

DRAFT WĀNANGA Ā-ROHE REPORT

1.1 INTRODUCTION

On 1 October 2024, Chief Judge Dr Caren Fox confirmed that Tribunal staff would produce a report following the wānanga ā-rohe phase of Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry (Wai 3300). The purpose of this report, as articulated by Chief Judge Fox, is to capture ‘the principles, themes and remaining issues raised during each wānanga’, so the report can ‘form a tūāpapa or foundation for the inquiry’.¹

In this report, we summarise the kōrero from both the claimants and the Crown on their respective understandings of constitutionalism, as well as their broader kōrero relating to the inquiry themes. The report draws on both the statements of position filed by the parties, and the transcripts of the various wānanga – as well as a selection of texts on tikanga and Western constitutionalism, such as Hirini Moko Mead’s *Tikanga Māori: Living by Māori Values* and Philip A Joseph’s *Joseph on Constitutional and Administrative Law*, 5th edition. Where relevant, the jurisprudence of past Tribunals on constitutional matters has also been referenced. These secondary sources have been included in explanatory footnotes to participants’ kōrero where relevant, and may or may not align with the views expressed by that participant. These references aim to provide broader context for the participants’ kōrero, and do not seek to supplant it. This report captures what the parties shared during the wānanga ā-rohe phase, so their kōrero can inform the Tribunal’s approach to the rest of the inquiry.

We emphasise that this report, as a staff discussion paper, does not constitute a formal Waitangi Tribunal publication. While completed in consultation with the panel, it does not contain substantive Treaty/te Tiriti analysis or Tribunal findings and should not be considered reflective of the views of the panel. Moreover, this report is necessarily a summary, which does not reflect every wānanga participant’s kōrero in detail. However, major themes, particularly impactful arguments, and key points of consensus and divergence have been captured. Readers seeking further information are encouraged to look to the transcripts of the wānanga available on the Record of Inquiry. A full list of claimant and Crown speakers, and the wānanga they attended, is appended to this report as Appendix III.

We begin the report by outlining the procedural history of this kaupapa inquiry and the wānanga ā-rohe phase, before listing the inquiry themes – both those proposed by the claimants and provided by the Tribunal. We then summarise claimant kōrero presented at each wānanga on the tikanga principles foundational to Māori constitutionalism, as well as claimant kōrero more broadly relevant to the inquiry themes. Claimant kōrero has been organised based on the wānanga the speakers attended, rather than by the region they whakapapa to. The kōrero of the New Zealand Māori Council has been summarised separately in section 1.4.7. The Crown’s articulation of the principles of constitutionalism, as well as Crown kōrero relevant to the inquiry themes, is covered in section 1.4.8. There is then a section summarising key points of

¹ Wai 3300, #2.6.19, p [5]

consensus and dispute that arose in the course of the wānanga ā-rohe phase. The report will conclude with a separate section summarising the kōrero of the panel of tikanga experts concerning the tikanga principles raised across the six wānanga.

Accompanying this report as Appendix I and II are a table and bar graph, which capture the frequency with which tikanga principles were referenced by wānanga participants across the six wānanga. The frequency table in Appendix I notes the number of speakers who mentioned particular tikanga principles during the wānanga ā-rohe phase. References in both written statements of position and in the transcripts have been considered for the purposes of the table – but when the author of a statement of position references the same principle in their oral kōrero, that has been counted as a mention by 'one speaker' for the purposes of this table. The bar graph reflects the data in the frequency table, with reference to the 25 tikanga principles most commonly referred to.

1.2 BACKGROUND TO THE INQUIRY AND THE WĀNANGA Ā-ROHE PHASE

On 22 December 2022, the Chairperson of the Tribunal, then Chief Judge Wilson Isaac, initiated the Constitutional Kaupapa Inquiry to inquire into claims concerning the constitution, self-government, and the electoral system. He appointed Chief Judge Fox as Presiding Officer, alongside panel members Derek Fox, Dr Grant Phillipson, Prue Kapua, and Commissioner Kevin Prime.² Subsequently, Professor Emeritus David V Williams and Dr Monty Soutar were appointed to the panel.³

On 17 April 2023, the Tribunal commissioned pou tikanga and pou ture Pākehā to develop a report on a tikanga and Treaty/te Tiriti-compliant process for the inquiry.⁴ On 15 December 2023, the pou released their report, recommending the inquiry take the form of a series of wānanga and avoid an adversarial or legalistic procedure.⁵ Following two inquiry-planning wānanga in January and March 2024, a judicial conference in April 2024, and the receipt of written submissions on inquiry design, the Tribunal initiated the wānanga ā-rohe phase of the inquiry.⁶

The purpose of the wānanga ā-rohe phase, as outlined by Chief Judge Fox, was to enable the parties to identify and articulate '[t]he principles of constitutionalism that should underpin [the] inquiry' and the themes that 'encompass the issues arising from the claims participating', with a view to confirming a final list of inquiry themes subsequent to the wānanga phase.⁷ Unlike

² Wai 3300, #2.5.1, p 2

³ Wai 3300, #2.5.2, p 2; Wai 3300, #2.5.3, p 2

⁴ Wai 3300, #2.3.1, pp 2-3. Waihoroi Shortland, Dame Naida Glavish, Associate Professor Linda Te Aho, and Professor Meihana Durie were appointed as pou tikanga, while Professor Jacinta Ruru, Dr Mark Hickford, and Matthew Smith served as pou ture Pākehā.

⁵ Wai 3300, #6.2.2, p 5

⁶ Wai 3300, #2.6.19, p [2]

⁷ Wai 3300, #2.6.19, pp [4]-[5]; Wai 3300, #2.6.33, p [2]

in standard Tribunal hearing process, the purpose of the wānanga was not to test evidence, though the Tribunal panel benefited from the kōrero given and the answers to their questions. Counsel were also instructed to participate largely in a supportive role, to enable participants to be heard effectively.⁸ Panel member Derek Fox was appointed as a facilitator for these wānanga.⁹

Chief Judge Fox confirmed that the wānanga a-rohe phase would be regionally based, with wānanga held in Ngāruawāhia, Te Tai Tokerau, Tūranga-nui-a-Kiwa, Ōtaki, Wairarapa, and Waiharakeke.¹⁰ The Tribunal held six wānanga over the course of 2024 and 2025:

- Wānanga Tuatahi – This wānanga was held at Waikato-Tainui Endowed College, Ngāruawāhia on 2 and 3 December 2024.¹¹
- Wānanga Tuarua – This wānanga was held at Te Poho-o-Rāwiri Marae in Tūranga-nui-a-Kiwa (Gisborne) on 28 and 29 April 2025.¹²
- Wānanga Tuatoru – This wānanga was held at the Waitangi Tribunal offices in Te Whananganui-a-Tara (Wellington) on 26 June 2025.¹³
- Wānanga Tuawhā – This wānanga was held at Whakatū Marae in Whakatū (Nelson) on 21 August 2025.¹⁴
- Wānanga Tuarima – This wānanga was held at St Michael’s Church and Marae in Te Papaioea (Palmerston North) on 30 October 2025.¹⁵
- Wānanga Tuaono – This wānanga was held at Te Tii Marae at Waitangi from 1 to 4 December 2025.¹⁶

The Crown responded to the claimant kōrero presented at the various wānanga through a statement of position filed on 11 December 2025, which built on its initial statement filed on 25 November 2024.¹⁷ On 13 February 2026, the Crown presented its 11 December 2025 statement of position via audio-visual link and was questioned by the panel.¹⁸ The Crown emphasised that it does not have a settled position on every point raised thus far in the inquiry, and that its statement did not seek to comprehensively address claimant kōrero given during the wānanga. It noted these matters may be addressed in further evidence or legal submissions later in the inquiry.¹⁹ We note the claimant positions on the proposed inquiry themes are similarly preliminary in nature and further evidence on these issues is expected later in the inquiry process.

⁸ Wai 3300, #2.6.19, p [6]

⁹ Wai 3300, #2.6.36, p [4]

¹⁰ Wai 3300, #2.6.27, p [5]; Wai 3300, #2.6.35, pp [2]-[3]

¹¹ Wai 3300, #2.6.22, p [2]

¹² Wai 3300, #2.6.46, p [2]

¹³ Wai 3300, #2.6.61, p [5]

¹⁴ Wai 3300, #2.6.62, p [2]

¹⁵ Wai 3300, #2.6.65, p 6

¹⁶ Wai 3300, #2.6.70, p 2

¹⁷ Wai 3300, #B14(c); Wai 3300, #B14

¹⁸ Wai 3300, #2.6.79, p [2]

¹⁹ Wai 3300, #B14(c), pp 5-6; Wai 3300, #B14(d), p 2

On 13 March 2026, a draft version of this report was circulated to the inquiry parties, to enable the draft to be discussed at a judicial conference on inquiry planning to be held on 30 March 2026.²⁰ The inquiry parties were invited to provide feedback on the way their kōrero was presented in the draft, including by providing corrections to any inaccuracies, misspellings, typographical errors, or missing words.²¹

After this feedback and feedback arising from the judicial conference is incorporated into the report, the draft will be considered by a panel of pou tikanga at a wānanga in May 2026. In particular, the tikanga experts will consider the tikanga principles discussed during the wānanga ā-rohe phase as foundational to Māori understandings of constitutionalism.²² A summary of the tikanga experts' kōrero will be included as a concluding section in this report, before a final version of the report is placed on the Record of Inquiry.²³

1.3 INQUIRY THEMES

In October 2024, the Tribunal confirmed an initial list of inquiry themes, after analysing the statements of claim filed in the inquiry up to that point.²⁴ However, claimants were encouraged to propose additional themes for the inquiry, should said themes be present in their statements of claim.²⁵ As the wānanga a-rohe phase progressed, the following additional themes were proposed by claimant counsel for consideration in the inquiry:

- the way in which Māori self-government and state government inform each other, otherwise referred to as 'dual governance';²⁶
- international treaty-making and rangatiratanga;²⁷
- trade, investment, and economic treaties and te Tiriti o Waitangi;²⁸
- environment and climate change;²⁹ and
- ouster clauses in settlement legislation.³⁰

We note that the Tribunal did not accept the last four themes for inclusion as distinct themes in the inquiry, though both international treaty-making and obligations to the environment would be considered within the broader themes of kāwanatanga and rangatiratanga.³¹ Nonetheless, in

²⁰ Wai 3300, #2.6.76, p 3

²¹ Wai 3300, #2.6.82, p [4]

²² Wai 3300, #2.6.82, p [4]

²³ Wai 3300, #2.6.82, p [4]

²⁴ Wai 3300, #2.6.19, p [4]; Wai 3300, #6.2.18, pp [1]-[6]

²⁵ Wai 3300, #2.6.34, p [3]

²⁶ Wai 3300, #2.6.34, p [3]; Wai 3300, #B6(a), p 4

²⁷ Wai 3300, #3.2.107, p 4

²⁸ Wai 3300, #3.2.107, p 4

²⁹ Wai 3300, #3.2.107, p 4; Wai 3300, #3.2.235, p 2

³⁰ Wai 3300, #3.2.136, p 2

³¹ Wai 3300, #2.6.34, p [3]; Wai 3300, #2.6.26, p [3]; Wai 3300, #2.6.61, p [4]; Wai 3300, #2.6.65, p 6

this report we have included kōrero relevant to every theme proposed, so as to accurately reflect what was said at the wānanga.

As of October 2025, the list of inquiry themes proposed by the Tribunal reads as follows:

- Theme one: mana motuhake, tino rangatiratanga, autonomy and self-government, and tikanga.
- Theme two: kāwanatanga, constitutional legitimacy and sovereignty, parliamentary sovereignty and systems, and ngā ture Pākehā.
- Theme three: ‘dual governance’ – the relationship between kāwanatanga and te mana Māori Motuhake including the way the two forms of government inform each other.
- Theme four: electoral rights and systems.
- Theme five: local government and te Tiriti o Waitangi/the Treaty of Waitangi.
- Theme six: human rights and te Tiriti o Waitangi/the Treaty of Waitangi.
- Theme seven: citizenship rights.³²

1.4 KŌRERO SHARED DURING THE WĀNANGA Ā-ROHE PHASE

1.4.1 Wānanga Tuatahi – Waikato-Tainui Endowed College, Ngāruawāhia

(1) Tikanga Principles Foundational to Māori Constitutionalism

Claimants at the first wānanga emphasised hapū as foundational to Māori conceptions of constitutionalism. Te Rangikaiwhiria Kemara (Ngāti Tauhunu) discussed the exercise of authority in Te Rohe Pōtae prior to colonisation, emphasising that ‘the perpetual and collective authority of hapū’ was the ‘ultimate authority’.³³ Mr Kemara stated that hapū were governed according to tikanga, which enforced ‘the equilibrium between hapū and our taiao.’³⁴ This authority was traditionally vested in rangatira whose chiefly power elicited obedience and was regarded as ‘entirely tika’ by members of the hapū.³⁵ Bruce Joyce (Ngāi Tawake) explained that the paepae and taumata maintain tikanga within a hapū.³⁶ He said ‘if that paepae or that taumata doesn’t obey [an] instruction from its people, it is replaced until it does so... to

³² Wai 3300, #2.6.73; Wai 3300, #2.6.73(b)

³³ Wai 3300, #4.1.8, p 80. Mr Kemara also affiliates to Ngāti Maniapoto, Ngāti Rereahu, Ngāti Tūmai, Ngāti Pūkauae, Ngāti Kāhinga, and Ngāti Te Rā.

³⁴ Wai 3300, #4.1.8, p 80. This idea of maintaining equilibrium is related to the tikanga principles of utu and ea – see Law Commission, *He Poutama* (NZLC SP24, 2023), pp 66-67. Ea is ‘a state of satisfaction where a sequence has been successfully closed’ or ‘relationships have been restored’. Utu is a means of achieving this ea through reciprocity.

³⁵ Wai 3300, #4.1.8, p 80

³⁶ Mr Joyce also affiliates to Ngāpuhi.

maintain the state of wellbeing.’³⁷ Maria Knight (Ngā Hapū o Tokomaru Ākau) noted that her hapū has its ‘own distinctive tikanga which should play an active role in our governance’.³⁸ Jack Berryman (Mongrel Mob Kingdom) shared that the formation of the Kingdom’s distinct governance structure and identity was a way of ‘collectively gathering together’ in an urban context that reflected hapūtanga.³⁹ Mr Joyce expressed his desire that the wānanga process produce principles of constitutionalism aligned ‘with whānau, hapū [and] tikanga’, stating that anything inconsistent with those values would be questionable from a Māori perspective.⁴⁰

Several participants in wānanga tuatahi discussed how mana, in various forms, is relevant to Māori understandings of constitutionalism. Mr Kemara described mana as analogous to the Pākehā concept of sovereignty, though he noted that not all Māori supported the term ‘sovereignty.’⁴¹ Mr Joyce described the mana of tangata whenua as inherent and God-given.⁴² Mihirawhiti Searancke (Ngāti Maniapoto) made a similar point, arguing that mana was intrinsic to ‘being Māori’.⁴³ She also stressed the importance of mana wahine, a tikanga principle further emphasised by Denise Messiter (Ngāti Pukenga ki Waiau) in her discussion of her kuia Wikitōria Te Hei, a wahine rangatira of Ngāti Pukenga and Ngāti Huarere.⁴⁴ Mr Berryman noted that the Mongrel Mob Kingdom’s constitution draws on mana tāne, mana wahine, and mana whānau to empower its members and encourage members away from criminality.⁴⁵ Ropata Carpenter (Ngāti Wai) spoke on mana tūpuna, or the mana inherited from one’s ancestors, which he traced back through the generations to the waka migrations and Hawaiki.⁴⁶

The principle of mana whenua featured prominently in the kōrero of participants at the first wānanga. Damian Matehaere (Ngāi Te Hapū) discussed the connections between mana and tino rangatiratanga in his kōrero – arguing rangatiratanga can only be held by Māori, as it has its origins and whakapapa in the whenua.⁴⁷ He explained how hapū derive their authority from their presence on the land, giving rise to complex independent and interdependent relationships with other hapū.⁴⁸ Howard Reti (Te Kapotai) echoed this, stating that he knows he has rangatiratanga because his people ‘owned this land Aotearoa’ and ‘govern[ed] [them]selves in all aspects.’⁴⁹ Lee Harris (Ngāpuhi) asserted that any discussions about future constitutional arrangements must take place in the country because of these ties of mana whenua, rather than in an international forum. In her words, ‘our mana is here’.⁵⁰

³⁷ Wai 3300, #4.1.8, p 167

³⁸ Wai 3300, #4.1.8, p 87; Wai 3300, #B13, p 6. Ms Knight also affiliates to Te Whānau-a-te Ao Tāwairangi, Te Whānau a Ruataupere, Ngāti Porou, Rongowhakaata, Te Aitanga a Hauiti, and Ngāti Whātua ki Orakei.

³⁹ Wai 3300, #4.1.8, pp 29, 36-37

⁴⁰ Wai 3300, #4.1.8, p 167

⁴¹ Wai 3300, #4.1.8, p 80; Wai 3300, #B1, p 3

⁴² Wai 3300, #4.1.8, p 166

⁴³ Wai 3300, #4.1.8, p 183. Ms Searancke also affiliates to Ngāti Apakura and Waikato.

⁴⁴ Wai 3300, #4.1.8, p 139. Ms Messiter also has affiliations to Ngāti Raukatauri.

⁴⁵ Wai 3300, #4.1.8, pp 34, 37

⁴⁶ Wai 3300, #4.1.8, p 56

⁴⁷ Wai 3300, #4.1.8, p 106

⁴⁸ Wai 3300, #4.1.8, p 106; Wai 3300, #B16, p [2]

⁴⁹ Wai 3300, #4.1.8, p 54. Howard Reti also affiliates to Ngātiwai ki Whangaruru, Ngāi Te Rangi, Ngāpuhi, Te Uri o Hikihiki, Ngāti Tautahi ki Whangaruru, and Ngāti Tapu.

⁵⁰ Wai 3300, #4.1.8, p 68. Lee Harris also affiliates to Te Rarawa.

The whenua and taiao, and corresponding duties of kaitiakitanga, were identified as important constitutional tikanga by speakers at the first wānanga. Mr Matehaere explained how tikanga is tied to the environment, and so varies from place to place.⁵¹ Michaela Rangitaawa-Schofield (Ngāti Apakura) stated that Māori notions of wellbeing are rooted in the whenua, and any future constitutional arrangements should align with those values.⁵² Tania Kingi (Tainui) cited the well-known Whanganui whakataukī, ‘ko au te awa, ko te awa ko au (I am the river, and the river is me)’.⁵³ Kelly Klink (Ngāti Rehua) discussed the connection of whanaungatanga between her people and ‘everything on the whenua’, a relationship compromised by the process of colonisation.⁵⁴ Ms Knight explained that ‘our whenua is not just our land. It’s our connection to our tūpuna’.⁵⁵ She noted that the ‘responsibility to be kaitiaki’ is not constrained, and is a commitment ‘for our future generations’ as well as her tūpuna.⁵⁶ Howard Reti similarly discussed the kaitiaki role of trustees of the Ngātiwai ki Whangaruru Whenua Tōpū Trust over the land, explaining that they are both ‘trustees for the owners that have passed on’ and ‘trustees for the beneficiaries yet to be born’.⁵⁷

The tikanga principles of whanaungatanga, manaakitanga, and āhurutanga were also discussed by speakers at wānanga tuatahi. Nicola Dally-Paki (Tūwharetoa) shared that ‘[c]entral to tikanga is the concept of whanaungatanga, which emphasises manaakitanga and collective responsibility, adopting a sense of belonging and interconnectedness.’⁵⁸ Mr Matehaere made similar points, explaining that while Western law prioritises individual self-interest, Māori authority is guided by the interests of the collective.⁵⁹ Ms Knight also pointed to manaakitanga as an important constitutional value, as it ‘ensures that policies are compassionate and uphold the dignity of individuals and communities’.⁶⁰ She further argued that whanaungatanga should guide ethical and inclusive governance, as it ‘encourages collaborative decision-making that considers the well-being of all affected parties’.⁶¹ In a similar vein, Moerangi Potiki (Ngāti Whakaue ki Maketū) spoke on the importance of āhurutanga, or creating a safe space, for honest and open conversations between Māori and the Crown on constitutional arrangements, to enable Māori to overcome past mamae and move forward.⁶²

⁵¹ Wai 3300, #B16, p [3]

⁵² Wai 3300, #4.1.8, p 93. Ms Rangitaawa-Schofield also affiliates to Ngāti Maniapoto. Hirini Moko Mead cites an illustrative whakataukī: ‘Te toto o te tangata he kai, te oranga o te tangata he whenua. Food supplied the blood of human beings, but the welfare of humans is based on land’ – see Hirini Moko Mead, *Tikanga Māori: Living by Māori Values*, revised ed (Wellington: Huia Publishers, 2016), p 298.

