MATAKĪREA STATEMENT OF RESPONSE (WAI 3389)

Introduction

1. This statement is provided in response to the Crown's statement of position (#B14(c)), talking points for presentation of Crown statement of position, (#B14(d)) and the presentation given by the Crown on 13 February 2025.

2. As set out in our statement of position (#B83), speaking notes (#B83(a)), and presentation at Wānanga Tuaono, on 1 December 2025 at Te Tii Marae:

   a. We agree with the finding of the Waitangi Tribunal in Stage 1 of the Te Paparahi o Te Raki Inquiry (WAI 1040) that "the rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain".

   b. We continue to seek strong findings from this Tribunal that the Crown has never legitimately acquired sovereignty, and thus the Crown sovereignty asserted today, beyond that of its delegated and subordinate kāwana functions to govern British subjects only (the Governor as a rangatira for the Pākehā), has never been legitimately acquired.

   c. Recommendations that reflect this and the constitutional transformation now required are sought as well as redress for the Crown's constitutional Te Tiriti breaches and the implications of these since 1840.

   d. We seek the Tribunal's prioritisation of these foundational 'Stage 1' issues (See joint memorandum filed 18 Sep 25 3.2.290). Every exercise of power, every piece of legislation, and every denial of tino rangatiratanga flows from this foundational claim.

Themes one to three: Sovereignty and legitimacy

3. We focus our response on themes one to three, as these form the key issues proposed as the foundational 'Stage 1' issues for inquiry.

Crown's approach to the Tribunal and Wai 1040 findings

4. The Crown before this Tribunal, has refused to accept the WAI 1040 Stage 1 findings that "the rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain" and continues to revert to its position as advanced in Stage Two of that inquiry (#B14(c) at [35], see Crown submissions 1040, #3.3.402).

5. The Crown should not be able to simply disagree and proceed as if that finding does not exist. The Crown's approach in this respect is quite frankly insulting, and calls into question the merits of continued engagement with the Crown and even the Tribunal process itself.

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6. The Crown also forecasts its approach to this Tribunal process, saying that constitutional direction cannot be made “within the confines of a Tribunal inquiry” (#B14(c) at [5]), and that “the Crown will consider the Tribunal’s recommendations. It will be for the government of the day to decide whether to take any steps towards change” (#B14(d) at [10]). Again, this highlights the exact issues and constitutional inequities raised, and the tyranny of the majority that the current constitutional framework imposes.

7. There is a certain irony present in the Crown’s position. By using Te Tiriti as the basis of its claim as sovereign, (again contrary to the findings of the Wai 1040 Tribunal), the Crown then entrenches its position by requiring a “need for broad public support concerning any constitutional change (#B14(d) at [9]).

8. Also paradoxically, the Crown then appears to put forward the position that its constitutional obligations under Te Tiriti are upheld (at least to a degree) within its current constitutional arrangements and identifies the jurisdiction of the Waitangi Tribunal to support this, including the capacity for Parliament to refer draft legislation, to the Waitangi Tribunal, a power that Parliament has never exercised, given again the simple problem: Parliament/the government of the day, can choose, and has repeatedly chosen not to uphold findings and recommendations of this Tribunal (such as the core Wai 1040 findings) or refer draft legislation to it.

9. The Crown needs to buy into this inquiry process, or risks further eroding Crown-hapū relationships and the status and standing of the Tribunal itself.

10. A dual-sphere model, with matters of Māori authority removed from majority decision-making entirely, and binding powers safeguarding this, is the only genuine protection.

Crown’s attempts to shape the course of this inquiry contrary to the claimants’ claims

11. The Crown calls for this Tribunal to “focus on our nation’s current constitutional framework” and to “make practical recommendations for change” (#B14(c) at [3]), whilst not calling into question the status of NZ as a modern liberal democracy (#B14(c) at [39]).

12. Again, this does not reflect or respond to the claims brought before this Tribunal. It is not the Crown’s role to shape the course of this inquiry against the claims filed.

13. The Crown's insistence that discussions must take place within the context of a "modern liberal democracy" in fact assumes the very matter in dispute. Many claimants’ positions, like ours, reject this framing and insist that the constitutional discussion must begin from Te Tiriti, not from the Crown's pre-existing and imposed assumptions.

14. The Tribunal's findings in relation to historic matters are critical in this way, as they provide validation and an authoritative record if not a mandate for change. The point is to ensure that knowledge becomes action. The idea that Crown sovereignty cannot be questioned, because the common law says so, should not stand. International law, tikanga, and the

Tribunal's own statutory mandate provide various frameworks for a closer examination. This inquiry is not only about looking at the past but ensuring that the future is built on truth which is informed by the "PAST".

Clear diametrically opposed world views to foundational issues

15. As has been confirmed from the chorus of voices heard throughout the wānanga ā-rohe process, the claimants and Crown positions on these issues remain diametrically opposed, and we implore a bold approach from this Tribunal.

16. The Crown position is that Te Tiriti is a founding document, but instead of giving practical effect to its actual status and meaning, the Crown instead seeks to use Te Tiriti as a means to which it has acquired its sovereign status (contrary to Wai 1040 findings) and the imposition of its own Westminster constitutional principles, a constitutional model of its own invention, imposed without consent.

Procedural issues

17. Tomokia ngā tatau o Matangireia commenced in December 2022, with an objective to finish by 2030 (#2.6.46 at [20]). As highlighted since the 26 April 2024 judicial conference regarding inquiry planning, it is paramount that the Crown's position is fully understood.

18. The initial Crown position filed on 25 November 2024, in advance of the wānanga, reads like a law textbook. It simply recites its Westminster constitutional principles of democracy, responsible government, the rule of law etc. It did not address the challenges or comment on the positions advanced by the claimants (Wai 3300, #B14).

19. An updated statement of position was provided on 17 April 2025 outlined some more detail in respect of the principle of equality but simply acknowledged that "the claimants' statements of position raise matters to be considered over the course of the inquiry" (#B14(b) at [2]).

20. The wānanga-ā-rohe phase then took place, with legal counsel directed to take a "observational or supporting role" (2.6.19 at [37]).

21. On 11 December, the Crown filed its statement of position following the wānanga-ā-rohe phase (#B14(c)), its talking points for presentation on 12 February 2026 (#B14(d)) and presented its position to the Tribunal on 13 February 2026.

22. On 12 February, Crown counsel also filed memorandum noting that they would be supporting its witnesses in their presentations. Crown counsel, Mr Irwin, then took a leading role in the Crown's presentation and in answering questions from the Tribunal. We as claimants have now been given strictly a week to respond to the Crown's presentation given 13 February.

23. We raise this to highlight the delays in the Crown's responses to the claimants claims as progressed within this inquiry, and its largely legalistic approach to the wānanga-ā-rohe process it has taken. We do not believe this was what was envisioned in the Pou Report's recommendation for a tikanga-based inquiry (#6.2.2) and believe this should be taken into consideration in the Tribunal's draft wānanga ā-rohe report.