

I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

WAI 3300 WAI 1359
 WAI 775 WAI 3374
 WAI 1341

KEI RARO I TE MANA O

te ture o te Tiriti o Waitangi 1975

I TE TAKE O

te ruku tātari ā-kaupapa, Tomokia ngā tatau o Matangireia (Wai 3300)

Ā

I TE TAKE O

tētahi kēreme nā Ted Wilson mā te hapū o Ngāti Tamainupō (Wai 775)

Ā

I TE TAKE O

tētahi kēreme nā Nora Rāmeke mā te Rūnanga o Ngāti Rēhia mō te hapū o Ngāti Rēhia (Wai 1341)

Ā

I TE TAKE O

tētahi kēreme nā Sir Graham Latimer rāua ko Tina Patricia Latimer mō rāua tahi me ngā uri o Paora (Te Paatu), Paerata (Te Paatu Koraha), Hare Reweti Hukatere (Te Paatu Tere Tere), Ratima Aperahama (Whakakohatu, Tokaawai, Te Uriaranui) me Marara Ratima (Te Paatu me Ngaitohianga) (Wai 1359)

Ā

I TE TAKE O

tētahi kēreme nā Umuhuri Matehaere, Kataraina Putiputi Rihara Nuku Keepa rātou ko Nepia Hona Ranapia, mā rātou anō me a rātou tūranga hei tarahitī o Te Haupapa Kohatu Trust hei whai painga mō ngā karanga hapū o Ngāi Te Hapū o te moutere o Motiti (Wai 3374)

He Manatu Rōia Tukutahi

I tēnei rā, i te 20 o Pēpuere 2026



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Waitangi Tribunal

23 Feb 26

Ministry of Justice
 WELLINGTON

KIA WHAKAAE MAI TE ROOPUU WHAKAMANA I TE TIRITI O WAITANGI

1. This Joint Memorandum of Counsel is filed on behalf of the following claims:
 - (a) A claim by Ted Wilson on behalf of Ngāti Tamainupō (Wai 775);
 - (b) A claim by Nora Rameka on behalf of Te Rūnanga o Ngāti Rēhia representing Ngāti Rēhia hapū (Wai 1341);
 - (c) A claim by Sir Graham Latimer and Tina Patricia Latimer for the descendants of Paora (Te Patu) Paerata (Te Patu Koraha), Hare Reweti Hukatere (Te Patu Tere Tere), Ratima Aperahama (Whakakohatu, Te Tokaawai, Te Uriaranui) and Marama Ratima (Te Patu me Ngaitohianga) (Wai 1359); and
 - (d) A claim by Umuhuri Matehaere, Kataraina Putiputi Rihara Nuku Keepa and Nepia Hona Ranapia for themselves and as trustees of Te Haupapa Kohatu Trust for the benefit of ngā karanga hapū o Ngāi Te Hapū (Wai 3374).

(together referred to as “**the Claimants**”)
2. On 13 February 2026, her Honour Chief Judge Dr Fox directed claimants to respond to the Crown’s statement of position by **20 February 2026**.
3. This Joint Memorandum of Counsel addresses the Crown’s framing of constitutional principles and its approach to Te Tiriti o Waitangi within the Constitutional Kaupapa Inquiry.
4. These submissions have been put together in haste to meet the deadline set by the Tribunal therefore Counsel have not had adequate time to include the relevant references.
5. The Claimants say the Crown’s submissions disregard settled Treaty jurisprudence and depart from the Tribunal’s findings in *Wai 1040 Te Paparahi o Te Raki Stage One*, by asking the Tribunal to start from

assumptions of parliamentary sovereignty rather than from te Tiriti and tikanga-based constitutional foundations.

6. The Claimants warn of the prejudicial harm that would result from an adoption of the Crown's constitutional principles to inform the substantive part of this Inquiry.

7. By way of summary, noticeable failures and gaps in the Crown's position include:

(a) It fails to centre te Tiriti o Waitangi as the key constitutional source and interpretive baseline for this Inquiry's themes and issues;

(b) It fails to acknowledge or record that Wai 1040 Stage One findings (including that Māori did not cede sovereignty) are a necessary starting point for constitutional analysis in this kaupapa inquiry, and that the Crown's request to sideline or relativise those findings is inappropriate;

(c) the Crown's constitutional framework unduly privileges parliamentary sovereignty and mistakenly treats "the Treaty of Waitangi" and "te Tiriti o Waitangi" as interchangeable, contrary to kaupapa Māori jurisprudence and the Tribunal's own approach across multiple inquiries;

(d) the Crown's move to relegate te Tiriti to the past, by reaffirming the Treaty relationship as ongoing and constitutive of current and future constitutional arrangements.