⁵³ Wai 3300, #4.1.8, p 75. Tania Kingi also affiliates to Ngāti Awa, Ngāti Pūkeko, Te Arawa, Ngāti Whakahemo, Ngāti Mākinō, Tainui, and Ngāi Tai.

⁵⁴ Wai 3300, #4.1.8, pp 100-101. Ms Klink also affiliates to Tainui.

⁵⁵ Wai 3300, #4.1.8, p 87

⁵⁶ Wai 3300, #4.1.8, p 87

⁵⁷ Wai 3300, #4.1.8, p 52

⁵⁸ Wai 3300, #B4 p [4]. Ms Dally-Paki also affiliates to Ngāpuhi and Maniapoto. Whanaungatanga is a fundamental principle of tikanga that embraces relationships and whakapapa – see Mead, *Tikanga Māori*, p 32. Mead writes that under whanaungatanga, while individuals ‘expect to be supported by their relatives near and distant’, ‘the collective group also expects the support and help of its individuals’.

⁵⁹ Wai 3300, #4.1.8, p 108; Wai 3300, #B3, p [3]

⁶⁰ Wai 3300, #B13, p 6

⁶¹ Wai 3300, #4.1.8, p 88

⁶² Wai 3300, #4.1.8, p 138. Ms Potiki also affiliates to Te Arawa.

Kotahitanga was highlighted as an important constitutional value by several participants at the first wānanga. Ms Searancke described kotahitanga as ‘the glue that will keep us together as people’, and referenced the call of Kiingi Tuheitia for unity in January 2024.⁶³ Rihari Dargaville (Ngāpuhi) noted the kotahitanga he had witnessed in the course of the Toitū te Tiriti protests, describing it as ‘the power of the collective’, and a ‘unity of Māori’.⁶⁴ Daniel (Danny) Te Rakai Watson (Ngāti Pakau) and Jane Mihingarangi Ruka (Waitaha) also emphasised the importance of kotahitanga, calling for Māori to come together to pursue constitutional change.⁶⁵

(2) Wānanga Participants’ Discussion of Inquiry Themes

Mana motuhake was a consistent theme of the kōrero presented at wānanga tuatahi. Ms Rangitaawa-Schofield defined mana motuhake as ‘self-determination’.⁶⁶ Ms Dally-Paki explained that mana motuhake was a tikanga concept that emerged in response to the impacts of colonisation – ‘Māori tribes recognised the need to restore what had been taken and began to articulate mana motuhake as a principle for exercising authority over their own affairs.’⁶⁷ Bryce Aldridge (Ngāpuhi) shared that ‘[m]ana motuhake refers to the jurisdiction or right to make the law’, and is on the ‘same level as mana whenua and mana moana’.⁶⁸ Lee Harris and Te Enga Harris defined mana motuhake as the ‘right to live as Māori undisturbed and in our own territories.’⁶⁹ Ms Knight shared that mana motuhake is about ‘empowering our whānau and people to make decisions based on our own tikanga and kawa’.⁷⁰ For her, mana motuhake was synonymous with Māori actively preserving their sovereignty, and ensuring her ‘hapū’s voice is strong in all matters concerning our lands, resources and communities’.⁷¹ Ms Messiter emphasised the role of wāhine Māori in the exercise of mana motuhake and rangatiratanga – explaining that wāhine had equal decision-making roles as tāne Māori prior to the signing of the Treaty/te Tiriti. This was ‘necessary to maintain the balance of tapu and noa within and across whānau, hapū and iwi relationships.’⁷²

⁶³ Wai 3300, #4.1.8, pp 125-126

⁶⁴ Wai 3300, #4.1.8, p 47. Mr Dargaville also affiliates to Ngā Uri o Tama, Tauke Te Awa, Ngāti Manawa, and Te Kai Tutae. The Toitū te Tiriti protests Mr Dargaville references here took place in November 2024 and consisted of a nine-day hīkoi from Te Rerenga Wairua to Parliament in opposition to the Treaty Principles Bill and other government policies impacting Māori. On the final day of the hīkoi in Te Whanganui a Tara an estimated 100,000 people participated in the protest – see Layla Bailey-McDowell, ‘Hīkoi mō Te Tiriti: A year on from one of Aotearoa’s largest protest movements’, Radio New Zealand, 11 November 2025, <https://www.rnz.co.nz/news/top/578456/hikoi-mo-te-tiriti-a-year-on-from-one-of-aotearoa-s-largest-protest-movement>

⁶⁵ Wai 3300, #4.1.8, pp 148-149

⁶⁶ Wai 3300, #B2, p 1

⁶⁷ Wai 3300, #B4, p [2]

⁶⁸ Wai 3300, #B11, p 3

⁶⁹ Wai 3300, #B12, p 2

⁷⁰ Wai 3300, #4.1.8, p 87

⁷¹ Wai 3300, #4.1.8, p 87, Wai 3300, #B13, pp 4

⁷² Wai 3300, #B3, p 1

Multiple speakers at wānanga tuatahi discussed mana motuhake in the context of historic models of Māori self-government. Ms Searancke discussed the role of the Kiingitanga in shaping expressions of Māori self-government. She described the aukati instituted after the Waikato War as a ‘powerful symbol of self-determination and autonomy’ that affirmed the commitment of Ngāti Maniapoto to ‘safeguarding their lands, rights and governance from Crown encroachment’.⁷³ Referencing such historic examples of mana motuhake, she argued that Māori are entitled to govern themselves and establish their own laws without external interference.⁷⁴ Ms Knight further discussed the Kotahitanga movement’s advocacy for a Māori parliament, stating that the movement ‘continues to inspire contemporary efforts toward Māori political unity and ... autonomy.’⁷⁵ Mr Kemara spoke to Te Ōhākī Tapu negotiations, specifically highlighting the 1883 petition of Te Rohe Pōtae Māori.⁷⁶ He posited that the ‘constitutional aspiration’ of those signatories for autonomy and tino rangatiratanga continues to be relevant today, and legislation should be enacted to realise it.⁷⁷ Ms Knight also spoke of the importance of the Kiingitanga movement, calling it ‘a unifying cultural symbol and advocate for Māori sovereignty’, which was an enduring emblem of resistance and pride.⁷⁸ The Kiingitanga was listed among other significant national organisations like the Iwi Chairs Forum, the New Zealand Māori Council, and the Maori Women’s Welfare League, which she argued ‘exemplify the broader push for mana motuhake and tino rangatiratanga’ today.⁷⁹

Several claimant speakers at the first wānanga challenged the Crown’s sovereignty over Māori. Lady Tureiti Moxon (Ngāti Pāhauwera) stated that Māori ‘never discussed’ giving up sovereignty in 1840.⁸⁰ Speakers from multiple hapū and iwi asserted that they retained their sovereignty to this day.⁸¹ Ruiha (Louisa) Te Matekino Collier (Ngāpuhi) cited the finding in *He Whakaputanga me te Kāwanatanga* that northern rangatira who signed te Tiriti did not cede their authority to make and enforce law over their people and within their territories.⁸² Several participants asserted the constitutional importance of He Whakaputanga, and Mr Kemara described it as the ‘basis of indigenous sovereignty’.⁸³ Diane Black (Ngāti Te Ata) argued that

⁷³ Wai 3300, #4.1.8, p 123. This aukati was established in the 1860s and was a ‘border area that protected the residual territory pledged to the Kīngitanga’. The aukati regulated the travel of people into Te Rohe Pōtae and ‘defined a zone of Māori authority’ – see Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on the Te Rohe Pōtae Claims*, 6 vols (Wellington: Legislation Direct, 2023), vol 2, pp 683, 692.

⁷⁴ Wai 3300, #4.1.8, p 124

⁷⁵ Wai 3300, #B3, p 4

⁷⁶ Wai 3300, #4.1.8, p 82; Wai 3300, #B1, p 11. The June 1883 petition was submitted by Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa and hapū and iwi of northern Whanganui – see Waitangi Tribunal, *Te Mana Whatu Ahuru*, vol 2, p 892. It requested the Crown legislate to give practical effect to the self-determination rights of Te Rohe Pōtae iwi, particularly in respect of land.

⁷⁷ Wai 3300, #B1, pp 10-11

⁷⁸ Wai 3300, #B13, p 4

⁷⁹ Wai 3300, #B13, pp 4-5. Te Rōpū Wāhine Māori Toko i te Ora (the Maori Women’s Welfare League) was founded in 1951 to advocate for wāhine Māori and their whānau. The Rōpū describes their mahi as including holding ‘the government to account to uphold Te Tiriti o Waitangi’ – see Maori Women’s Welfare League, ‘Ko Wai Matou’, www.mwwl.org.nz/blank, accessed 28 August 2025.

⁸⁰ Wai 3300, #4.1.8, p 22. Lady Moxon also affiliates to Ngāti Kahungunu and Kai Tahu.

⁸¹ Wai 3300, #4.1.8, pp 65, 101, 125

⁸² Wai 3300, #4.1.8, p 43. See also Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty – The Report on Stage 1 of the Te Paparahi o te Raki Inquiry* (Lower Hutt: Legislation Direct, 2014), p 527.

⁸³ Wai 3300, #4.1.8, pp 80, 114, 146

it should be viewed as a legally binding document and that its guarantee of Māori self-government must be upheld in the constitution.⁸⁴ Mr Kemara argued that te Tiriti reaffirmed He Whakaputanga and guaranteed tino rangatiratanga which he defined as ‘Māori chiefly sovereignty’ which is ‘above and beyond kāwanatanga’.⁸⁵ He described the constitutional conversation around sovereignty as ‘two distinct versions of reality’ — one where the Crown believes it has legitimate authority as the ‘mandated sovereign’, and the other where Māori believe the Crown exercises its power in ‘a blatant abuse of the 1840 gift of kāwanatanga.’⁸⁶

Further to these discussions of sovereignty, the claimants spoke about their understanding of kāwanatanga. Tania Kingi explained that the cession of kāwanatanga in article 1 was so the Queen could ‘control her unruly subjects’.⁸⁷ Lee and Te Enga Harris echoed this statement in their kōrero, explaining that while kāwanatanga translates to ‘the right to govern’, their tūpuna who signed te Tiriti thought that the Crown would govern its own people, and the lives of Māori would continue ‘undisturbed’.⁸⁸ As such, the Crown did not have the authority to pass laws that applied to Māori.⁸⁹ Ms Knight stated that kāwanatanga was ‘intended to grant the Crown administrative power, [and] should never have undermined the tino rangatiratanga of Māori’.⁹⁰ However, the Crown went on to impose laws and policies ‘that have marginalised Māori voices [and] undermined our sovereignty.’⁹¹ Multiple claimant speakers echoed this sentiment, particularly in reference to recent legislative changes under the Coalition Government.⁹² Edward Wilson (Ngāti Tamainupō) argued that in light of the discrepant meanings of kāwanatanga in te Tiriti and sovereignty in the Treaty, only the reo Māori text of te Tiriti should be treated as legally valid.⁹³ Several claimants suggested that any disagreement between Māori and the Crown on the meaning of the Treaty/te Tiriti should be resolved directly between the parties.⁹⁴ If consensus cannot be reached, these claimants suggested that the International Court of Justice should be involved as an external arbitrator, while others asserted that external, international influence was not appropriate.⁹⁵

Multiple claimants spoke about the kinds of dual governance arrangements the Crown and Māori could enter into in order for the constitution to reflect the Treaty/te Tiriti partnership.

⁸⁴ Ms Black also affiliates to Waikato and Ngāti Ruanui. While discussions on the founding constitutional documents of Aotearoa often focus on the Treaty/te Tiriti, Vincent O’Malley emphasises the importance of He Whakaputanga – see Vincent O’Malley, *He Whakaputanga: The Declaration of Independence 1835* (Wellington: Bridget Williams Books, 2017), p 13. He Whakaputanga asserts the independence of Nu Tireni (New Zealand) under the rule of the United Tribes of New Zealand, and vests ‘[a]ll sovereign power and authority in the land’ with the signatory rangatira in their collective capacity, as defined in O’Malley, *He Whakaputanga*, p 16.

⁸⁵ Wai 3300, #4.1.8, p 82; Wai 3300, #B1, pp 3-4

⁸⁶ Wai 3300, #4.1.8, p 81

⁸⁷ Wai 3300, #B10, p [3]

⁸⁸ Wai 3300, #B12, p 5

⁸⁹ Wai 3300, #B12, p 5

⁹⁰ Wai 3300, #B13, pp 6-7

⁹¹ Wai 3300, #B13, p 7

⁹² Wai 3300, #4.1.8, pp 23, 68, 73, 79; Wai 3300, #B10, p [2]-[4]

⁹³ Wai 3300, #4.1.8, p 111. Privileging the reo Māori text of te Tiriti is consistent with principles of international law – see Matthew S Palmer, *The Treaty of Waitangi in New Zealand’s Law and Constitution* (Wellington: Victoria University Press, 2008), pp 163-164. The principle of contra proferentum ‘provides that the meaning should be preferred which is least to the advantage’ to the party drafting that treaty provision.

⁹⁴ Wai 3300, #B9, p 3

⁹⁵ Wai 3300, #B9, p 3; Wai 3300, #4.1.8, p 68

Mr Aldridge commented that ‘when we examine the partnership relationship in 1840 and compare it to our current constitutional arrangements, where Parliament is said to have supreme law-making power, it becomes evident which partner was left behind.’⁹⁶ To remedy this imbalance, Mr Kemara proposed creating ‘autonomous or self-governing regions’ within the country for Māori, similar to indigenous self-government frameworks in Canada.⁹⁷ He also supported the introduction of specialist courts to resolve disputes amongst Māori in accordance with tikanga.⁹⁸ He further called for the implementation of ‘co-governance arrangements at national and local levels’ that would ‘allow for shared decision-making between Crown and Māori’ on matters like resource management, healthcare and education.⁹⁹ Ms Knight argued that ‘tikanga should be foundational’ in shaping government authority in light of the bicultural partnership called for by the Treaty/te Tiriti.¹⁰⁰ She explained that for hapū, ‘achieving mana motuhake under constitutional law’ would involve having ‘legally acknowledged authority that allows for autonomous governance’ in a way that ‘aligns with both te Tiriti and the broader New Zealand legal framework’.¹⁰¹

The speakers at the first wānanga noted the barriers that exist for Māori representation in the country’s constitutional arrangements, both in Parliament and at a local government level. Mr Aldridge and Mr Kemara critiqued the current majoritarian electoral system for fostering division,¹⁰² and enabling the continual underrepresentation of Māori perspectives.¹⁰³ Ms Knight noted that although systems like Māori wards have ‘potential to enhance [and] ensure’ Māori voices are included in local decision making, their effectiveness is easily undermined if councils do not ‘fully commit’ to engagement with Māori.¹⁰⁴ Speakers discussed the specific prejudice arising from lack of engagement with and representation on their local councils – for instance, Mr Matehaere shared his experience with local council’s denial of ‘any meaningful participation’ for his people in the administration of Mōtītī Island.¹⁰⁵ At a central government level, Ms Knight noted that increasing the seats guaranteed to Māori in Parliament would help ensure Māori perspectives are represented.¹⁰⁶ Speakers advocated for other changes to the electoral system, with Ms Searancke supporting the proposal that Māori be allowed to vote based on where their marae is located, not where they currently reside.¹⁰⁷ Ms Knight argued that those on the Māori roll should be able to vote for any Māori candidate, regardless of their rohe.¹⁰⁸ She and Tania Kingi noted the barriers to voting faced by Māori, including accessibility

⁹⁶ Wai 3300, #B11, p 4

⁹⁷ Wai 3300, #B1, p 13. In Canada, reserve lands are set aside for First Nations peoples under the Indian Act 1876, which allows tribal councils to pass by-laws on their land relating to public health, law and order, and infrastructure – see Robert Irwin, ‘Reserves in Canada’, *The Canadian Encyclopedia*, <https://thecanadianencyclopedia.ca/en/article/aboriginal-reserves>, last modified 22 November 2022, accessed 15 January 2026.

⁹⁸ Wai 3300, #B1, p 13.

⁹⁹ Wai 3300, #B1, p 12.

¹⁰⁰ Wai 3300, #4.1.8, p 88.

¹⁰¹ Wai 3300, #B13, p 4.

¹⁰² Wai 3300, #B11, p 5

¹⁰³ Wai 3300, #B11, p 5; Wai 3300, #B12, p 7

¹⁰⁴ Wai 3300, #B13, p 12

¹⁰⁵ Wai 3300, #4.1.8, pp 106-107, 110, 140

¹⁰⁶ Wai 3300, #B1, p 12

¹⁰⁷ Wai 3300, #4.1.8, p 19

¹⁰⁸ Wai 3300, #4.1.8, p 90

issues for whānau hauā and those in rural areas.¹⁰⁹ Ms Knight stated that changes to the electoral system to more fully involve Māori would represent ‘a genuine recognition of tino rangatiratanga’.¹¹⁰

Speakers at wānanga tuatahi also spoke to the inquiry theme of human rights, with particular reference to international human rights law. Mr Aldridge stated that protections of the human and indigenous rights of Māori, like those recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), were ‘of the utmost importance’.¹¹¹ Ms Dally-Paki argued that it was necessary for the constitution to uphold Māori mana motuhake in order for Aotearoa New Zealand to align with global standards of human rights, like those found in the UNDRIP.¹¹² By contrast, Lee and Te Enga Harris criticised domestic human rights legislation, describing the lack of specific reference to Māori or the Treaty/te Tiriti in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 as ‘shocking’. They argued that as the indigenous people of Aotearoa New Zealand, Māori should have specific legal protections.¹¹³ Tania Kingi also noted the underperformance of the domestic human rights framework – arguing that despite ratifying the United Nations Convention on the Rights of Persons with Disabilities in 2008, the Crown continuously failed to meet their obligations to whānau hauā.¹¹⁴ Ms Knight recognised that while Aotearoa New Zealand’s human rights laws have made progress toward acknowledging the rights of Māori, ‘substantial challenges persist’ in fully implementing the principles of the Treaty/te Tiriti in the human rights framework.¹¹⁵

1.4.2 Wānanga Tuarua – Te Poho-o-Rāwiri Marae, Tūranga-nui-a-Kiwa (Gisborne)

(1) Tikanga Principles Foundational to Māori Constitutionalism

Speakers at wānanga tuarua described hapū and whānau as the centre of Māori authority. Malcolm James Kingi (Ngāi Tahu o Mohaka Waikare) explained that hapū have the credibility to speak on matters of importance to Māori.¹¹⁶ He highlighted the structure of the United Confederation of Tribes as a historic example of a hapū-led system of government which existed prior to 1840.¹¹⁷ The participants noted that the authority of the hapū is not a fixed or closed system. Kim Te Tua (Ngā Uri o Kurapoto) referred to this authority as mana motuhake, arguing it is not a ‘generic New Zealand Māori thing’, but must go back to hapū and whānau as they are ‘where the constitution sits.’¹¹⁸ Allison Bullock (Ngāti Kahungunu ki Wairarapa)

¹⁰⁹ Wai 3300, #B10, pp [3]-[4]; Wai 3300, #B13, p 10

¹¹⁰ Wai 3300, #B13, 7

¹¹¹ Wai 3300, #B11, p 6

¹¹² Wai 3300, #B4, p [2]

¹¹³ Wai 3300, #B12, p 8.

