
**KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI**

BEFORE THE WAITANGI TRIBUNAL

WAI 3300

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

**Tomokia ngā tatau o Mātangireia – the
constitutional kaupapa inquiry**

**MEMORANDUM OF THE CROWN FILING ADDITIONAL INFORMATION
FOLLOWING PRESENTATION OF STATEMENT POSITION**

2 March 2026



**Te Tari Ture
o te Karauna**
Crown Law

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Waitangi Tribunal

2 Mar 26

Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL:

1. At the presentation of the Crown statement of position on Friday 13 February 2026, the Crown committed to provide further information, in writing, on two matters. Those matters were confirmed in memorandum-directions of the Presiding Officer on 24 February 2026.¹
2. Those two matters were:
 - 2.1 Whether, in the Crown's 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.
 - 2.2 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
3. This memorandum sets out that further information.

The rule of law and international bodies

4. We answer this question from an international and domestic law perspective.
5. International law provides a framework within which states can engage with each other, and in some instances with individuals. New Zealand is bound by the international rule of law, to the extent that legally binding treaties and customary international law apply to it. The international rule of law requires New Zealand to adhere to these legal obligations. However, international law does not carry the same machinery for enforcement that exists at domestic law (depending on the nature of the agreement), such as recourse to the High Court.²
6. By way of example, if New Zealand were held to have breached an international treaty by the International Court of Justice, adherence to the

¹ Wai 3300, #2.6.82 at [28]-[31].

² Gillian D Triggs *International Law: Contemporary Principles and Practices* (LexisNexis Butterworths, Australia, 2006) at [3.1].

international rule of law would require New Zealand to comply with the Court's decision. Although there is not the same machinery for enforcement, the consequences of a breach of the international rule of law are significant in terms of New Zealand's diplomatic relationships with other states.³

7. We note also that many directions and recommendations of international bodies are not legally binding, but the New Zealand government will receive and consider them carefully.
8. In terms of New Zealand's domestic law, the rule of law applies to the extent any of New Zealand's international law obligations are directly incorporated through a domestic statute. Additionally, relevant international law (such as obligations in treaties New Zealand has acceded to, or customary international law) may be used in the interpretation of New Zealand statutes, and may then influence the development of the common law.⁴ This reflects the dualist system in New Zealand where international law has no direct application unless directly incorporated, but can influence domestic law.⁵

The Cabinet Manual

9. As noted in its foreword, the Cabinet Manual's purpose is to be the primary authority on the conduct of Cabinet government in New Zealand, covering Cabinet procedure and providing guidance for Ministers, their offices and those working within the public service.
10. The Cabinet Manual sets out this procedure and guidance from the perspective of the executive branch of government. It does not prescribe rules, as its preface notes.

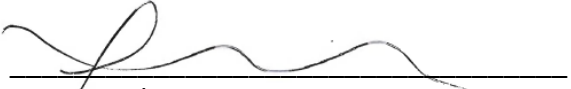
³ Gillian D Triggs *International Law: Contemporary Principles and Practices* (LexisNexis Butterworths, Australia, 2006) at [3.10].

⁴ Philip Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at p 609. Although none may defeat the clear meaning of a statute.

⁵ Except in the case of rules of customary international law, which apply as parts of the common law where the rule is generally applied by states uniformly and there is a shared belief that it is a requirement of domestic law: Philip Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at pp 39-42.

11. The Crown's November 2024 statement, noting that Sir Kenneth Keith's essay is strictly not part of the Manual, reflects that Sir Kenneth's expert views do not form part of this procedural guidance.
12. The intention of this point was to note that the essay functions differently from the operational chapters that follow. The essay serves as constitutional context. That is, it is intended to support understanding of the broader context in which the procedure and guidance operate.

2 March 2026



A K Irwin / R K Douglas
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal

AND TO: Claimant counsel