8. Counsel expand on these points below.

The Crown asks the Tribunal to begin from Parliamentary Sovereignty, not te Tiriti

9. The Crown's framework places Parliamentary Sovereignty at the centre—the "full power to make laws," non-binding of future Parliaments, and non-justiciability of Acts—then treats te Tiriti as a factor subordinate to that supremacy. This inverts first principles in a Treaty-centred constitutional inquiry. The Tribunal should reject this starting point.
10. The Crown's Talking Points underline the same hierarchy: democracy, rule of law, responsible government, separation of powers, Parliament's powers, and human rights are listed as the constitutional bedrock, with te Tiriti only "informing" their application. That is a constitutional frame selection that pre-determines outcomes against rangatiratanga.
11. In a kaupapa inquiry into constitutional arrangements under the Treaty of Waitangi Act 1975, the proper starting point is te Tiriti and tikanga-grounded authority, not Western parliamentary sovereignty. The Crown's request that the Tribunal not revisit Wai 1040 findings (even as general starting points) underscores a strategy to marginalise te Tiriti's constitutional force.

The Crown's submissions disregard longstanding Treaty jurisprudence and Wai 1040 Stage One

12. The Crown acknowledges the significance of sovereignty questions but resists engaging with the Wai 1040 inquiry's foundational findings, noting it "did not agree" with aspects and prefers to focus forward. This stance disregards the Tribunal's own jurisprudence that Māori did not cede sovereignty, a baseline that shapes how kāwanatanga and tino rangatiratanga relate constitutionally. The Tribunal should reaffirm that baseline for the Wai 3300 inquiry's thematic analysis.

13. The Crown’s portrayal of present-day legitimacy - “a modern liberal democracy” where sovereignty resides with “the people” expressed through Parliament - cannot erase the constitutional implications of te Tiriti’s guarantees and the Tribunal’s findings about pre-existing authority and the non-cession of sovereignty. Those findings must inform today’s constitutional design, not be treated as historical curiosities.

The Crown conflates “the Treaty of Waitangi” and “te Tiriti o Waitangi”

14. Across its Statement of Position and Talking Points, the Crown uses “the Treaty / te Tiriti” as if the English text and te Tiriti (Māori text) are interchangeable. In constitutional argument, that conflation erases the Māori text’s primacy and the substantive meanings that follow (including the scope of tino rangatiratanga and the limited, contextual nature of kāwanatanga). The Tribunal should record that in a kaupapa inquiry, te Tiriti (Māori text) is the interpretive starting point, and that the Crown’s interchangeable usage is methodologically flawed.

The Crown relegates te Tiriti to the past

15. The Crown repeatedly describes te Tiriti as a “founding” (historical) document that “informs” the operation of modern principles, implying a temporal distancing that relegates te Tiriti to origin story rather than living constitutional commitment. Framing te Tiriti primarily as historical foundation, while locating true constitutional authority in Parliament today, hollows out the Treaty relationship. The Tribunal should reject this framing and affirm te Tiriti as ongoing, constitutive, and directive of current and future arrangements.

The Crown sets an improper threshold: “broad public support” before constitutional redress

16. The Crown states that constitutional change requires broad public support and forecloses engagement until such consensus exists. That

standard is inappropriate in a Treaty breach context where Crown duties exist regardless of majoritarian approval. It risks entrenching structural breach behind a political veto. The Tribunal should find that public support cannot be a precondition to recognising and implementing Treaty-consistent constitutional arrangements.

Tikanga is acknowledged—then sidelined as “complex”

17. The Crown concedes tikanga is part of New Zealand law, but portrays its constitutional incorporation as “not straightforward” and primarily a matter for broad debate. The Tribunal should prefer a rights-consistent approach - complexity does not dilute constitutional obligation. Where tikanga and Western doctrines appear in tension, the inquiry’s purpose is to work those through in principled ways - not to defer them to the vagaries of political mood.

I TĒNEI RĀ, i Pōkeno, te rā 20 o Pēpuere 2026



Ihipera Peters / Aroha Herewini / Amber Evans

Rōia mō Ngā Kaikerēme