¹¹⁴ Wai 3300, #B10, p [4]

¹¹⁵ Wai 3300, #B13, p 13

¹¹⁶ Wai 3300, #4.1.9, p 56

¹¹⁷ Wai 3300, #4.1.9, p 63. The United Confederation of Tribes is also referred to as ‘Te Whakaminenga’. The Tribunal’s *He Whakaputanga me te Tiriti* report described Te Whakaminenga as a ‘formal assembly of rangatira from autonomous hapū, gathering together to deliberate and act in concert’ which existed at least from 1835 and the signing of He Whakaputanga—see Waitangi Tribunal, *He Whakaputanga me te Tiriti: The Declaration and the Treaty*, (Lower Hutt: Legislation Direct, 2014), p 179.

¹¹⁸ Wai 3300, #4.1.9, p 112

described tikanga principles as ‘specific to those places and those spaces’ that each hapū lives in.¹¹⁹ Evelyn Ratima (Ngāti Tātara) agreed that the constitution must recognise that Māori all have ‘different ways of doing things’ depending on what hapū they are from.¹²⁰ She shared that these differences are what ‘giv[e] us our mana’.¹²¹ Ms Te Tua argued that Māori mana must be restored by a return to ‘our own unwritten constitution of tikanga and kawa [which are] where our tino rangatiratanga, our governance systems happen.’¹²² Malcolm Kingi agreed, describing a vision for the future government of Aotearoa which upholds the authority of hapū—a Māori ‘republic’ comprised of several ‘sovereign bod[ies]’ throughout the motu, led by elected rangatira from each hapū in each rohe.¹²³ Cherie Evangeline Maria Kururangi Smith Kara (Mongrel Mob Kingdom) also emphasised the tikanga-led and whānau centric nature of Māori authority—but in an urban context.¹²⁴ She described the Mongrel Mob Kingdom as a whānau ‘bound by tikanga...values that have provided stability and leadership’ to its members.¹²⁵ Accordingly, Ms Kururangi argued that mana motuhake must not be conceptualised as ‘confined to just iwi governance structures’—instead it exists within all whānau Māori, including those pushed to the margins.¹²⁶

Participants at the second wānanga particularly emphasised the role of whakapapa and whenua in their understandings of constitutionalism. Jason Koia (Ruawaipu) opened his kōrero with the statement ‘our constitution is our whakapapa.’¹²⁷ He explained that Māori ‘become legally bound to everything spiritual, cultural [and] physical’ from birth.¹²⁸ Ms Kururangi shared that mana motuhake is ‘grounded in whakapapa and whenua and tikanga Māori. It is not something to be granted or negotiated by the Crown. It is already ours.’¹²⁹ Other speakers noted that whakapapa and their connection to the whenua affirms their mana. Malcolm Kingi shared that Māori are tangata whenua and ‘tūturu’ and as such have ‘ancestral rights’ in Aotearoa—referencing the historic waka migrations.¹³⁰ Ms Ratima discussed how tikanga is intrinsically connected to whakapapa and the legacy of her tūpuna, who have left a ‘foundation to build our culture upon.’¹³¹ She stated that ‘[o]ur whakapapa makes us who we are, so we can stand tall... in front of all our manuhiri and our people.’¹³² Florence Marie Karaitiana (Ngā Uri ō Kurapoto) emphasised the extent of this whakapapa obligation, noting that ‘I am the living product of a

¹¹⁹ Wai 3300, #4.1.9, p 104. Ms Bullock also affiliates to Te Hika a Pāpāuma. In his conclusion to *Tikanga Māori*, Mead writes that ‘there is a dynamic aspect to tikanga Māori. Besides the fact that the physical setting for tikanga Māori varies enormously, there is the equally compelling fact that the players and the audiences are never the same. On each occasion there is a range of variables that impinge not only on how the tikanga is interpreted but also in its practice’—see Mead, *Tikanga Māori*, p 385.

¹²⁰ Wai 3300, #4.1.9, p 105

¹²¹ Wai 3300, #4.1.9, p 105

¹²² Wai 3300, #4.1.9, p 112

¹²³ Wai 3300, #4.1.9, pp 67-68

¹²⁴ Ms Kururangi also affiliates to Ngāti Kahungunu and Ngāti Porou.

¹²⁵ Wai 3300, #B22, p 1

¹²⁶ Wai 3300, #4.1.9, p 93

¹²⁷ Wai 3300, #4.1.9, p 58

¹²⁸ Wai 3300, #4.1.9, p 58. Mead also discussed the inherent mana of individuals, writing that every Māori person is ‘born with an increment of mana’, that can be built on throughout one’s life, including by supporting one’s community – see Mead, *Tikanga Māori*, pp 55-56.

¹²⁹ Wai 3300, #4.1.9, p 91

¹³⁰ Wai 3300, #4.1.9, pp 85-86

¹³¹ Wai 3300, #4.1.9, p 98

¹³² Wai 3300, #4.1.9, p 100

three generation whawhai (struggle) for our tūpuna... I really hope I'm the last.'¹³³ Mr Koia described the pressure to promise his pakeke (elders) that he would ensure 'the mana and the mauri of our tūpuna would continue' after their death.¹³⁴ This obligation is not one-sided. Mr Koia noted that he himself has an obligation to build a legacy so that 'when I die the next generation ... will be in good stead to keep the mana alive.'¹³⁵

Manaakitanga and whanaungatanga were also mentioned by speakers at the second wānanga as important constitutional values, both in the context of marae-based governance and kaupapa-based organisations. Ms Bullock stated that manaaki 'shapes all the interactions that go on' and exists in every encounter.¹³⁶ As such, she and Ms Ratima both identified manaaki as a kawa which must be embedded in a successful constitution.¹³⁷ Ms Ratima gave kōrero about the importance of extending manaaki to the community, including those who have passed. For example, she described the function of tukutuku panels to 'manaaki our wharenuī' and respect the mana and mātauranga of her tūpuna.¹³⁸ This mātauranga cannot be learned in isolation, but must be learned 'as a collective' through whanaungatanga. Ms Ratima identified this as one of the first things children learn on the marae—that 'their job is to learn, to mingle, to whakawhanaungatanga.'¹³⁹ The role of manaakitanga and whanaungatanga in shaping Māori self-government structures is not confined to hapū-based marae. Ms Kururangi discussed the prominence of these values in shaping the governance structure of the Mongrel Mob Kingdom, in the place of more direct whakapapa connections. In her words: 'we don't have to be blood. To be in, we just have to care.'¹⁴⁰ Ms Kururangi shared that the success of the Mongrel Mob Kingdom has been in building a constitution upon tikanga principles which acknowledge and support the value of the collective.¹⁴¹

Speakers shared their hopes for a revised constitution that fully recognises and upholds tikanga Māori, in accordance with its status as a system of law. Ms Kururangi described tikanga Māori as 'the law of this whenua', and stated that recognising it as such will lay 'a foundation of a just and equitable constitutional framework for Aotearoa.'¹⁴² She emphasised that tikanga is not a 'secondary or supplementary system' and must not be used only when convenient.¹⁴³ Malcolm Kingi also spoke to the need for consistent tikanga-centred constitutional arrangements—he described tikanga as a law that 'sets our protocol in death and living and all

¹³³ Wai 3300, #4.1.9, p 110

¹³⁴ Wai 3300, #4.1.9, p 59

¹³⁵ Wai 3300, #4.1.9, p 59

¹³⁶ Wai 3300, #4.1.9, p 107

¹³⁷ Wai 3300, #4.1.9, p 107

¹³⁸ Wai 3300, #4.1.9, p 100. *Te Mātāpunenga* describes the importance of the marae to hapori Māori, citing Te Rangi Hiroa in April 1930: 'Kia mau ki te pupuri i nga Marae o koutou kainga. Ko tena te mauri hei paihere i to koutou maoritanga kei ngaro ki te kore. Hold steadfast onto the marae of your homes. That is the essence to which you bind your Maoritanga that nothing may be lost.'—see Benton, Richard, Frame, Alex, & Meredith, Paul, *Te Mātāpunenga: a compendium of references to the concepts and institutions of Māori customary law* (Victoria University Press 2013), p 219.

¹³⁹ Wai 3300, #4.1.9, p 99

¹⁴⁰ Wai 3300, #4.1.9, p 94

¹⁴¹ Wai 3300, #4.1.9, p 94

¹⁴² Wai 3300, #4.1.9, p 93

¹⁴³ Wai 3300, #4.1.9, p 93

things Māori.’¹⁴⁴ Ms Ratima shared the profound impact that the neglect of tikanga throughout Aotearoa has had on her and her whānau—‘all our being has been dissected and separated [so that it is] now very difficult to say which part is Māori.’¹⁴⁵ Claimants shared that this absence of tikanga permeates all government structures, including the Treaty settlement space. Ms Karaitiana and Mr Koia both stated that the mana and tino rangatiratanga of their hapū had been undermined by approaches to claims and settlements which do not fully uphold tikanga.¹⁴⁶ Florence Karaitiana argued that the Crown failed to recognise Kurapoto as a distinct group from Tūwharetoa and thus made them ‘invisible’,¹⁴⁷ while Mr Koia refused to have his claim settled ‘under the wrong Treaty’, noting he ‘would rather withdraw our claim than have the mana of it ceded.’¹⁴⁸ Many such problems, Ms Bullock argued, can be addressed by basing a re-imagined constitution ‘on the Treaty, on kawa, on tikanga, and the manner in which we have lived our lives for these decades behind us and the ones that we intend to live in the future.’¹⁴⁹ As she noted, ‘governments come and go. Policies change ... [B]ut for Māori who follow kawa and tikanga[,] that endures.’¹⁵⁰

(2) Wānanga Participants’ Discussion of Inquiry Themes

Participants at wānanga tuarua discussed the overlap between mana motuhake and tino rangatiratanga. Malcolm Kingi noted that these themes have ‘considerable overlap’, as both focus on Māori self-determination and self-government.¹⁵¹ He specifically shared that for him, mana motuhake refers to the agreements of He Whakaputanga—the need to honour te Tiriti and provide equal rights for Māori.¹⁵² To do so, he argued that Māori must be involved in decision making at all levels of government, and that these decisions must abide by tikanga.¹⁵³ Ms Kururangi described mana motuhake as an ‘inherent and undeniable right’ grounded in whakapapa, which thus cannot be ‘granted or negotiated by the Crown’.¹⁵⁴ She noted that for the Mongrel Mob Kingdom, recognising mana motuhake is a way of ‘reclaiming our dignity, our leadership, and self-determination’, and must be embedded in the constitutional framework of Aotearoa.¹⁵⁵ Ms Te Tua described mana motuhake as ‘departmental’ and likened this form of Māori authority to the Crown’s executive branch, explaining that ‘we’ve all got our tohunga, our specialists. We’ve got all those things, but we can’t bring it up to the level of this

¹⁴⁴ Wai 3300, #4.1.9, p 54

¹⁴⁵ Wai 3300, #4.1.9, p 98

¹⁴⁶ Mr Koia also affiliates to Te Whānau-a-Tāpuhi.

¹⁴⁷ Wai 3300, #4.1.9, p 109. Te Tari Whakatau | The Office of Treaty Settlements and Takutai Moana notes that the Crown ‘strongly prefers to negotiate comprehensive settlements with large natural groups.’ These groups are typically claimant groups like iwi with common interests based in shared whakapapa or history, rather than individuals, specific hapū or whānau—see ‘Large natural groups and mandating’, Te Tari Whakatau | The Office of Treaty Settlements and Takutai Moana, <https://whakatau.govt.nz/te-tira-kurapounamu-treaty-settlements/the-red-book/large-natural-groups>, accessed 9 January 2026.

¹⁴⁸ Wai 3300, #4.1.9, pp 79-80

¹⁴⁹ Wai 3300, #4.1.9, p 105

¹⁵⁰ Wai 3300, #4.1.9, p 104

¹⁵¹ Wai 3300, #4.1.9, p 53

¹⁵² Wai 3300, #B19, p 1; Wai 3300, #4.1.9, p 53

¹⁵³ Wai 3300, #4.1.9, pp 53-54

¹⁵⁴ Wai 3300, #B22, p 2

¹⁵⁵ Wai 3300, #4.1.9, p 91

government. They won't recognise it and they should.'¹⁵⁶ Mr Koia shared that tino rangatiratanga affirms the 'absolute chieftainship [and] supreme authority' of Māori over their lands, resources and institutions.¹⁵⁷ He added that a true recognition of Māori authority must be upheld in a tangible sense, including 'our rights to our oils [and] minerals, our rights to our own taxation systems [and] revenue, our rights to passing our own law.'¹⁵⁸ Ms Kururangi agreed that a reformed constitution must recognise and commit to upholding mana motuhake 'in practice'.¹⁵⁹ In order to achieve this, she argued, there must be a commitment to 'actively dismantle the State structures that continue to deny' tino rangatiratanga and mana motuhake.¹⁶⁰

Much of the kōrero at wānanga tuarua denied that the Crown has sovereignty over Māori. Ms Kururangi and Malcolm Kingi stated that Māori never ceded sovereignty,¹⁶¹ and Mr Koia stated that there was 'absolutely no reason at all' for Māori to do so.¹⁶² He emphasised that at the time the Treaty/te Tiriti was signed, Māori 'were a body politic' with a much larger population than the European settlers.¹⁶³ Malcolm Kingi's kōrero also highlighted that Māori 'engaged in self-governance over ourselves before Pākēhā came.'¹⁶⁴ Addressing the two texts of the Treaty/te Tiriti, Mr Koia argued that the te reo version must take precedence.¹⁶⁵ He acknowledged that 'the English version ceded sovereignty' but described this text as 'totally invalid' because it did not travel the whole of the country, and 'has never been brought before [his] ancestors' in Te Tai Rāwhiti.¹⁶⁶ Instead, the te reo text was signed by the majority of Māori, and therefore must be regarded as the 'valid and prevailing version'.¹⁶⁷ The speakers asserted that under te Tiriti Māori retained tino rangatiratanga,¹⁶⁸ and granted the Crown kāwanatanga as a limited form of authority to 'establish a government for the peace and good order of the country'.¹⁶⁹ Malcolm Kingi noted his understanding that 'kāwanatanga is for Pākehā not Māori... It is for the Crown to follow.'¹⁷⁰ He also shared that while kāwanatanga allows the Crown to pass laws that are binding for Māori, these laws must be 'the result of partnership, consultation and participation' from and with Māori.¹⁷¹ Ms Te Tua argued that 'the Crown is nothing but a manuhiri' and shared her hope that soon Māori tino rangatiratanga and mana motuhake will be

¹⁵⁶ Wai 3300, #4.1.9, p 112. Sir Āpirana Ngata told Parliament in 1907 that '[t]he law that governed the tribe practically emanated from ... the tohunga.' The kupu 'tohunga' refers to an expert in any branch of knowledge or craft—see Benton et al, *Te Mātāpunenga*, pp 434-437.

¹⁵⁷ Wai 3300, #4.1.9, p 61

¹⁵⁸ Wai 3300, #4.1.9, p 83

¹⁵⁹ Wai 3300, #4.1.9, p 91

¹⁶⁰ Wai 3300, #4.1.9, p 93; Wai 3300 #B22, p 3

¹⁶¹ Wai 3300, #4.1.9, pp 91, 53

¹⁶² Wai 3300, #4.1.9, p 62

¹⁶³ Wai 3300, #4.1.9, p 62

¹⁶⁴ Wai 3300, #4.1.9, p 53

¹⁶⁵ Privileging the reo Māori text of te Tiriti is consistent with principles of international law – see Palmer, *The Treaty of Waitangi in New Zealand's Law and Constitution*, pp 163-164. The principle of contra proferentum 'provides that the meaning should be preferred which is least to the advantage' to the party drafting that treaty provision.

¹⁶⁶ Wai 3300, #4.1.9, p 60

¹⁶⁷ Wai 3300, #4.1.9, p 60

¹⁶⁸ Wai 3300, #4.1.9, p 91

¹⁶⁹ Wai 3300, #4.1.9, p 68. *Te Mātāpunenga* records the meaning of kāwanatanga as used in the Māori text of te Tiriti as 'authority to govern under delegation from a superior or sovereign power' – see Benton et al., *Te Mātāpunenga*, p 132.

¹⁷⁰ Wai 3300, #4.1.9, p 54

¹⁷¹ Wai 3300, #B19, p 2

appropriately recognised.¹⁷² Florence Karaitiana held a similar view, stating that the constitution must ‘reflect the true constitutional status of Māori as a Treaty partner who has equal standing as a sovereign constitutional power to the Crown.’¹⁷³

Relatedly, several participants highlighted the need for a constitutionally mandated dual governance system which recognises Māori as equal partners to the Crown. Malcolm Kingi noted that this must look like ‘equal say [and] equal participation’ in all things.¹⁷⁴ He noted that although the Crown technically consults with Māori today, their feedback is often not taken on board.¹⁷⁵ Mr Koia asked why Māori are ‘assimilated into a one law for all policy’ and stressed the need for Māori independence.¹⁷⁶ Ms Bullock echoed this, sharing that the current models of government ‘do not necessarily entirely meet the needs of Māori’.¹⁷⁷ Instead, she suggested introducing government models based locally and regionally to reflect the needs of individual hapū and iwi.¹⁷⁸ Malcolm Kingi argued that the Crown ‘does not have the right’ to make decisions in international trade or treaty-making without the input of Māori as its Treaty/te Tiriti partner.¹⁷⁹ Owen Lloyd (Ngā Ariki Kaipūtahi) concluded the kōrero around dual governance and equal participation by stating that the constitution must enable Māori to ‘pose the questions [and] the kōrero’ in order to achieve positive outcomes for the benefit of Māori and non-Māori alike.¹⁸⁰

Some speakers noted the barriers that exist for Māori involvement in the government of Aotearoa, particularly at the level of local government. Malcolm Kingi shared his experience that ‘local government bodies never listen to Māori’, and instead follow an interpretation of the English Treaty ‘for Pākehā benefit.’¹⁸¹ This idea that local government prioritises Pākehā and Pākehā systems was a common thread in the kōrero from other speakers. Ms Bullock noted that many systems of government ‘have been worked up over time [and] do not necessarily entirely meet the needs of Māori.’¹⁸² In contrast to the deficiencies of local government, claimants highlighted the important work being done at the marae level. Ms Te Tua described the marae of Te Arawa as ‘our parliament houses.’¹⁸³ She emphasised the way Māori self-government is closely connected to the local rohe, describing how political and whenua issues are discussed on marae – in her words, that is ‘where our politicking is.’¹⁸⁴ Mr Koia suggested

¹⁷² Wai 3300, #4.1.9, pp 112-113

¹⁷³ Wai 3300, #4.1.9, p 110

¹⁷⁴ Wai 3300, #4.1.9, p 56

¹⁷⁵ Wai 3300, #4.1.9, p 56

¹⁷⁶ Wai 3300, #4.1.9, p 78

¹⁷⁷ Wai 3300, #4.1.9, p 105

¹⁷⁸ Wai 3300, #4.1.9, p 105

¹⁷⁹ Wai 3300, #4.1.9, p 55

¹⁸⁰ Wai 3300, #4.1.9, p 126. While Mr Lloyd is one of the claimants for the NZMC’s Wai 3352 claim, here is he speaking on his own behalf.

