only adult male Athenian citizens had the right to vote in the Assembly, participate in elections, serve on juries, or hold office.⁵⁷ Citizenship was strictly limited to free-born males who had two Athenian parents. This group typically made up only about 10-30% of the total population of Athens. Numerous groups could not vote including women, slaves, metics or resident foreigners, children and freed slaves.
62. Democracy ‘worked’ in Athens but only because of an extreme level of exclusivity. Outside of ancient Athens, democracy’s application as a political representation organising principle is wholly limited. Democracy was not designed for a strongly bi-cultural society that has a significant minority group, who also happen to be the first people of the land and signatories to the country’s key founding document. Instead, a nuanced political representation organising principle is required for Aotearoa.

⁵⁵ Crown Law Office, *Crown Statement of Position following Wānanga-a-Rohe*, Wai 3300, #C14(c), at [63].

⁵⁶ Crown Law Office, *Crown Statement of Position following Wānanga-a-Rohe*, Wai 3300, #C14(c), at [63].

⁵⁷ Aristotle, *Constitution of the Athenians* (also known as *Athenaion Politeia*), a key primary, near contemporary text from the late 4th century BCE.

Dated this 20th day of February, 2026



Bryce Aldridge



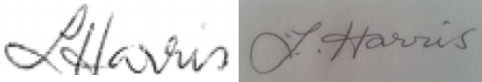
Te Urunga Aroha Evelyn Kereopa



Malcolm James Kingi



Violet Eva Walker



Lee and Te Enga Harris