¹⁸¹ Wai 3300, #4.1.9, p 55

¹⁸² Wai 3300, #4.1.9, p 105

¹⁸³ Wai 3300, #4.1.9, p 112

¹⁸⁴ Wai 3300, #4.1.9, p 112. Mead describes the marae as ‘a place of cultural resistance that helped Māori enjoy what others have called de-facto sovereignty’, and ‘a place where Māori culture can be celebrated to the fullest extent, where language can be spoken, where Māori can meet Māori, where intertribal obligations can be met, [and] where customs can be explored, practised, debated, continued, or amended’ – see Mead, *Tikanga Māori*, pp 116-117

a ‘Māori protectorate’ rather than allowing councils to regulate Māori resources.¹⁸⁵ He argued that local Māori have ‘never come under Gisborne Council law’.¹⁸⁶ Mr Koia also raised the idea of paying taxes to their own marae or ‘Māori parliament’ rather than local or regional councils.¹⁸⁷ Despite the issues raised by speakers about the function of local government, Ms Ratima acknowledged that some councils are more actively engaging with Māori and beginning to share their responsibilities.¹⁸⁸ However, ‘even that is a slow process’.¹⁸⁹ She noted her aspiration that ‘once we recognise we are partners, and we are of equal understandings ... we can practice being Māori in this Pākehā world our way.’¹⁹⁰

Finally, some participants at wānanga tuarua discussed how international human rights law could positively influence a revised constitution of Aotearoa New Zealand. Speakers focused on the UNDRIP as an international agreement which could have a positive impact on Māori. Malcolm Kingi noted that Māori have consistently been denied ‘the human rights we deserve’.¹⁹¹ Recognising the UNDRIP, which Mr Koia described as a ‘fleshed out version of Article II’ of te Tiriti, would ‘enhance and protect’ the rights of Māori.¹⁹² Mr Koia also asserted that, ‘irrespective of whether or not te Tiriti is legislated’, section 28 of the Bill of Rights Act 1990 guarantees Māori indigenous rights.¹⁹³ These rights—particularly the guarantee of tino rangatiratanga—must, he argued, be at the forefront of the work done by the Te Tari Whakataū.¹⁹⁴ Ms Kururangi’s kōrero echoed this. She stated that, to move forward and appropriately recognise the tino rangatiratanga and mana motuhake of Māori, a renewed ‘governance structure and framework of Aotearoa must be built upon the recognition of Māori rights affirmed in the Māori version of te Tiriti.’¹⁹⁵

1.4.3 Wānanga Tuatoru – Waitangi Tribunal offices, Te Whanganui-a-Tara (Wellington)

(1) Tikanga Principles Foundational to Māori Constitutionalism

Speakers at wānanga tuatoru emphasised tikanga Māori as the foundational legal order of this country, asserting that it therefore must be incorporated into any renewed constitutional framework. Teina Boasa-Dean (Ngāi Tūhoe) called tikanga ‘the first law of this land’,¹⁹⁶ while Mike Tana (Ngāti Whātua) described it as ‘fundamental to the Māori worldview’.¹⁹⁷ Both understood tikanga not merely as a cultural practice, but as a system – ‘a legitimate legal system that must be given equal standing to existing state laws’, as Mr Tana argued.¹⁹⁸ In their kōrero,

¹⁸⁵ Wai 3300, #4.1.9, p 77

¹⁸⁶ Wai 3300, #4.1.9, p 77

¹⁸⁷ Wai 3300, #4.1.9, p 83

¹⁸⁸ Wai 3300, #4.1.9, p 103

¹⁸⁹ Wai 3300, #4.1.9, p 103

¹⁹⁰ Wai 3300, #4.1.9, p 103

¹⁹¹ Wai 3300, #4.1.9, p 55

¹⁹² Wai 3300, #4.1.9, p 81

¹⁹³ Wai 3300, #B20, p 15

¹⁹⁴ Wai 3300, #4.1.9, p 81

¹⁹⁵ Wai 3300, #4.1.9, p 90

¹⁹⁶ Wai 3300, #B30, p 3

¹⁹⁷ Wai 3300, #B21, p 2. Mr Tana also affiliates to Te Uri o Hau.

¹⁹⁸ Wai 3300, #B21, p 2. Tikanga was explicitly recognised as a system of laws by the Supreme Court in the 2022 *Ellis* case, where Chief Justice Helen Winkelmann stated that tikanga was relevant to the development of

Matthew Mullany (Ngāti Pārau) and Hori Reti (Ngāti Kahungunu) described tikanga as conceptually ‘symbiotic’ with tino rangatiratanga.¹⁹⁹ Ms Boasa-Dean also characterised tikanga as a system encompassing ‘values, principles, and practices that guide right relationships with each other, the whenua, the Atua, and the universe’.²⁰⁰ She asserted that tikanga is not ‘an alternative, but the origin’, and should be foundational to any constitutional transformation.²⁰¹ She argued that tikanga must have ‘equal constitutional status’ with Pākehā law, in a dual legal system. In her words, ‘[t]hese are two systems that must co-exist in balance not in competition.’²⁰²

Speakers emphasised how whakapapa underpins any exercise of tino rangatiratanga and mana motuhake. Ms Boasa-Dean spoke about how constitutionalism for Māori ‘means returning to tūpuna and their directions and instructions in terms of principles and values’.²⁰³ Hori Reti and Mr Mullany explained that there is considerable overlap between tino rangatiratanga and mana motuhake and ‘[t]he authority that vests in rangatira derives from whakapapa which connects individuals to one another and to their atua (take tipuna)’.²⁰⁴ Mr Tana described tino rangatiratanga as ‘an ancestral right’.²⁰⁵ Ms Boasa-Dean sees both tino rangatiratanga and mana motuhake as ‘born of our whakapapa and our relationship with our Atua, our whenua, and each other’.²⁰⁶ Mr Tana acknowledged that some Māori are disenfranchised and disconnected from knowing their whakapapa. Any constitutional arrangements going forward need to support these Māori, for, in his words ‘they don’t have the strength of an iwi or a hapū voice’.²⁰⁷

Participants at the third wānanga further expanded on the operation of rangatiratanga in Māori self-government, closely linking it to mana and the wider operation of tikanga in a community. Ms Boasa-Dean explained that mana is one of multiple principles that ‘give strength and framework to tikanga and kawa.’²⁰⁸ She equated it to ‘external power and authority’, and an ‘external ability to be positively influential’.²⁰⁹ Hori Reti and Mr Mullany explained that ‘rangatiratanga embodies notions of mana’ and attaches both to resources and people accessing the resources – meaning that the holder of rangatiratanga can influence the way a resource is used.²¹⁰

While much of the kōrero focused on tikanga more broadly, speakers at the third wānanga highlighted the significance of mātauranga. For example, Mr Mullany argued that ‘mātauranga

New Zealand’s common law because it ‘was the first law of New Zealand and was not displaced or extinguished by the arrival of the English common law’ – see *Ellis v R* [2022] NZSC 114, p [55].

¹⁹⁹ Wai 3300, #4.1.10, p 19; Wai 3300, #B23, p [4]. Mr Mullany also affiliates to Ngāti Kahungunu.

²⁰⁰ Wai 3300, #B30, pp 3-4

²⁰¹ Wai 3300, #B30, p 7

²⁰² Wai 3300, #B30, p 5

²⁰³ Wai 3300, #4.1.10, p 26

²⁰⁴ Wai 3300, #B23, p [4]

²⁰⁵ Wai 3300, #B21, p 1

²⁰⁶ Wai 3300, #B30, p 2

²⁰⁷ Wai 3300, #4.1.10, p 46

²⁰⁸ Wai 3300, #4.1.10, p 32

²⁰⁹ Wai 3300, #4.1.10, p 32

²¹⁰ Wai 3300, #B23, pp [3]-[4]. Mead explains that the ‘primary function’ of the rangatira within a hapū ‘was to ensure that the group survived and that its land base and resources were protected and defended’ – see Mead, *Tikanga Māori*, p 229.

is an integral thread in conceptualising Māori notions of constitutionality'.²¹¹ Mr Mullany explained that mātauranga 'encompasses the body of knowledge, experiences, values, and philosophy of Māori, including traditional and contemporary knowledge, language practices and culture'.²¹² He also described it as a 'holistic dynamic and a continually evolving knowledge system involving generational observations and experiences'.²¹³ Ms Boasa-Dean expressed that over time the effects of colonisation have eroded the passing on of mātauranga—in her words – 'the ability to teach our mokopuna to think'.²¹⁴ She went on to point out that this has repercussions on the ability of Māori 'to think as great people in the political arena' and 'to ... retain our own knowledge to become the libraries of our own political consciousness'.²¹⁵ Mr Mullany advised that 'weaving Māori knowledge systems[,] mātauranga[,] into Aotearoa's constitutional framework goes hand in hand with recognising Māori perspectives, values, and legal and political processes'.²¹⁶

Participants at the third wānanga noted that tikanga is not fixed, and that any constitution must avoid making definitive statements about the meaning and application of tikanga in every context. Hori Reti stated that 'tikanga sits separately and is distinct with each and every iwi'.²¹⁷ He went on to explain that the tikanga of each iwi is theirs to determine and isn't for the constitution to decide – arguing that tikanga should stay 'in that space of that iwi, their hapū, their marae'.²¹⁸ Hori Reti and Mr Mullany agreed that tino rangatiratanga and mana motuhake 'are the source of rights which empower hapū/iwi (or an individual) to exercise their tikanga in a particular way'.²¹⁹ Mr Mullany spoke about how tikanga can evolve to meet circumstances 'within an iwi [and] hapū context'.²²⁰ He continued to say that '[e]volution occurs within a framework of custom and whakapapa', where both tikanga and tino rangatiratanga act as 'validating systems' to ensure there is precedent for appropriate behaviours.²²¹ Ms Boasa-Dean described the idea of there being 'one tikanga or one kawa' as fundamentally incorrect, since 'there is a kawa on the marae... a kawa that the forests enjoy... a kawa that the insects enjoy'.²²² Despite the many distinct systems and practices of tikanga and kawa throughout the motu, she believed that 'if [Māoridom] sat down as collective iwi, we will all agree on a common set of principles'.²²³

²¹¹ Wai 3300, #4.1.10, p 19

²¹² Wai 3300, #4.1.10, p 19

²¹³ Wai 3300, #4.1.10, p 19

²¹⁴ Wai 3300, #4.1.10, p 36

²¹⁵ Wai 3300, #4.1.10, p 36

²¹⁶ Wai 3300, #4.1.10, p 19

²¹⁷ Wai 3300, #4.1.10, p 21

²¹⁸ Wai 3300, #4.1.10, p 21

²¹⁹ Wai 3300, #B23, p [4]

²²⁰ Wai 3300, #4.1.10, p 19

²²¹ Wai 3300, #4.1.10, p 19

²²² Wai 3300, #4.1.10, p 33. The flexibility of tikanga is a theme discussed by Justice Joe Williams – he explains that the first law of Aotearoa was 'internally coherent and clear', but 'being primarily value-based rather than prescriptive, it was flexible: law for small communities in which making peace was as important as making principle' – see Justice Joseph Williams, 'Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law', *Waikato Law Review*, vol 21, 2013, p 5.

²²³ Wai 3300, #4.1.10, p 33

(2) Wānanga Participants' Discussion of Inquiry Themes

Speakers at wānanga tuatoru emphasised that mana motuhake and tino rangatiratanga must be at the forefront of Aotearoa New Zealand's constitutional arrangements. Mr Tana asserted that to achieve 'true constitutionalism', tino rangatiratanga and mana motuhake must be recognised and implemented 'in their fullest sense'.²²⁴ This sentiment was supported by Ms Boasa-Dean, who argued that mana motuhake must be the 'cornerstone of a new framework that places Māori governance structures alongside, not beneath, that of the Crown'.²²⁵ Mr Tana stated that Māori self-determination and independence 'takes precedence over all other governance constructs imposed upon Māori', and that while it is intrinsic to Māori, the Crown must take 'tangible steps to give effect to mana motuhake through legal, systemic, and policy reforms'.²²⁶ Ms Boasa-Dean described mana motuhake as the 'sacred, inherent authority of whānau, hapū, and iwi to govern ourselves'.²²⁷ Though she located mana motuhake at the iwi and hapū level, Ms Boasa-Dean did support national Māori structures of self-government like the Kiingitanga and the Iwi Chairs Forum being constitutionally recognised, so long as this was not done at the 'expense of hapū-based authority'.²²⁸

Speakers attributed a similar level of constitutional significance to tino rangatiratanga, as befits the close connections between the two concepts. Ms Boasa-Dean described tino rangatiratanga as 'the authority and responsibility to exercise leadership, decision-making, and governance over our people and places'.²²⁹ Implementing tino rangatiratanga in the constitutional framework would not equate to co-governance, she argued, but rather 'Māori-led governance in our own spheres'.²³⁰ Mr Tana described tino rangatiratanga as 'pre-foundational to constitutionalism', as an ancestral right tied to the land. It should therefore be 'the basis upon which governance structures are built'.²³¹ Despite this, the Crown has failed to recognise tino rangatiratanga, 'instead imposing a shadow of what self-determination truly means'.²³² Māori tino rangatiratanga persists, in spite of the Crown, and exists today as its own constitution which in his words 'is still valid here in Aotearoa ... and can't go away'.²³³ Ms Boasa-Dean highlighted that tino rangatiratanga 'was explicitly promised to [Māori] in Te Tiriti o Waitangi'.²³⁴ Mr Mullany agreed that in te Tiriti, the Crown clearly affirms and promises its protection of the 'rangatiratanga [which] is vested in the chiefs and tribes'.²³⁵ Ms Boasa-Dean posited that binding obligations should be introduced to ensure the Crown honours and upholds tino rangatiratanga.²³⁶

²²⁴ Wai 3300, # B21, p 1

²²⁵ Wai 3300, # B30, p 2

²²⁶ Wai 3300, #B21, p 1

²²⁷ Wai 3300, # B30, p 2

²²⁸ Wai 3300, #B30, p 3

²²⁹ Wai 3300, # B30, p 2

²³⁰ Wai 3300, #B30, p 3

²³¹ Wai 3300, #B21, pp 1-2

²³² Wai 3300, #B21, pp 1-2

²³³ Wai 3300, #4.1.10, p 44

²³⁴ Wai 3300, # B30, p 2

²³⁵ Wai 3300, #4.1.10, p 18

²³⁶ Wai 3300, #B30, p 4

Speakers at the wānanga discussed the theme of sovereignty, and what they perceived as Crown misapplication of kāwanatanga. Ms Boasa-Dean stated that the Crown’s claim to sovereignty had no legitimate foundation in te Tiriti, nor international law.²³⁷ Mr Tana expressed that in 1840, Māori had sovereign right, while the legitimacy of the Crown’s sovereignty was – and continues to be – contested.²³⁸ The issue, as Mr Tana explained, is that the Crown is ‘trying to entrench [sovereignty]’.²³⁹ He acknowledged that people have differing understandings of the meaning of the Treaty/te Tiriti texts, but argued that the only way to truly legitimise the Crown’s sovereignty is through a government structure that ‘fully acknowledges and upholds te Tiriti o Waitangi’.²⁴⁰ Kāwanatanga was identified by Mr Mullany and Hori Reti as a ‘key constitutional principle’, recognising that it was guaranteed under te Tiriti.²⁴¹ However, speakers acknowledged that the agreement was to be exercised alongside tino rangatiratanga. For example, Ms Boasa-Dean said kāwanatanga was ‘never intended to be a licence for absolute Crown control. It was a delegation of limited administrative authority’.²⁴² The Crown’s imposition of laws that treat Māori as subjects rather than partners is, in her words, ‘a legal fiction that must end.’²⁴³ Mr Tana said that the Crown’s assertion of kāwanatanga ‘has historically come at the expense of Māori self-determination ... kāwanatanga should not be exercised in a manner that undermines tino rangatiratanga’.²⁴⁴ Mr Mullany and Hori Reti advised that the Crown and Māori ‘must work together in good faith to establish the appropriate balance between rangatiratanga and kāwanatanga’.²⁴⁵ For Mr Tana, this means not taking actions such as removing the Treaty/te Tiriti from legislation, explaining that ‘[o]bligations can be forgotten and that’s what is so dangerous about the point that we’re in now... any constitution should protect [against] that’.²⁴⁶

The speakers at wānanga tuatoru addressed the barriers facing Māori at the level of local government. Mr Mullany and Hori Reti argued that legislative and policy arrangements for local government ‘fail to afford Māori the central role they are guaranteed under the Treaty of Waitangi’.²⁴⁷ Mr Tana agreed that ‘[m]any local authorities have failed to meet their te Tiriti

²³⁷ Wai 3300, #B30, p 4

²³⁸ Wai 3300, #B21, p 2; Wai 3300, #4.1.10, pp 41, 46

²³⁹ Wai 3300, #4.1.10, p 46

²⁴⁰ Wai 3300, #B21, p 2;

²⁴¹ Wai 3300, #B23, p [5]

²⁴² Wai 3300, # B30 p 4. There has been much debate around the discrepancies between the Treaty and te Tiriti texts over the years. Historian Claudia Orange argues that the term kāwanatanga ‘does not convey the many facets of sovereign power and authority’ – see Claudia Orange, *An Illustrated History of the Treaty of Waitangi* (Bridget Williams Books, 2004), p 26. Also of note is the more recent scholarship of Ned Fletcher who argues that the two texts of the Treaty/te Tiriti can be reconciled, as the British objective was for the English text ‘to set up an arrangement similar to a federation, in which the sovereign power did not supplant tribal government’ – see Ned Fletcher, *The English Text of the Treaty of Waitangi* (Wellington: Bridget Williams, 2022), p 529.

²⁴³ Wai 3300, #B30, p 5

²⁴⁴ Wai 3300, # B21, p 2

²⁴⁵ Wai 3300, #B23, p [5]

²⁴⁶ Wai 3300, #4.1.10, p 46. The Constitution Kaupapa Inquiry panel has made findings on the ongoing Treaty clause review in its urgent *Ngā Mātāpono* report – there recommending that repeal of Treaty clauses be taken off the table and that the Crown expand the time for engagement with Māori and involvement of Māori in decision-making in the review – see Waitangi Tribunal, *Ngā Mātāpono/The Principles: Part III of the 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 – Pre-publication Version* (Wellington: Waitangi Tribunal, 2025), p 49.

²⁴⁷ Wai 3300, #B23, p [2]

obligations, leading to policies that negatively impact Māori land and resources'.²⁴⁸ Mr Mullany took issue with a lack of performance auditing of local government against the Treaty/te Tiriti, asserting that '[t]his loophole allows continual Treaty breaches'.²⁴⁹ Speakers also raised concerns about Māori wards and the lack of Treaty/te Tiriti protections in the Local Government Act 2002.²⁵⁰ Mr Mullany particularly emphasised the 'systemic issues regarding Māori representation in local government'.²⁵¹ Multiple speakers thought these issues could be addressed through a more meaningful collaboration between the Treaty/te Tiriti partners. To Mr Mullany and Hori Reti, this meant 'at least joint decision-making between Crown and Māori agencies and groups, not mere "contributions to" or "participation in"' decisions.²⁵² Ms Boasa-Dean argued that 'veto rights, resource jurisdiction, and co-governance mandates' must be constitutionally protected in local government frameworks.²⁵³ Stronger legal protections would allow Māori to hold local governments to account.²⁵⁴ Mr Tana warned that when the principle of partnership is not upheld within local government, 'the result isn't theoretical harm. It directly affects Māori communities'.²⁵⁵ He explained that 'constitutional principles are not some amorphous abstract esoteric consideration ... [they] directly affect and impact our whānau, our ... whenua (land), wai (water), taonga'.²⁵⁶

Participants also addressed other inquiry themes, including electoral rights and systems, human rights, and international treaty-making – arguing that the rights and interests of Māori are not adequately reflected in these aspects of our current constitution. Ms Boasa-Dean labelled the current electoral system as 'structurally biased' because the underrepresentation of Māori in decision-making marginalises Māori voices.²⁵⁷ Both she and Mr Tana maintained that the electoral system must be reformed to ensure fair Māori representation 'at all levels of government'.²⁵⁸ Ms Boasa-Dean suggested reserved seats, Māori only electorates, and independent Māori parliaments.²⁵⁹ At the international level, speakers referenced human rights instruments including UNDRIP. Mr Tana argued the declaration 'must be fully incorporated into New Zealand's legal framework to ensure the protection of Māori rights', while Ms Boasa-Dean emphasised the need for reform to embed Māori collective rights into the human rights framework.²⁶⁰ Speakers also discussed international treaty-making processes, with Mr Tana arguing that Māori must have 'direct participation' in treaty negotiation, 'particularly those that

²⁴⁸ Wai 3300, #B21, p 3

²⁴⁹ Wai 3300, #4.1.10 p, 16

²⁵⁰ Wai 3300, #4.1.0, p 14; Wai 3300, #B23, p [2]

²⁵¹ Wai 3300, #4.1.10, p 14

²⁵² Wai 3300, #B23, p [2]

²⁵³ Wai 3300, #B30, p 6

²⁵⁴ Wai 3300, #4.1.16, p 18

²⁵⁵ Wai 3300, #4.1.10, p 17

²⁵⁶ Wai 3300, #4.1.10, p 17

²⁵⁷ Wai 3300, #B30, p 5

²⁵⁸ Wai 3300, #B30, p 5; Wai 300, #B21, p 3

²⁵⁹ Wai 3300, #B30, p 5

²⁶⁰ Wai 3300, #B21, p 3; Wai 3300, #B30, p 6. Article 1 of the UNDRIP states that indigenous peoples have the right to full enjoyment of all human rights and fundamental freedoms 'as a collective or as individuals', while the preamble reaffirms that 'indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples' – see United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007, A/RES/61/295.

affect mātauranga, kaitiakitanga, and economic development’.²⁶¹ Ms Boasa-Dean explained how the Crown’s exclusive authority over international treaties has excluded Māori from decision-making on matters that ‘deeply affect’ them including in ‘trade, biodiversity, intellectual property, and climate’.²⁶² She advised on mechanisms for remediation including Māori Foreign Policy Councils, Indigenous delegations, and veto rights, as ‘[t]ino [r]angatiratanga must not end at the border’.²⁶³

1.4.4 Wānanga Tuawhā – Whakatū Marae, Whakatū (Nelson)

(1) Tikanga Principles Foundational to Māori Constitutionalism

Participants at wānanga tuawhā discussed how tikanga Māori is itself a constitutional system. The Ngāti Koata panel of claimants explained that ‘constitutionalism is not an abstract or foreign concept’ – their ‘constitutional values flow from [their] tikanga’.²⁶⁴ The panel emphasised that ‘[t]ikanga is not just a cultural reference’, but a ‘source of legal and political authority’.²⁶⁵ The values which underpin the decision-making systems of Ngāti Koata, including principles of reciprocity, manaakitanga, and collective responsibility – as well as ‘obligations to whānau, whenua, moana, and taonga’ – are all constitutional in nature.²⁶⁶ Angeline Greensill (Tainui Awhiro) spoke of Aotearoa New Zealand’s ‘two constitutional systems: tikanga-based Māori law and Westminster-style parliamentary democracy’.²⁶⁷ She explained that ‘[t]rue constitutionalism’ means power is shared, tikanga embedded, and balance restored.²⁶⁸ Melanie McGregor (Ngāti Koata) discussed the practice of tikanga-based self-government in the context of her marae, which is shared between multiple iwi. She described moving to ‘a collaborative model where we would need to share our space, share our whakaaro kia kotahi ai tātou (ideas)’, and changing their constitution to ‘allow each iwi to have representation’.²⁶⁹ She referenced specific values of manaakitanga and aroha as the mechanisms that enable this model to work, bringing the iwi together in kotahitanga.²⁷⁰

Hapū and iwi authority was emphasised by participants as a principle which must be embedded within the constitutional framework of Aotearoa New Zealand. The Ngāti Koata panel referenced the text of te Tiriti, ‘which affirms the right of hapū and iwi to exercise authority

²⁶¹ Wai 3300, #B21, p 4

²⁶² Wai 3300, #B30, p 6

²⁶³ Wai 3300, #B30, p 7

²⁶⁴ Wai 3300, #B32, p 2. The Ngāti Koata panel of claimants consists of Caroline Palmer, Rāhui Katene, Ammon Katene, Anthony Patete, Laken Geiger, Rawenata Geiger, Rebecca Mason, Ihaka Griffin, and Melanie McGregor. Though the statement was authored by Caroline Palmer, the claimants presented the statement together at wānanga tuawhā. When referring to the statement of position, the claimants will be referred to as the ‘Ngāti Koata panel’. When referring to separate comments made during the wānanga as recorded in the transcript, reference will be made only to the individual speaker.

²⁶⁵ Wai 3300, #B32, p 2

²⁶⁶ Wai 3300, #B32, p 2

²⁶⁷ Wai 3300, #4.1.11, p 57. Mrs Greensill also affiliates to Ngāti Tahinga, Ngāti Koata, Ngāti Toa, Ngāti Te Ata, Waiohua, Ngāti Ruanui, Ngāti Porou and Te Riu o Waiapu.

²⁶⁸ Wai 3300, #4.1.11, p 55

²⁶⁹ Wai 3300, #4.1.11, p 24

²⁷⁰ Wai 3300, #4.1.11, p 25

within our own spheres'.²⁷¹ Mrs Greensill stated that legitimate '[c]onstitutionalism must begin with recognising the ongoing authority of hapū and iwi' as sovereign political entities.²⁷² She added that this meant 'resourcing hapū and iwi governance, recognising te reo Māori as a working and living language of law and government, and embedding marae-based, hapū-based and Māori community-based political authority'.²⁷³ Mrs Greensill noted the distinct roles of different social structures within Māoridom in self-government, asserting that decisions 'should primarily reside with smaller polities such as marae and hapū, and when necessary, iwi and waka confederations can be engaged to support the decisions of these polities'.²⁷⁴ She also cited historic examples of self-government within her iwi, explaining that Te Kauhanganui was a parallel system to the English Parliament – an annual gathering of rangatira where policy would be set and taken back to the various hapū.²⁷⁵ Mrs Greensill also emphasised that post-settlement governance entities do not hold the 'highest political authority in te ao Māori', and the Crown's recognition of them as such 'breaches the principle of tino rangatiratanga and is contrary to tikanga Māori'.²⁷⁶

Speakers at wānanga tuawhā shared that whakapapa, along with corresponding obligations held by tangata whenua to their tūpuna, underpin their understandings of constitutionalism. The Ngāti Koata panel described their constitution as a legacy inherited from their tūpuna, which they understand as not just 'power [but] ... justice, dignity, and the ability to live according to our own tikanga'.²⁷⁷ The panel shared that their 'tūpuna envisioned a future where Māori and Pākehā would live side by side ... respecting one another, and working together', and that while this vision has not been realised, as descendants they 'continue the kōrero and the kaupapa'.²⁷⁸ Caroline Palmer (Ngāti Koata) noted she carried 'the mātauranga, responsibilities, and aspirations of [her] tūpuna, who upheld mana motuhake long before the arrival of the Crown'.²⁷⁹ Mrs Greensill gave a recent example of her people manifesting the legacy of their tūpuna in the 1996 Declaration of Independence of Whaingaroa, which proclaimed Whaingaroa as a sovereign state and stated that local Māori would exercise their authority in a manner 'sourced in tikanga and historical practices of our tūpuna'. It also sought to establish relationships with other iwi in a spirit of 'equality and whakapapa'.²⁸⁰ She recalled the words

²⁷¹ Wai 3300, #B32, p 8

²⁷² Wai 3300, #4.1.11, pp 56

²⁷³ Wai 3300, #4.1.11, p 58

²⁷⁴ Wai 3300, #4.1.11, p 59

²⁷⁵ Wai 3300, #4.1.11, p 56. Te Kauhanganui was established in 1890 at Maungakawa, as a parliament for the Kiingitanga movement, with an upper house (Whare Ariki) and a lower house (Whare a Raro). It also had a council of ministers and 12 tribal representatives (the tekau-maa-rua), with the Māori King at its head – see Basil Keane, 'Kotahitanga – unity movements – Parliamentary unity movements, 1870 to 1900', Te Ara – the Encyclopaedia of New Zealand, 20 October 2015, p 3, <https://teara.govt.nz/en/kotahitanga-unity-movements/page-3>, accessed 16 January 2026.

²⁷⁶ Wai 3300, #4.1.11, p 60

²⁷⁷ Wai 3300, #B32, p 16

²⁷⁸ Wai 3300, #B32, p 16

²⁷⁹ Wai 3300, #4.1.11, p 7. Ms Palmer also affiliates to Ngāti Kuia and Ngāti Toa Rangatira.

²⁸⁰ Wai 3300, #4.1.11, pp 52-54. The Declaration of Whaingaroa (1996) proclaimed an independent state for Whaingaroa Māori, and was signed at the Whaingaroa Festival of Expression, 12 February 1996. Māori from across the motu attended, alongside indigenous peoples from overseas – including representatives from the International Indian Treaty Council – see 'Treaty Council News', International Indian Treaty Council, Spring 1996, <https://www.iitc.org/wp-content/uploads/Spring-1996.pdf>, accessed 23 December 2025.

of Dr Moana Jackson, who asserted that the ability to ‘restore, enhance, and advance whakapapa relationships’ was a key component of the constitutional authority held by rangatira prior to 1840.²⁸¹ Whakapapa was a consistent theme of the kōrero at wānanga tuawhā, with several members of the Ngāti Koata panel discussing how it is not adequately recognised in Aotearoa New Zealand’s citizenship processes, and can result in Māori being denied citizenship.²⁸² Ms Palmer explained that severing whakapapa relationships, including with place, can leave individuals without a tūrangawaewae.²⁸³ Mrs Greensill agreed, noting that ‘without land ... you’re just like a seagull floating in space’.²⁸⁴

(2) Wānanga Participants’ Discussion of Inquiry Themes

Participants at wānanga tuawhā argued that a renewed constitution must be built upon, and explicitly recognise, te Tiriti. Mrs Greensill described te Tiriti as ‘the foundational constitutional document of Aotearoa ... a sacrosanct marker of a relationship between two sovereign peoples ... [and] the only legitimate source of political authority’.²⁸⁵ She also argued that te Tiriti is the ‘first law’ of the country and needs to be entrenched as such, rather than being viewed as an ‘optional guiding principle’.²⁸⁶ The Ngāti Koata panel agreed, voicing concern that because te Tiriti ‘exists in rhetoric’, and is not directly enforceable in law, ‘Parliament could theoretically amend or repeal settlement legislation at any time, even without our consent’.²⁸⁷ Without constitutional protections, Ngāti Koata are subject to ‘ongoing uncertainty’ in terms of Treaty/te Tiriti redress and continual disrespect of mana.²⁸⁸ Dr Terence Lomax (Ngāpuhi) agreed that a ‘lack of a written constitution that has the force of higher law’ was a problem, noting that the Treaty/te Tiriti ‘has to be somehow embedded in the constitution’.²⁸⁹

Speakers at wānanga tuawhā also contested the Crown’s sovereignty over Māori, arguing that the constitution must recognise Māori sovereignty, tino rangatiratanga, and mana motuhake. Mrs Greensill explained that Māori sovereignty did not ‘disappear in 1840 [b]ecause it was never ceded’ – a statement supported by the Ngāti Koata panel.²⁹⁰ Mrs Greensill described rangatiratanga as ‘inherent and inalienable’.²⁹¹ In a similar vein, the Ngāti Koata panel argued that ‘Māori constitutional authority predates the Crown’, noting that Māori had their own ‘functioning constitutional systems’ that governed people and protected resources.²⁹² They

²⁸¹ Wai 3300, #B33, p 3

²⁸² Wai 3300, #4.1.11, pp 17-22. We note that the Tribunal has recently reported on these issues – see Waitangi Tribunal, *He Tangata, He Whenua: The Citizenship Report – Pre-publication Version* (Wellington: Waitangi Tribunal, 2025).

²⁸³ Wai 3300, #4.1.11, p 17. Mead defines tūrangawaewae as ‘a place for the feet to stand; where one’s rights are not challenged, where one feels secure and at home’ – and explains that the land and environment people live in serves as ‘the foundation of their view of the world, the centre of their universe and the basis of their identity as citizens or members of a social unit’ – see Mead, *Tikanga Māori*, p 288.

²⁸⁴ Wai 3300, #4.1.11, p 59

²⁸⁵ Wai 3300, #4.1.11, p 54; Wai 3300, #B33, p 4

²⁸⁶ Wai 3300, #4.1.11, p 61

²⁸⁷ Wai 3300, #B32, p 5

²⁸⁸ Wai 3300, #B32, p 5

²⁸⁹ Wai 3300, #4.1.11, p 28. Dr Lomax also affiliates to Ngāti Rangī and Ngāti Korohue.

²⁹⁰ Wai 3300, #4.1.11, p 56; Wai 3300, #B32, p 3

²⁹¹ Wai 3300, #4.1.11, p 54

²⁹² Wai 3300, #B32, p 3

asserted that tino rangatiratanga is a ‘birthright, inherited through whakapapa’, characterised by the ‘exercise of authority in governance, law, language, and life’, while mana motuhake is the foundational principle underpinning tino rangatiratanga: ‘the deep, inherent right of Māori to exist as a people and make decisions for themselves’.²⁹³ Dr Lomax identified the ‘fundamental issue ... that Parliament has assumed sovereignty for itself without permission from either the Crown or Māori’.²⁹⁴ The Ngāti Koata panel explained how they experience the Crown’s ‘unilateral imposition of decision-making’ in their rohe, contrary to article 2 of te Tiriti, noting that Parliament, with its ‘unconstrained power’ can choose to ignore the guarantees of te Tiriti at any time.²⁹⁵ Additionally, they noted that local government frameworks do not respect iwi or hapū as political entities.²⁹⁶ Ngāti Koata input into lawmaking is ‘often limited to making submissions, not co-drafting or co-deciding’, the panel said.²⁹⁷ The Ngāti Koata panel stated that even if such input is received, ‘[t]here remains no guarantee that Crown or council decisions will reflect or protect Ngāti Koata cultural practices and identity’.²⁹⁸

Participants at the fourth wānanga shared their desire for a renewed constitution that provides a framework which recognises Māori and the Crown as constitutionally equal, in a dual governance arrangement. The Ngāti Koata panel stated that their tūpuna signed te Tiriti to ‘establish a relationship between equals’ and was based on a relationship of ‘mutual respect, co-governance, and good faith between Māori and the Crown’.²⁹⁹ Similarly, Mrs Greensill emphasised that te Tiriti ‘established parallel spheres of authority ... co-existing, not hierarchical, jurisdictions’.³⁰⁰ Ms Palmer emphasised that any such relationship is undermined because the current constitution denies both tino rangatiratanga and mana motuhake.³⁰¹ The Ngāti Koata panel echoed this in their kōrero, explaining that Parliament’s ability to act unilaterally has created ‘a one-sided relationship’.³⁰² Mrs Greensill claimed the Crown uses “‘partnership” language’, but pointed out that ‘partnership is not constitutional equality if one partner writes the rules, controls the budget, and can legislate away Māori rights’.³⁰³ She argued that the ‘tyranny of the majority that is demonstrated by parliamentary democracy cannot be accepted’ in any te Tiriti-aligned constitutional framework – there must be an ‘entrenched protection for Māori authority that cannot be unilaterally overridden by Parliament’.³⁰⁴

²⁹³ Wai 3300, #B32, p 3

²⁹⁴ Wai 3300, #B31, p 1

²⁹⁵ Wai 3300, #B32, pp 4, 9

²⁹⁶ Wai 3300, #B32, p 9

²⁹⁷ Wai 3300, #B32, p 5

²⁹⁸ Wai 3300, #B32, p 12

²⁹⁹ Wai 3300, #B32, pp 3-4

³⁰⁰ Wai 3300, #4.1.11, p 56

³⁰¹ Wai 3300, #4.1.11, p 10

³⁰² Wai 3300, #B32, p 4

³⁰³ Wai 3300, #4.1.11, p 57

³⁰⁴ Wai 3300, #4.1.11, p 58. The term ‘tyranny of the majority’ articulates the risks of majoritarian decision-making in a democracy, where the interests of the dominant voting group could lead to policies that harm or disadvantage minority groups within the voting population. Sir Kenneth Keith’s essay, that is in the introduction to the Cabinet manual, ‘On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government’, states that ‘those with the authority to make majority decisions often themselves recognise that their authority is limited [...] by the Treaty of Waitangi, by international obligations and by ideas

Wānanga participants provided several ideas on what increased Māori representation in such a Treaty/te Tiriti-consistent constitutional framework could look like. Mrs Greensill noted any change needed to ‘be mindful of not making Māori fit better into the current constitutional arrangements’ but instead seek transformation which reflects the distinct spheres of Māori and Crown authority.³⁰⁵ Dr Lomax expressed a need for a constitutional body that acts as a constraint on Parliament and ensure it is answerable to ‘the people’.³⁰⁶ Ammon Katene (Ngāti Koata) suggested a bicameral system as a way to ensure fair decision-making, with ‘a senate...made up of iwi representatives that works in partnership with the House of Representatives.’³⁰⁷ Rahui Katene (Ngāti Koata) explained that Māori would need to come together to decide what this body would look like, who is represented and establish kawa (protocols) for the body.³⁰⁸ Dr Lomax gave logistical recommendations for such a system, proposing that this Upper House maintain 50:50 representation of Māori and non-Māori, and contain members with skills in science, tikanga, and law. He also proposed a methodology for selecting hapū representatives within such a body.³⁰⁹

Participants also addressed the intersection between tino rangatiratanga and international law. Rahui Katene argued that during treaty-making, tangata whenua ‘need to be involved in those negotiations’ – especially where the cultural and intellectual property rights of Māori are involved.³¹⁰ The Ngāti Koata panel described this exclusion from international trade and investment treaty negotiation as an ‘[e]rosion of tino rangatiratanga’.³¹¹ Multiple speakers at the wānanga also said that UNDRIP reinforced their Treaty/te Tiriti rights, with Dr Lomax noting that under UNDRIP, Parliament should not be permitted to force Māori to abandon their language and culture, or to give up their land.³¹² The Ngāti Koata panel referenced the article of UNDRIP which affirms the right of indigenous peoples to self-determination, arguing that ‘[t]he Crown has failed to recognise Ngāti Koata’s tino rangatiratanga and inherent right to govern our own affairs’.³¹³ The Ngāti Koata panel also noted that the iwi ‘has been excluded from genuine co-decision-making at national and local levels’, in areas like education, health, and environmental matters – in contravention of article 18 of UNDRIP.³¹⁴

of fairness and justice’ – see Cabinet Office, *Cabinet Manual 2023* (Wellington: Department of Prime Minister and Cabinet, 2023), p 5.

³⁰⁵ Wai 3300, #4.1.11, p 58

³⁰⁶ Wai 3300, #4.1.11, pp 28-29

³⁰⁷ Wai 3300, #4.1.11, p 14

³⁰⁸ Wai 3300, #4.1.11, p 21. Mr Katene also affiliates to Ngāti Toa, Ngāti Kuia and Kai Tahu.

³⁰⁹ Wai 3300, #B31, pp 4-5

³¹⁰ Wai 3300, #4.1.11, p 20. Mr Katene’s statement is supported by the findings of the Wai 262 Tribunal, who recommended that when making international instruments, the Crown provide for engagement with Māori beyond consultation (i.e. negotiation), depending on the nature and strength of the Māori interest at play – see Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington : Legislation Direct, 2011), pp 239-240.

³¹¹ Wai 3300, #B32, p 14

³¹² Wai 3300, #4.1.11, p 27

³¹³ Wai 3300, #B32, p 11

³¹⁴ Wai 3300, #B32, p 12. Article 18 of the UNDRIP provides that ‘[i]ndigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions’ – see United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007, A/RES/61/295.

1.4.5 Wānanga Tuarima – St Michael’s Church and Marae, Te Papaioea (Palmerston North)

(1) Tikanga Principles Foundational to Māori Constitutionalism

Participants at wānanga tuarima, like wānanga tuawhā, asserted that tikanga is the foundation of the Māori constitutional and legal order and should be recognised as such. Dr Rāpata Wiri (Ngāti Ruapani ki Waikaremoana) described tikanga as ‘Māori laws, customs, and protocols’ and ‘an essential foundation of Māori life’.³¹⁵ Heitia Raureti (Ngāti Kapu) discussed how tikanga is explicitly constitutional in nature, describing its principles not as ‘mere cultural aspirations but a binding constitutional order’, one that predates colonisation and continues to ‘govern our collective life’.³¹⁶ Te Urunga Aroha Evelyn Kereopa (Te Ihingārangi) shared similar points, explaining that tikanga is rational, restorative, and intergenerational in nature and ‘precedes and outlasts colonial law’.³¹⁷ Mr Raureti explained that, as ‘the first law of this land’, tikanga guides his hapū Ngāti Kapu in all enterprise, including ‘the maintenance of whānau, whare, and whenua’.³¹⁸ Mr Raureti further asserted that the status of tikanga as law must be recognised and not marginalised by te ture Pākehā. He said that tikanga must be given effect ‘as a primary legal authority in matters concerning Māori lands, taonga, and communities’, and given equal status to both statute and common law.³¹⁹ Tahuri o Te Rangi Tait (Ngāti Ruapani ki Waikaremoana) agreed, explaining that ‘the only way Māori and Pākehā can stand together on equal ground’ is to ensure that tikanga sits, at least, ‘equally with Pākehā law’.³²⁰ The aspirations of Florence Titihuia Amohia and Nyree Nikora Hurst’s (Ngāti Hāua) for constitutional change chimed with these ideas. They argued that ‘too long we have spoken about the need to comply with te Tiriti/the Treaty’, and it is time to ‘move forward and start exercising Tikanga’.³²¹

Speakers at the wānanga discussed the foundational nature of whakapapa to Māori understandings of constitutionalism. Ms Kereopa set the tone, grounding her people’s participation in the inquiry in tikanga and whakapapa, stating that ‘Matangireia is not a courtroom, it is a house of constitutional transformation. Our walls are whakapapa, our roof is tikanga, our floor is mana motuhake ... we come to uphold whakapapa, restore visibility, and reclaim space for our whānau’.³²² This was bolstered by Tamati Durie-McGrath (Ngāti Raukawa ki te Tonga), who explained that Māori constitutionalism is held through social connections – ‘[w]e do not separate governance from relationships - in a real sense, our constitution is a living whakapapa’.³²³ He emphasised that ‘knowledge flows from generation

³¹⁵ Wai 3300, #B36, p 3. Dr Wiri also affiliates to Ngāi Tūhoe and Te Arawa.

³¹⁶ Wai 3300, #B34, p 6

³¹⁷ Wai 3300, #B42, p 2. Ms Kereopa also affiliates to Ngāti Maniapoto.

³¹⁸ Wai 3300, #4.1.12, p 76

³¹⁹ Wai 3300, #B34, p 6

³²⁰ Wai 3300, #B37(a), pp 3-4. Mr Tait also affiliates to Te Arawa and Tūhoe.

³²¹ Wai 3300, #B39, p 7. Ms Hurst also affiliates to Ngāti Hauaroa.

³²² Wai 3300, #4.1.12, p 63

³²³ Wai 3300, #4.1.12, p 59. Mr Durie-McGrath also affiliates to Ngāti Kauwhata and Rangitāne. We note that at wānanga tuaono Mr Durie-McGrath presented twice – once on behalf of the NZMC, and once on behalf of himself as a rangatahi. Here, he is speaking on his own behalf.

to generation’, in a deliberate transmission that is constitutional in itself.³²⁴ Ms Hurst’s kōrero evidenced this by explaining that ‘[t]ikanga is what we were taught by our elders, about what was right, and what was not right’.³²⁵ She explained how relationships between people and the environment were also an important factor in her iwi’s decision-making practice – citing the whakataukī: ‘toituu te marae o Taane, toituu te marae o Tangaroa, toituu te iwi’.³²⁶ Ms Kereopa discussed how governance, decision-making, and leadership occurs through ‘whakapapa, not electoral cycles’.³²⁷ She explained that rangatira trustees and associates today continue to be chosen for their whakapapa, lived experience, and mana, ensuring accountability through ‘intergenerational relationships, grounded in tikanga, to uphold, enhance, and serve the collective wellbeing of whānau, whenua, and communities’.³²⁸ James Brett Harold (Ngāti Kahungunu) supported this by noting that ‘whakapapa and bloodlines ... are fundamental to Māori social structure and leadership’.³²⁹ He suggested that Crown mandates do not acknowledge whakapapa appropriately, as not ‘all individuals possess the rights and responsibilities of a chief’.³³⁰

Another theme of the kōrero at wānanga tuarima was the way tikanga is contextual and functions differently across iwi, hapū, and whānau. Dr Wiri used a whakataukī to stress this idea: “nōku tōku marae, nāku āku tikanga” ... If the marae is my marae, then I control the tikanga.’³³¹ Mr Harold agreed, stating ‘[o]ne hapū or iwi cannot impose its Tikanga upon another.’³³² Mr Harold drew on his personal experience, arguing that the Crown had failed to recognise his family’s tikanga to elect one whānau representative in all areas.³³³ Dr Wiri advocated for tikanga to be formally incorporated into the constitution, and for ‘hapū-specific tikanga [to be] respected’, referring to his people’s experience of the Crown ‘allowing Tūhoe to impose their tikanga on Ruapani in Treaty settlement processes’.³³⁴ Mr Raureti provided an example of the specific practice of tikanga within Ngāti Kapu with reference to mana wahine, explaining that the concept is central to their constitutional practice, and that wāhine of Ngāti Kapu have historically carried authority in land, spiritual life, and whānau governance.³³⁵ Mr Harold’s written statement cited the Crown’s failings to recognise the tikanga of whānau groupings, and also cited the importance of personal tikanga and bodily self-determination

³²⁴ Wai 3300, #4.1.12, p 59

³²⁵ Wai 3300, #B39, p 4

³²⁶ Wai 3300, #B39, p 4. This whakataukī translates to ‘preserve the marae of Taane, preserve the marae of Tangaroa, preserve the iwi’. Ms Hurst explained that this whakataukī ‘supports the Tikanga of our iwi that if you look after your taonga, whether it be the whenua or the water source, you are also looking after your people and all manuhiri to your whenua.’

³²⁷ Wai 3300, #B42, p 2

³²⁸ Wai 3300, #4.1.12, p 64

³²⁹ Wai 3300, #B41, p 3. Mr Harold also affiliates to Muaūpoko, Ngāti Pohoi, Ngāti Tu, Ngāti Hine, and Ngāti Te Au.

³³⁰ Wai 3300, #B41, p 3

³³¹ Wai 3300, #4.1.12, p 7

³³² Wai 3300, #B41, p 4

³³³ Wai 3300, #B41, p 4

³³⁴ Wai 3300, #B36 p 3

³³⁵ Wai 3300, #B34, p 5

being respected in the context of the COVID-19 vaccine requirements.³³⁶ Ms Amohia and Ms Hurst said that the practice of tikanga should be a fundamental human right for all Māori.³³⁷

(2) Wānanga Participants' Discussion of Inquiry Themes

Participants at wānanga tuarima discussed tino rangatiratanga and mana motuhake as related but distinct concepts. Dr Wiri defined tino rangatiratanga as 'paramount chieftainship' and said that te Tiriti o Waitangi guaranteed Māori authority and self-determination.³³⁸ Mr Tait described it as being about 'our right to stand on our own mana, [and] make our own decisions'.³³⁹ Mr Raureti said that for Ngāti Kapu, tino rangatiratanga means 'the right and responsibility to exercise authority over our whenua, taonga, reo, tikanga, and people as guaranteed in Article 2 of te Tiriti'.³⁴⁰ Dianne (Di) Rita Rump (Ngāi Tara o Muaūpoko o Te Ika a Māui) interpreted tino rangatiratanga as 'absolute sovereignty'.³⁴¹ Mana motuhake was similarly described by Mr Raureti as authority and independence – but that which is 'inherent', derived from tūpuna, and 'sustained through whakapapa, tikanga, and whenua'.³⁴² Mr Tait agreed that mana motuhake was primarily derived from whakapapa.³⁴³ Dr Wiri agreed, adding that mana motuhake comes with the right to not be interfered with 'by another iwi, the Crown, or other ethnic groups'.³⁴⁴ He noted that the term can be interpreted to mean 'independent mana'.³⁴⁵ Mr Harold stated that both mana motuhake and tino rangatiratanga carry the same importance and 'great constitutional significance'.³⁴⁶ Mr Harold said that his people continue to uphold their mana motuhake through tikanga, whakapapa, and te reo, despite Crown actions, but that it should be restored as it 'upholds the dignity, autonomy, and wellbeing of all Māori, now and in the future'.³⁴⁷ He explained that constitutional recognition of mana motuhake requires direct acknowledgement of hapū authority.³⁴⁸ Mr Tait made similar points in regard to tino rangatiratanga, 'if [it] is to be honoured, it has to be recognised in law, not as a token, but as the actual authority of hapū, and iwi'.³⁴⁹

Speakers challenged the Crown's assertion of constitutional legitimacy and exercise of kāwanatanga. They also argued that the supremacy of Parliament is inconsistent with the Treaty/te Tiriti. Ms Kereopa argued that the current system 'lacks [constitutional] legitimacy

³³⁶ Wai 3300, #B41, p 4; Wai 3300, #4.1.12, p 36. Mead discusses 'te tapu o te tangata' or the 'sanctity of the person', including the tapu of the body, personal space, and blood, describing one's personal tapu as 'the sacred life force which supports the mauri' – see Mead, *Tikanga Māori*, pp 45-50.

³³⁷ Wai 3300, #B39, p 6

³³⁸ Wai 3300, #B36, p 2

³³⁹ Wai 3300, #B37(a), p 3

³⁴⁰ Wai 3300, #B34, p 4

³⁴¹ Wai 3300, #B35, p 4. Ms Rump also affiliates to the sovereign nation of Muaūpoko.

³⁴² Wai 3300, #B34, p 3

³⁴³ Wai 3300, #B37(a), p 2

³⁴⁴ Wai 3300, #B36, p 2

³⁴⁵ Wai 3300, #4.1.12, pp 21-22

³⁴⁶ Wai 3300, #B41, p 2

³⁴⁷ Wai 3300, #B41, p 3

³⁴⁸ Wai 3300, #B41, p 2

³⁴⁹ Wai 3300, #B37(a), p 3

where it fails to uphold Te Tiriti o Waitangi and the inherent rights of tangata whenua'.³⁵⁰ Both Dr Wiri and Mr Raureti rejected the constitutional legitimacy of 'unilateral' Crown sovereignty.³⁵¹ Ms Amohia and Ms Hurst argued that the Crown has unilaterally dictated constitutional arrangements in violation of the Treaty/te Tiriti, and like others, argued that te Tiriti should be the basis of an 'entrenched' constitution.³⁵² Participants discussed how kāwanatanga was intended to operate under te Tiriti – that is as administrative support and limited government, not as overriding authority.³⁵³ In contravention of this meaning, Mr Harold explained, the Crown has used 'kāwanatanga to impose its laws and institutions over Māori'.³⁵⁴ Mr Raureti highlighted unchecked parliamentary sovereignty as 'fundamentally inconsistent with te Tiriti'.³⁵⁵ Dr Wiri emphasised the negative impacts of parliamentary supremacy with reference to parliamentary urgency, which allows laws that disproportionately impact Māori to be passed without consultation.³⁵⁶ Ms Amohia and Ms Hurst pointed out that despite agreeing to a partnership in the Treaty/te Tiriti, the Crown had offered no opportunity for Māori to co-design Parliament.³⁵⁷ Mr Harold argued that the Crown should not have the right to dictate to Māori, 'especially when their decisions continue to hurt people, and undermine local Tikanga and the autonomy of our peoples'.³⁵⁸ Ms Amohia and Ms Hurst contrasted the traditional role of rangatira with the limited agency provided to tribal leaders in a Crown-dominated constitutional framework; 'a rangatira needs to be able to take their people into battle and have the power to protect their iwi ... [t]oday, that is now absent. It is a person who has quietly and obligingly sat on Crown controlled committees'.³⁵⁹ Mr Raureti noted the support of Ngāti Kapu for 'entrenched constitutional mechanisms' to invalidate laws inconsistent with te Tiriti, a proposal supported by several other speakers.³⁶⁰ Mr Raureti also argued law inconsistent with tikanga should be struck down.³⁶¹ In a similar vein, Ms Kereopa argued a te Tiriti-based constitution should embed 'tikanga-based law making'.³⁶²

Participants provided several ideas on future dual governance arrangements, whereby Crown and Māori authority could be balanced in a reformed constitutional framework. Dr Wiri believed this possible if government was reshaped in light of the principles of 'justice, honesty, and genuine partnership between the Crown and Māori'.³⁶³ Ms Rump saw a 'wonderful opportunity' at this point in time to create 'a stronger and more united constitutional

³⁵⁰ Wai 3300, #B42, p 2

³⁵¹ Wai 3300, #B34, p 6; Wai 3300, #B36, p 4

³⁵² Wai 3300, #B39, pp 2-3; Wai 3300, #B34, p 7; Wai 3300, #B41, p 1

³⁵³ Wai 3300, #B42, p 2; Wai 3300, #4.1.12, p 64; Wai 3300, #B34, p 6

³⁵⁴ Wai 3300, #B41, p 4

³⁵⁵ Wai 3300, #B34, p 7

³⁵⁶ Wai 3300, #B36, p 5. Sir Geoffrey Palmer has recently criticised the government passing laws increasingly under urgency which allows it to bypass consultation stages – see Nine To Noon, 'Too many laws passing without 'proper scrutiny', Geoffrey Palmer says', Radio New Zealand, <https://www.rnz.co.nz/news/political/581193/too-many-laws-passing-without-proper-scrutiny-geoffrey-palmer-says>, accessed 19 February 2026

³⁵⁷ Wai 3300, #B39, p 5

³⁵⁸ Wai 3300, #B41, p 4

³⁵⁹ Wai 3300, #B39, p 1

³⁶⁰ Wai 3300, #B34, p 7; Wai 3300, #B41, p 1; Wai 3300, #B39, pp 1-2

³⁶¹ Wai 3300, #B34, p 7

³⁶² Wai 3300, #B42, p 2

³⁶³ Wai 3300, #4.1.12, p 6

structure’.³⁶⁴ She recommended adopting shared rights and responsibilities models such as co-governance to ‘build a unique Aotearoa approach’.³⁶⁵ Others also advocated for dual governance, including Ngāti Kapu, who argued tino rangatiratanga and kāwanatanga should have ‘parallel and equal authority’ and supported a ‘dual-house system’.³⁶⁶ Mr Durie-McGrath emphasised that the country’s constitution should reflect the values of the people it serves – namely, both Pākehā and Māori ideas of constitutionality.³⁶⁷ He argued that an important step towards constitutional reform or ‘transformation’ is to educate both Māori and Pākehā on constitutional matters.³⁶⁸ Ms Kereopa also advocated for transformational reform – Māori do not want ‘inclusion in a broken system’ but rather reform that reclaims constitutional space for Māori and non-Māori ‘through Pou Tikanga and Pou Ture’, creating a constitution where ‘whakapapa, whenua and wellbeing are the pillars of legitimacy’.³⁶⁹ Participants noted reform needed to account for the autonomy of hapū and iwi – with Dr Wiri calling for recognition of iwi as ‘independent, self-determining peoples’, though he did also support the mandate of national bodies like the New Zealand Māori Council, the Kiingitanga, and the Iwi Chairs Forum.³⁷⁰ Likewise, Mr Raureti advocated for constitutional arrangements that guarantee ‘meaningful autonomy’ to allow hapū to ‘sustain [them]selves independently’.³⁷¹

Speakers at the fifth wānanga discussed the electoral system, asserting that it does not allow for adequate Māori representation. Ms Amohia and Ms Hurst asserted that the electoral system was established to displace Māori, explaining how historically the right to vote was tied to property ownership, while today Māori are disadvantaged as a minority in the voting population.³⁷² Ms Kereopa commented that ‘Māori electoral participation is constrained by colonial structures,’ and Mr Raureti, noted that ‘[t]he current electoral system marginalises Māori voices’.³⁷³ Dr Wiri described Māori seats as ‘important [but] insufficient to ensure genuine Māori participation in governance’, an opinion shared by Mr Raureti, who argued that the seats do not reflect tino rangatiratanga.³⁷⁴ Mr Raureti said Ngāti Kapu supported reforms toward hapū or iwi-based electoral representation, ‘ensuring political voice is grounded in whakapapa and rangatiratanga’, while Ms Kereopa argued there should be dual electoral systems that uphold ‘both whakapapa and democratic choice’.³⁷⁵

Wānanga tuarima participants criticised local government frameworks in their kōrero, arguing reform was needed to make them Treaty/te Tiriti-consistent. Both Dr Wiri and Mr Harold

³⁶⁴ Wai 3300, #4.1.12, pp 68-69

³⁶⁵ Wai 3300, #4.1.12, p 68; Wai 3300, #B35, p 3

³⁶⁶ Wai 3300, #B34, pp 5, 7

³⁶⁷ Wai 3300, #4.1.12, p 59

³⁶⁸ Wai 3300, #4.1.12, pp 59, 61

³⁶⁹ Wai 3300, #B42, p 3

³⁷⁰ Wai 3300, #B36, pp 3, 7

³⁷¹ Wai 3300, #B34, p 5

³⁷² Wai 3300, #B39, p 5

³⁷³ Wai 3300, #B42, p 2; Wai 3300, #B34, p 7

³⁷⁴ Wai 3300, #B36, p 5; Wai 3300, #B34, p 7. The Māori electoral option was introduced in 1975, allowing those of Māori descent to vote in Māori electorates, as opposed to general electorates, should they wish to. Today there are seven Māori seats in Parliament which present the seven Māori electorates across the motu – see Manatū Taonga – Ministry of Culture and Heritage, ‘Māori and the vote – Change in the 20th century’, New Zealand History, <https://nzhistory.govt.nz/page/change-20th-century>, accessed 19 February 2026.

³⁷⁵ Wai 3300, #B34, p 7; Wai 3300, #B42, p 2

asserted that the Crown is ‘ultimately responsible’ for the powers it delegates to be exercised by local government.³⁷⁶ Mr Harold argued the exercise of these delegated powers should therefore be subject to the Crown’s Treaty/te Tiriti obligations.³⁷⁷ Ms Rump also believed local government should be directly subject to the Treaty/te Tiriti, as Māori are impacted daily by local government decisions, ‘just as much, if not more than central government’.³⁷⁸ Participants noted that local governments are responsible for managing land and resources, yet often fail to uphold their te Tiriti/Treaty obligations. Multiple participants gave examples of local government conduct which they perceived as Treaty-inconsistent – including unjust rating of Māori land and disregard of tikanga in environmental matters.³⁷⁹ Mr Raureti called for Treaty/te Tiriti-based constitutional reform involving Māori representation in local government and partnership with iwi and hapū.³⁸⁰ He expressed a need for localised hapū authority to be restored as Māori wards were ‘insufficient’ – mana whenua should have ‘equal authority in planning and resource management’, and tikanga should be embedded in decision-making processes.³⁸¹

During their kōrero, participants also placed human rights, citizenship rights, and international treaty-making within a Treaty/te Tiriti context. Mr Raureti said te Tiriti was ‘the primary human rights instrument in Aotearoa’.³⁸² Ms Kereopa pointed out the distinction between individual rights affirmed in the New Zealand Bill of Rights Act (NZBORA) and collective rights affirmed in the Treaty/te Tiriti, calling for a reinterpretation of human rights through this collective lens so as ‘to protect our authority as whānau, hapū and iwi’.³⁸³ Dr Wiri noted that international law has failed to protect Māori te Tiriti rights – reform is needed so that international instruments such as UNDRIP are ‘fully incorporated into domestic law and applied in all Crown decision-making’.³⁸⁴ Ms Amohia and Ms Hurst also suggested that the NZBORA, the Human Rights Act 1993, and the UNDRIP should be ‘entrenched as higher law’, alongside the Treaty/te Tiriti, and ‘the Courts given the power to strike down legislation that is contrary to these’.³⁸⁵ Mr Raureti expanded on this, arguing that ‘a Tiriti-based constitution must provide mechanisms for Māori to seek international remedies when domestic institutions fail to uphold our rights’.³⁸⁶ In terms of citizenship rights, claimants argued that the promise of equal citizenship contained in article 3 of te Tiriti has never been fully realised.³⁸⁷ Dr Wiri said that ‘[t]he Crown’s interpretation of citizenship has historically sought to

³⁷⁶ Wai 3300, #B36, p 5; Wai 3300, #B41, p 5

³⁷⁷ Wai 3300, #B41, p 5; Wai 3300, #B36, p 5. Dr Wiri also used these words.

³⁷⁸ Wai 3300, #B35, p 6

³⁷⁹ Wai 3300, #B42, p 3; Wai 3300, #B36, p 5; Wai 3300, #B41, p 5; Wai 3300, #B41, p 5; Wai 3300, #B39, pp 4-6; Wai 3300, #4.1.12, p 69

³⁸⁰ Wai 3300, #B36, p 5

³⁸¹ Wai 3300, #B34, p 8. Māori wards and constituencies allow for specific Māori representation on local councils and were the subject of a recent urgent Waitangi Tribunal inquiry, where that panel noted that the guarantee of tino rangatiratanga also guarantees Māori ‘the right to be represented and to participate in decision-making’ at a local government level – see Waitangi Tribunal, *Report on the Māori Wards and Constituencies Urgent Inquiry* (Wellington: Blue Star Group, 2025), p 57.

³⁸² Wai 3300, #B34, p 8

³⁸³ Wai 3300, #4.1.12, pp 64-65

³⁸⁴ Wai 3300, #B36, p 5

³⁸⁵ Wai 3300, #B39, p 6

³⁸⁶ Wai 3300, #B34, p 8

³⁸⁷ Wai 3300, #B34, p 8; Wai 3300, #B41, p 6

assimilate Māori and erode our distinct status as tangata whenua'.³⁸⁸ Both Dr Wiri and Mr Raureti stressed that citizenship must not come at the expense of Māori identity, sovereignty, or tino rangatiratanga.³⁸⁹

Participants also discussed international treaty-making. Ms Kereopa explained that the right of Māori to make international treaties was never ceded.³⁹⁰ Mr Raureti noted that Māori nationhood was internationally recognised through He Whakaputanga, in what he called a 'continuum of indigenous sovereignty ... which has never been extinguished'.³⁹¹ Dr Wiri asserted that 'Māori must have direct participation in negotiating and determining international treaties that impact our rights'.³⁹² Ms Kereopa emphasised that whānau and hapū must be recognised as legitimate authorities in treaty negotiations, not just stakeholders, and resourced as such.³⁹³ Ms Amohia and Ms Hurst referred to the Trans Pacific Partnership agreement, calling it 'unacceptable' that the Crown makes decisions about Māori resources in the international sphere without giving Māori 'a seat at the table'.³⁹⁴ Dr Wiri suggested that this 'exclusive control' over international treaty-making constitutes a Treaty/te Tiriti breach as it prevents Māori from participating in decisions that affect sovereignty, mātauranga, and kaitiakitanga.³⁹⁵ Such breaches, argued Mr Raureti, 'engage not only domestic but international obligations'.³⁹⁶

1.4.6 Wānanga Tuaono – Te Tii Marae, Waitangi

(1) Tikanga Principles Foundational to Māori Constitutionalism

The kōrero across this four-day wānanga, like at wānanga tuawhā and tuarima, emphasised that tikanga Māori is a constitutional system, and that any constitutional reform must recognise it as such. Multiple speakers described tikanga as the first law of Aotearoa and asserted that it must be given a special place within the constitution.³⁹⁷ Rhonda Aorangi Kawiti (Ngāti Kororā) described tikanga as a 'constitutional gate' requiring all matters to be decided in ways that are fair and 'spiritually sound'.³⁹⁸ Rosaria Hotere (Ngāpuhi) added that Māori have obligations to

³⁸⁸ Wai 3300, #B36, p 6

³⁸⁹ Wai 3300, #B41, p 6; Wai 3300, #B36, p 6

³⁹⁰ Wai 3300, #4.1.12, p 65

³⁹¹ Wai 3300, #B34, pp 3-4. In its analysis of the texts of He Whakaputanga, the Te Pāparahi o Te Raki Tribunal commented that the document's 'assertions of mana, rangatiratanga and kīngitanga undoubtedly amounted to an assertion of [the signing rangatira's] authority to make and enforce law, and therefore of their sovereignty', but notably did not find that the text created a 'single state' or nationhood – see Waitangi Tribunal, *Report on He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Pāparahi o Te Raki Inquiry* (Lower Hutt: Legislation Direct, 2014), p 203.

³⁹² Wai 3300, #B36, p 6

³⁹³ Wai 3300, #B42, p 3

³⁹⁴ Wai 3300, #B39, p 7

³⁹⁵ Wai 3300, #B36, p 6

³⁹⁶ Wai 3300, #B34, p 8

³⁹⁷ Wai 3300, #B48, p 4; Wai 3300, #B58, p 2, Wai 3300, #B52, p5; Wai 3300, #B53, p 3; Wai 3300, #B67, p 4; Wai 3300, #B61, p 5; Wai 3300, #B71, p [3]; Wai 3300, #B75, p 6; Wai 3300, #B76, p 6; Wai 3300, #B74, p 2; 4.1.13, pp 88, 108, 132, 146, 169, 199, 218, 319

³⁹⁸ Wai 3300, #B78, p 3; Wai 3300, #4.1.13, p 144. Ms Kawiti also affiliates to Ngāpuhi, Te Waiariki, Ngāti Wai, and Ngāi Tūhoe.

whānau, whenua, and te taiao which ‘are all constitutional in nature’.³⁹⁹ Owen Hape Kingi (Te Tahawai) emphasised that tikanga functioned as a constitutional system ‘long before tauwi turned up’,⁴⁰⁰ and Paula Ormsby (Apakura) explained that hapū have always lived ‘under our own constitutional systems...guided by tikanga, kawa, and pūrākau’.⁴⁰¹ The enforceability and applicability of tikanga continues today – as Waihoroi Shortland (Ngāti Hine) explained, ‘tikanga are not theoretical or abstract, they are living and will endure’.⁴⁰² Several claimants shared their ideas for how constitutional reform should best acknowledge and affirm tikanga Māori. Arthur Mahanga (Ngāti Korora) asserted that tikanga should be given ‘statutory recognition’, with specific protections and enforcement mechanisms established to ensure tikanga is observed within civil and administrative contexts.⁴⁰³ Claimants from Ngāti Ruamahue argued that tikanga Māori must be recognised on the same level as Pākehā law, and that, in matters directly relating to ‘our whenua and our cultural survival [it] must be determinative.’⁴⁰⁴ Waimarie Kingi (Ngāti Kahu o Torongare me Te Parawhau) agreed, noting the Supreme Court’s commentary that ‘in some cases [tikanga] may be the “controlling law”’.⁴⁰⁵ Kōrero also touched on the dynamic nature of tikanga, and the complexities surrounding how the constitution could best uphold tikanga Māori. Professor Margaret Mutu (Ngāti Kahu) noted that each tikanga is best understood ‘in the law and language of the tūpuna’, which each individual hapū will have their own specific understanding of.⁴⁰⁶ Mr Shortland shared that, before deciding which tikanga to apply to a certain situation, hapū members will ‘wānanga until there is consensus’.⁴⁰⁷ Other speakers asserted that it would be inappropriate to legislate or write down the specifics of tikanga.⁴⁰⁸ Instead, each hapū must be allowed to define and exercise tikanga on their own terms.⁴⁰⁹

The participants at wānanga tuaono focused on the authority vested in hapū under tikanga Māori and noted that hapū must be constitutionally recognised as legitimate political entities. Waimarie Kingi described hapū as the primary political unit prior to 1840,⁴¹⁰ while Professor

³⁹⁹ Wai 3300, #B53, p 2; Wai 3300, #4.1.13, p 480. Ms Hotere also affiliates to Te Rarawa.

⁴⁰⁰ Wai 3300, #B50, p [1]. Owen Kingi also affiliates to Ngāti Teketanumia and Ngāti Uru.

⁴⁰¹ Wai 3300, #B70, p 6. Ms Ormsby also affiliates to Ngāti Maniapoto. The term pūrākau refers to a form of traditional Māori narrative that contains ‘epistemological constructs, cultural codes, and worldviews’ – see Jenny Lee, ‘Decolonising Māori narratives: Pūrākau as a method’, *MAI Review*, vol 2, (2009), p 1, <https://www.journal.mai.ac.nz/system/files/maireview/242-1618-1-PB.pdf>, accessed 25 February 2026.

⁴⁰² Wai 3300, #B62, p 9

⁴⁰³ Wai 3300, #B79, p 7; Wai 3300, #4.1.13, p 158. Mr Mahanga also affiliates to Te Waiariki, Ngāti Taka, Ngai Tāhuhu, Ngāti Whatua, and Ngāpuhi.

⁴⁰⁴ Wai 3300, #B76, p 18. The representatives for Ngāti Ruamahue included Frances Materoa Goulton, Sailor Morgan, Jacqueline Paul, Calle Swanpoel, Lawrence Sullivan, Cassie Himiona Smith, Mel Rosenthal, Awhirangi Lawrence, Toni Kingi O’Neill, Hinerangi Himiona, Raiha Frederickson.

⁴⁰⁵ Wai 3300, #B61, p 7. Waimarie Kingi also affiliates to Ngāpuhi, and Ngāti Manu.

⁴⁰⁶ Wai 3300, #B52, p 2

⁴⁰⁷ Wai 3300, #B62, p 9

⁴⁰⁸ Wai 3300, #B67, p 4; Wai 3300, #4.1.13, p 180. Academic discourse on the implementation of tikanga within Western legal systems has noted similar risks – for example, while recognising the potential benefits of including tikanga Māori in common law, Natalie Coates raises concerns around non-Māori judges with little knowledge of tikanga interpreting and applying it, and notes the risk the judiciary may ‘only recognise a certain limited type of traditional and static custom’, rather than approaching tikanga Māori as a ‘dynamic living body of law’ – see Natalie Coates, ‘The Recognition of Tikanga in the Common Law of New Zealand’, *Te Tai Haruru Journal*, vol 5 (2017), pp 52-53, <https://tinyurl.com/57ur9hez>, accessed 25 February 2026.

⁴⁰⁹ Wai 3300, #B67, p 4; Wai 3300, #4.1.13, p 257

⁴¹⁰ Wai 3300, #B61, p 3

Mutu emphasised that the ‘separate and autonomous’ nature of hapū and iwi is recognised both historically and through tikanga Māori.⁴¹¹ Mr Shortland’s kōrero supported this, and he specified that each hapū and iwi constituted ‘a whole lot of little nations’ within a nation.⁴¹² Ms Ormsby added that Māori continue to live under these systems of self-government but their ability to do has been ‘disrupted’ by the Crown.⁴¹³ Ian John Mitchell (Ngāpuhi) asserted that the authority of hapū ‘should hold a special place in the constitution’,⁴¹⁴ and Ms Kawiti noted that, in order to do so, decision-making powers must be restored to hapū and whānau.⁴¹⁵ The mana of rangatira shapes how hapū operate – as Professor Mutu explained, hapū were led by ariki or rangatira who held mana on behalf of the ‘past, present and future’ collective.⁴¹⁶ Hōne Pereki Sadler (Ngāti Moerewa) noted that rangatira earn the right to exercise authority through ‘their skill and their mana’, which itself is validated and conferred upon a person by their community.⁴¹⁷ As such, their authority could ‘ebb and wane’.⁴¹⁸ Fiona Reihana Ruka (Ngāpuhi) asserted that a renewed constitutional framework should build upon the foundations already in place in tikanga Māori and recognise the legitimacy of hapū entities and structures, as doing so will enable hapū Māori to ‘secure a better future’.⁴¹⁹ Other speakers also shared that while organisations like Te Pāti Māori, the Kiingitanga, the Iwi Chairs Forum, and settlement entities are important, they are not a substitute for hapū-based self-government.⁴²⁰ In the Treaty-settlement context, Sheena Ross (Ngāti Korokoro) shared her concern that the Crown may overlook distinct hapū identity in favour of settling with ‘the entirety of Ngāpuhi affiliated groups’.⁴²¹ However, despite the focus on the primacy of the hapū, Ms Ormsby acknowledged there are thousands of Māori who are disconnected from their hapū and iwi, and who seek social connection outside kinship groups.⁴²² The constitution must recognise that ‘Māori have a right to evolve their models of governorship...to meet the needs of Māori today’.⁴²³

Speakers noted that marae function as an important locus for lived expressions of Māori constitutionality. Mr Mahanga asserted that ‘mana motuhake is lived on the marae’.⁴²⁴ Ms Kawiti emphasised that constitutional legitimacy in te ao Māori is ‘sustained through everyday practice on our marae and papakāinga’.⁴²⁵ John Klaricich (Ngā Hapū o Te Wahapu o Hokianga nui a Kupe) described marae as holding a similar position in Māori society to Parliament, while also being inherently communal and accessible spaces.⁴²⁶ Yohanan Thomas Theodore (Ngāti Hineira) shared how his experience growing up on the marae shaped his understanding of

⁴¹¹ Wai 3300, #B52, p 7

⁴¹² Wai 3300, #4.1.13, p 9

⁴¹³ Wai 3300, #B70, p 6

⁴¹⁴ Wai 3300, #B48, p 6. Mr Mitchell also affiliates to Te Uri Taniwha and Te Hikutu.

⁴¹⁵ Wai 3300, #B78, p 3

⁴¹⁶ Wai 3300, #B52, p 7

⁴¹⁷ Wai 3300, #B75, p 5. Mr Sadler also affiliates to Ngāti Rangī, Ngāi Tawake-ki-te-Waokū, and Ngāpuhi.

⁴¹⁸ Wai 3300, #B75, p 5; Wai 3300, #4.1.13, p 255

⁴¹⁹ Wai 3300, #B72, p [3]. Fiona Ruka also affiliates to Ngāti Pakau, Ngāti Maniapoto and Ngāti Waiora.

⁴²⁰ Wai 3300, #B79, p 11; Wai 3300, #B78, p 5; Wai 3300, #B56, p 3; Wai 3300, #4.1.13, p 357

⁴²¹ Wai 3300, #B56, p 5

⁴²² Wai 3300, #B70, p 3

⁴²³ Wai 3300, #B70, p 3

⁴²⁴ Wai 3300, #B79, p 4; Wai 3300, #4.1.13, p 155

⁴²⁵ Wai 3300, #B78, p 2; see also Wai 3300, #B74, p 2; Wai 3300, #B79, p 9; Wai 3300, #4.1.13, p 159

⁴²⁶ Wai 3300, #4.1.13, p 439

leadership and decision-making—‘decisions were made through marae committees, kaumātua groups, and Takiwā hui. They discussed issues as a collective and worked towards resolution’.⁴²⁷ It is this community-centred approach which he felt must be reflected in Aotearoa’s constitution.⁴²⁸ Mr Mitchell shared that Māori already have the frameworks to govern themselves according to tikanga without interference from the Crown.⁴²⁹ The principles of the Treaty/te Tiriti, particularly those of ‘independence and interdependence’, Mr Shortland asserted, are ‘alive and well... in our marae’.⁴³⁰

Claimants spoke about whakapapa and whanaungatanga as central tikanga which underpin Māori constitutionalism. Several speakers shared that Māori authority is established through whakapapa, which Aroha Louise Rickus (Waitaha te Iwi) described as ‘the primary record of constitutional order’.⁴³¹ Both Mr Mahanga and Fiona Ruka emphasised that whakapapa confers a responsibility to honour the intentions and expectations of their tūpuna.⁴³² These responsibilities also extend to those connected by whakapapa in the present. Matutaera Clendon (Ngāti Kuta Hapū ki te Rāwhiti) argued that ‘true constitutional legitimacy in te ao Māori is grounded in whakapapa’ and ‘is sanctioned by whānau, hapū, and iwi’.⁴³³ Fiona Ruka cited a whakatauki which exemplifies the nature of whakapapa-based responsibility: ‘Kia whakatōmuri te haere whakamua – we walk backwards into the future’. She described it as a reminder that ‘to forge a path forward for our whānau and hapū...we must never forget our past and those who lived and fought for us’.⁴³⁴ Kōrero also focused on the importance of embedding whanaungatanga in a renewed constitution. Mr Clendon shared that in te ao Māori, power is grounded in one’s ‘capacity to feed, protect, and sustain the whānau’.⁴³⁵ Ms Kawiti specifically noted that power is held on behalf of the collective, and thus is continually ‘justified by... demonstrated service to the whānau and hapū’.⁴³⁶ Tina Patricia Latimer (Te Paatu) described whanaungatanga as a ‘commitment to maintain unity and mutual support.’⁴³⁷ Mr Mitchell contrasted this with the current constitutional framework of Aotearoa New Zealand. He described English common law as a system where those in power ‘rule over someone who cannot be trusted’, while tikanga-informed authority is ‘relational’ and prioritises relationships and interpersonal accountability.⁴³⁸ A group representing three Whangaroa-based claims

⁴²⁷ Wai 3300, #B64(b), p 3; Wai 3300, #4.1.13, p 187. Mr Theodore also affiliates to Te Uri Taniwha, Te Whānau Whero, Ngāti Korohue, Ngāpuhi-nui-tonu, and Ngāti Kahungunu ki Mangakino.

⁴²⁸ Wai 3300, #B64(b), p 3

⁴²⁹ Wai 3300, #B48, p 2

⁴³⁰ Wai 3300, #B62, p 7

⁴³¹ Wai 3300, #B45, p 2; see also Wai 3300, #B76, p 1; Wai 3300, #B79, pp 4-5; Wai 3300, #B78, p 2

⁴³² Wai 3300, #B79, p 4; Wai 3300, #B72, p [2]; Wai 3300, #4.1.13, p 94

⁴³³ Wai 3300, #B74, p 2; Wai 3300, #4.1.13, p 133. Mr Clendon also affiliates to Ngāi Tawake ki twe Takutai Moana, Ngāti Rāhiri, Ngāti Kawa, Ngāti Whakaeke, and Ngāti Tautahi Hapū.

⁴³⁴ Wai 3300, #B72, p [2]; Wai 3300, #4.1.13, p 94

⁴³⁵ Wai 3300, #B74, p 4

⁴³⁶ Wai 3300, #B78, p 2; Wai 3300, #4.1.13, p 144. Mead described how the decisions of rangatira were influenced by the desire to maintain their personal mana. He described that ‘great mana was attributed to those leaders who exhibited a real compassion for people and where possible avoided wholesale slaughter’ – see Mead, *Tikanga Māori*, p 190.

⁴³⁷ Wai 3300, #4.1.13, p 421. Ms Latimer also affiliates to Te Rarawa and Ngaitohianga.

⁴³⁸ Wai 3300, #B48, pp 4-5. As articulated in the *Huanga o te Tika* discussion paper compiled in the course of Te Rau o te Tika - the Justice System Inquiry, when a hara is committed, utu is used as the mechanism for achieving ea – ‘a response that provides for balance and reciprocity’. If the measures of utu have the desired effect, ‘the

echoed this assessment of the current constitutional structure as contrary to tikanga Māori.⁴³⁹ They asserted that values like whanaungatanga must be embedded in any constitutional reform to foster equal partnership between hapū and Crown bodies.⁴⁴⁰

Speakers also shared that kaitiakitanga responsibilities are central tikanga which inform their understandings of constitutionalism. Leah Marie Wright (Muriwhenua Hapū Collective) asserted that her tūpuna signed He Whakaputanga and Te Tiriti with the expectation that kaitiakitanga, manaakitanga, and aroha would be upheld.⁴⁴¹ A group representing Ngā Toki Whakarururanga referred to Dr Moana Jackson's research which determined several constituent parts of mana which he termed the 'specifics of power'.⁴⁴² Among these is 'the power to protect' or 'to be kaitiaki...and protect everything and everyone'.⁴⁴³ Rukuwai Allen (Ngāpuhi) shared that tikanga Māori prioritises 'the welfare of the collective' which includes past, present and future generations, the environment, whenua, and moana.⁴⁴⁴ Maiki Marks (Ngāpuhi) summarised kaitiakitanga as a 'spiritual and cultural responsibility' to care for such taonga—an obligation which other speakers also emphasised.⁴⁴⁵ Ms Hotere asserted that the current constitutional system constrains the ability of Māori to exercise kaitiakitanga. She gave the example of the Crown's current exclusion of Māori involvement from international trade and investment treaties, which often ignore kaitiakitanga responsibilities by prioritising economic interests over the well-being of the whenua, moana, and taonga Māori.⁴⁴⁶ Donna Kerridge (Waikato) noted that, by contrast, Māori historically engaged in 'highly successful modes of relational trade' which prioritised te taiao and protected taonga.⁴⁴⁷ Ms Marks argued that the constitution must specifically recognise the need to protect te taiao, and give tohunga taiao and tangata whenua 'equal status to that of planners, engineers, and scientists'.⁴⁴⁸ Doing so would not prohibit external interests in taonga and whenua Māori, but would ensure protection mechanisms are in place to respect tikanga.⁴⁴⁹ Rihari Dargaville (Ngāpuhi) further explained that the exercise of kaitiakitanga was not synonymous with the exclusion of others – sharing that mana whenua historically granted other groups access to areas and resources within their rohe, but such access had to 'go through the kaitiaki who carry the whakapapa of

wrongdoer will be rehabilitated, the harmed people will no longer feel aggrieved, and the community will have the sense that they can put the take behind them' – see Wai 3060, #6.2.2, p 30.

⁴³⁹ Wai 3300, #B67, pp 5-6. The representatives for this group were Patricia Tauroa, Robyn Tauroa, Bill Hori, and Doreen Puru. They collectively represent the Wai 58, Wai 1312, and Wai 1684 claims.

⁴⁴⁰ Wai 3300, #B76, p 20. Another speaker at the wānanga – Peti Kake – cited the whakataukī 'with my kete and your kete, the people will survive' (Wai 3300, #4.1.13, p 458).

⁴⁴¹ Wai 3300, #B57, p 1

⁴⁴² Wai 3300, #B43, p 7

⁴⁴³ Wai 3300, #B43, p 8

⁴⁴⁴ Wai 3300, #B82(a), p 3. Ms Allen also affiliates to Ngāti Rēhia,

⁴⁴⁵ Wai 3300, #B59, p 4; Wai 3300, #B49, p 4; Wai 3300, #B53, p 4; Wai 3300, #B78, p 2

⁴⁴⁶ Wai 3300, #B53, pp 9-10

⁴⁴⁷ Wai 3300, #B43(a), p [2]. Ms Kerridge also affiliates to Ngāti Mahuta and Ngāti Tahinga.

⁴⁴⁸ Wai 3300, #B59, pp 1- 2

⁴⁴⁹ Wai 3300, #B59, p 2

that place'.⁴⁵⁰ As Ms Kerridge summarised, the constitution must ensure Māori retain their authority over their resources, knowledge, and systems 'for the benefit of the whole country'.⁴⁵¹

(2) Wānanga Participants' Discussion of Inquiry Themes

The key theme underlying the kōrero at Waitangi was the role of He Whakaputanga me te Tiriti o Waitangi as the foundational constitutional documents of Aotearoa New Zealand. Several participants described the documents as central to the constitutional discussion, with representatives for Ngā Toki Whakarururanga stating that they 'were and remain the constitutional foundations of the state of Aotearoa New Zealand'.⁴⁵² Others, referring to the rangatira who signed the documents, described both He Whakaputanga and te Tiriti as sacred covenants which Māori have a duty to protect and uphold.⁴⁵³ Ms Rickus rejected the assertion that the country does not have a written constitution – arguing that He Whakaputanga and te Tiriti are these constitutional texts, which the Crown simply 'refused to treat... as foundational law'.⁴⁵⁴ Most claimants who spoke about He Whakaputanga were united in their view that any discussion of te Tiriti must be informed by an understanding of He Whakaputanga as its enabling document.⁴⁵⁵ As Mr Sadler shared, 'He Whakaputanga is the Matua, and te Tiriti is the Tama'.⁴⁵⁶ Mr Sadler discussed how He Whakaputanga recognised Māori as a legitimate sovereign nation.⁴⁵⁷ As such, te Tiriti functioned as an 'international treaty' between two nation states.⁴⁵⁸ Professor Mutu and Ms Ross shared that those who signed He Whakaputanga proposed that representatives from various hapū should meet regularly to make decisions as a collective—a body referred to as Te Whakaminenga o ngā Hapū o Nu Tireni.⁴⁵⁹ While Professor Mutu noted that He Whakaputanga formally declared that only the rangatira who signed it held decision-making power in Aotearoa, she stated that *Matike Mai* had found 'broad consensus' throughout the motu that He Whakaputanga 'stands as a precedent' for how relationships between Māori polities can be 'given constitutional form'.⁴⁶⁰ For example,

⁴⁵⁰ Wai 3300, #B69, pp 1-2; Wai 3300, #4.1.13, p 104. Mr Dargaville also affiliates to Ngā Uri o Tama and Tauke Te Awa.

⁴⁵¹ Wai 3300, #B43(d), p [3].

⁴⁵² Wai 3300, #B43, p 5; Wai 3300, #B57, p 1; Wai 3300, #B74, p 1; Wai 3300, #B54, p 2, Wai 3300, #B83, p 3; Wai 3300, #4.1.13, pp 10, 225, 362; Wai 3300, #4.1.13, p 193; Wai 3300 #4.1.13(n), p 1

⁴⁵³ Wai 3300, #B54(a), p 2; Wai 3300, #B52, p 9

⁴⁵⁴ Wai 3300, #B45, p 1; Wai 3300, #4.1.13, p 231. While the general consensus is that the articles of the Treaty/te Tiriti are not directly enforceable at law, the courts have over time been more willing to apply Treaty/te Tiriti principles in their analysis, even where such application is not provided for in statute. In the 2021 *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board* decision, for example, the Supreme Court stated that 'the courts will not easily read statutory language as excluding consideration of Treaty principles if a statute is silent on the question' – see *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, paras 150–151 (as cited in Waitangi Tribunal, *Ngā Matāpono/The Principles*, pre-publication version (Waitangi Tribunal, 2024), p 66).

⁴⁵⁵ Wai 3300, #B72, p [5]; Wai 3300, #B48, pp 2, 4; Wai 3300, #B67, p 1; Wai 3300, #B75, p 2; Wai 3300, #B50, p [2]; Wai 3300, #4.1.13, p 25

⁴⁵⁶ Wai 3300, #B75, p 3; Wai 3300, #4.1.13, p 252

⁴⁵⁷ Wai 3300, #B75, p 3

⁴⁵⁸ Wai 3300, #B75, p 2

⁴⁵⁹ Wai 3300, #B52 p 8; Wai 3300, #B56, p 1

⁴⁶⁰ Wai 3300, #B52, pp 8-9. *Matike Mai* Aotearoa, the Independent Working Group on Constitutional Transformation was created by the Iwi Chairs' Forum in 2010 to 'develop and implement a model for an inclusive Constitution for Aotearoa based on tikanga and kawa, He Whakaputanga... Te Tiriti o Waitangi... and other indigenous human rights instruments.' The Group engaged with Māori around Aotearoa across 4 years and used

Isobelle Karaitiana (Ngāti Kahungunu) shared that her father believed that, being from Te Arawa, He Whakaputanga was not relevant to him. However, she recounted her feeling that He Whakaputanga ‘is for everyone’.⁴⁶¹ Mr Sadler similarly advocated for the wider applicability of He Whakaputanga – stating that it ‘is not a Ngāpuhi only document... It is legitimate for all Māori to have reference to He Whakaputanga’.⁴⁶² Jade Kake (Ngāpuhi) suggested that the rights and responsibilities contained in He Whakaputanga be ‘constitutionally enshrined’ through the enactment of law.⁴⁶³

In addition to He Whakaputanga, many speakers looked to the Treaty/te Tiriti as a necessary pou to uphold constitutional legitimacy in Aotearoa. Professor Mutu argued that te Tiriti uses ‘western legal convention’ to affirm tikanga and mana Māori as distinct and legitimate concepts of power.⁴⁶⁴ Ms Ross noted that by signing the Treaty/te Tiriti, the Crown ‘bound itself to an obligation to uphold the rangatiratanga of our hapū’.⁴⁶⁵ Further to this, Violet Eva Walker (Ngāti Rangi o Waiapu ki Tawhiti) stated that te Tiriti ‘enshrines our human rights as tangata whenua’,⁴⁶⁶ while Owen Kingi noted that the Treaty/te Tiriti was a ‘clear and unequivocal statement of the legal independence and authority of the hapū’.⁴⁶⁷ Ipu Tito-Absolum (Te Māhurehure) cautioned that undermining the document upon which ‘New Zealand’s legitimacy as a sovereign nation exists’ could cause a significant ‘constitutional crisis’.⁴⁶⁸ Several speakers gave kōrero on how the constitution could best recognise te Tiriti. Professor Mutu asserted that ‘there is no “English version” of te Tiriti’—only the Māori version is valid.⁴⁶⁹ Dr Mary-Anne Baker (Ngāti Rahiri) and Claire Morgan (Ngāpuhi) argued that the development of shared Treaty/te Tiriti principles between the te reo and English texts ‘was a deliberate political distortion to weaken it’.⁴⁷⁰ Instead of reliance on principles, Ms Morgan asserted that te Tiriti must have the ability to stand alone, and must be ‘justiciable in the Courts in its entirety’.⁴⁷¹ To enable this, multiple speakers asserted that te Tiriti must be embedded in law along with He Whakaputanga.⁴⁷² Dr Hope Tupara, speaking as National President of the Te Ropu Wahine Maori Toko i te Ora / the Maori Women’s Welfare League (MWWL) celebrated the Treaty/te Tiriti as ‘the founding document of Aotearoa’, and a document which is ‘unmatched for

this feedback to produce their report in which they suggest six possible models for constitutional transformation – see Wai 3300, #6.2.11, pp 7 10, 18.

⁴⁶¹ Wai 3300, #4.1.13, p 462. Isobelle Karaitiana also affiliates to Heretaunga, Te Arawa, Ngāti Manu, Taihape, Ngāti Hine, Ngāti Kahu, Parawhau, and Patuharakeke.

⁴⁶² Wai 3300, #B75, p 2; Wai 3300, #4.1.13, p 251

⁴⁶³ Wai 3300, #4.1.13, p 65. Jade Kake also affiliates to Te Parawhau and Ngāti Hau.

⁴⁶⁴ Wai 3300, #B52, p 9

⁴⁶⁵ Wai 3300, #B56, p 2

⁴⁶⁶ Wai 3300, #B49, p 8. Ms Walker also affiliates to Ngāti Kahu ki Whangaroa.

⁴⁶⁷ Wai 3300, #B50, p [4]

⁴⁶⁸ Wai 3300, #B51, p [5]. Ms Tito-Absolum also affiliates to Te Rauwawe.

⁴⁶⁹ Wai 3300, #B52, p 9

⁴⁷⁰ Wai 3300, #B54(a), p 3; Wai 3300, #B71, p [6]. Dr Baker also affiliates to Ngāti Kawa. Ms Morgan also affiliates to Te Māhurehure and Ngāti Rarua o Te Taihū o Te Waka a Maui. In *Colonising Myths -- Māori Realities*, Ani Mikaere criticises the increasing reliance on Treaty principles. She argues that doing so had led to an ‘irrational expectation’ that the two texts of the Treaty/te Tiriti are ‘read together’, and has actively weakened the role of te Tiriti and He Whakaputanga by subordinating them to the English Treaty – see Ani Mikaere, *Colonising Myths – Māori Realities* (Wellington: Huia Publishers, 2011), pp 124-125.

⁴⁷¹ Wai 3300, #B71, p [5]; Wai 3300, #4.1.13, p 90

⁴⁷² Wai 3300, #B54(a), p 2; Wai 3300, #B59, p 3; Wai 3300, #B72, pp [5]-[6]

creating conditions for mana motuhake, equality and rangatiratanga'.⁴⁷³ She described '[c]onstitutional transformation that embeds te Tiriti' as imperative.⁴⁷⁴ Georgina Kerr, speaking on behalf of Pūkenga Here Tikanga Mahi / the Public Service Association (PSA) noted the current mutability of the Government's commitment to the Treaty/te Tiriti in the absence of such constitutional recognition – describing the 'oscillating Crown policy toward te Tiriti' as a 'political football'.⁴⁷⁵

Speakers at wānanga tuaono discussed mana motuhake and its place in the constitution extensively. Multiple participants explained that in the exercise of mana motuhake, decisions reflect the shared aspirations and well-being of hāpori Māori.⁴⁷⁶ Ms Walker described mana motuhake as the 'self-sovereignty of Māori as individuals and as their collective'.⁴⁷⁷ Several speakers described mana motuhake as 'inherently within someone',⁴⁷⁸ inherited through whakapapa, and connected to a person's individual mana.⁴⁷⁹ The connection between whakapapa and mana motuhake was further drawn out by Mr Dargaville, who shared that the ongoing presence of a hapū in a certain place 'gives life to Mana Motuhake'—connecting Māori authority to the whenua.⁴⁸⁰ Because mana motuhake is inherent to Māori, Kawhena Paul (Ngāitupanga) and the Whangaroa claimants were clear—it is an authority which 'cannot be changed (unlike tikanga), nor can it be handed on'.⁴⁸¹ Several speakers argued that the constitution must recognise that Māori exercised mana motuhake long before the signing of He Whakaputanga or te Tiriti.⁴⁸² Speakers noted that a renewed constitution must place mana motuhake at the centre, to reflect the fact that it is guaranteed under te Tiriti and He Whakaputanga.⁴⁸³ To do so, the constitution must respect the 'credible status' of Māori self-determination, and acknowledge Māori as equal Treaty partners.⁴⁸⁴ Mr Theodore suggested that an Upper House could be created in Parliament where Māori rangatira representing hapū exercise 'authority alongside the Crown'.⁴⁸⁵ Others simply noted that, however it manifests, the constitutional framework must allow Māori to empower themselves, living independently without influence from the Crown.⁴⁸⁶ Ms Ormsby stated that restoring mana motuhake in lived reality 'would be a step forward in undoing over 180 years of colonisation'.⁴⁸⁷

⁴⁷³ Wai 3300, #B81, pp 2-3 Dr Tupara is President of Te Ropu Wahine Maori Toko i te Ora / the Maori Women's Welfare League (MWWL).

⁴⁷⁴ Wai 3300, #B81, p 3

⁴⁷⁵ Wai 3300, #B055, pp 1, 7. Ms Kerr is te Kuia (Elder) of Pūkenga Here Tikanga Mahi / the Public Service Association (PSA).

⁴⁷⁶ Wai 3300, #B49, p 1; Wai 3300, #B54, p 2; Wai 3300, #B78, p 2; Wai 3300, #B76, p 6; Wai 3300, #B79, p 4

⁴⁷⁷ Wai 3300, #B49, p 1

⁴⁷⁸ Wai 3300, #B58, p 1

⁴⁷⁹ Wai 3300, #B64, p 3; Wai 3300, #B62, p 11; Wai 3300, #B69 p 1; Wai 3300, #B78, p 2; Wai 3300, #B46, p [2]; Wai 3300, #B58, p 1; Wai 3300, #B67, p 4

⁴⁸⁰ Wai 3300, #B69, p 1

⁴⁸¹ Wai 3300, #B58, p 1; Wai 3300, #B58(a), p 1; Wai 3300, #B67, p 4. Ms Paul also affiliates to Ngāti Ruamahue.

⁴⁸² Wai 3300, #B48, p 1; Wai 3300, #B53, pp 2-3; Wai 3300, #B58, p1; Wai 3300, #B46, p [3]; Wai 3300, #B61, pp 5-6, Wai 3300, #B48, p 1

⁴⁸³ Wai 3300, #B58, p 1; Wai 3300, #B46, p [3]; Wai 3300, #B61, pp 5-6; Wai 3300, #B48, p 1

⁴⁸⁴ Wai 3300, #B71, p [3]

⁴⁸⁵ Wai 3300, #B64, pp 3-4; Wai 3300, #4.1.13, p 189

⁴⁸⁶ Wai 3300, #B46 p [3]; Wai 3300, #B64, pp 3-4

⁴⁸⁷ Wai 3300, #B70, p 4

Participants at the wānanga asserted that enduring Māori sovereignty, which they also referred to as tino rangatiratanga, must be recognised by the constitutional framework of Aotearoa. Many claimants noted that, while the term tino rangatiratanga has similar connotations, it is different to mana motuhake.⁴⁸⁸ Dr Tupara expressed support for the Te Paparahi o Te Raki Tribunal’s finding on sovereignty, arguing that te Tiriti obliged the Crown to share power and authority with Māori.⁴⁸⁹ She referred to Parliament’s supremacy as ‘illegitimate’, describing the system as a ‘power and conquer model of democracy’ at odds with the guarantees of te Tiriti.⁴⁹⁰ The imposition of this constitutional system upon Māori, without their consent has caused disproportionate harm.⁴⁹¹ Ms Ormsby defined tino rangatiratanga as ‘the absolute expression of Māori sovereignty’,⁴⁹² while the Whangaroa claimants preferred to translate it as ‘absolute collective autonomy’.⁴⁹³ Some claimants were less inclined to rely on the terms tino rangatiratanga or sovereignty to describe Māori authority.⁴⁹⁴ Mr Mitchell viewed tino rangatiratanga as a term arising from the words of te Tiriti rather than te ao Māori,⁴⁹⁵ and Mr Mahanga explained that the concept of sovereignty ‘sits uncomfortably with Māori constitutional ideas’.⁴⁹⁶ In his words, the notion of sovereignty is ‘alien to Tikanga based authority’ as it implies a hierarchy of power totally at odds with the collective nature of Māori constitutionalism.⁴⁹⁷ Mr Clendon also emphasised the collective nature of Māori authority, explaining that power which is ‘relational and lateral [and] shared among the people... is true sovereignty’.⁴⁹⁸ Though different terms were used for Māori authority and self-determination, speakers at wānanga tuaono consistently argued that such authority has never been ceded by Māori – be it categorised as sovereignty, tino rangatiratanga, or mana motuhake.⁴⁹⁹ Lorene Royal (Ngāpuhi) asserted that constitutional reform must ensure that parliamentary sovereignty does not ‘supersede the authority of tangata Wenua Rangatira’.⁵⁰⁰

Speakers across the four days argued that the Crown has disregarded the inalienable nature of Māori self-determination by overstepping the bounds of kāwanatanga to illegitimately exercise sovereignty in Aotearoa New Zealand. Multiple speakers asserted that the term kāwanatanga refers only to the authority of the British Crown over Pākehā settlers.⁵⁰¹ Raewyn Louise Kapa (Ngāpuhi me Te Aupōuri) emphasised that ‘kāwanatanga... was never intended to extinguish

⁴⁸⁸ Wai 3300, #B48, pp 1-2; Wai 3300, #4.1.13, p 8

⁴⁸⁹ Wai 3300, #B81, pp 2-3

⁴⁹⁰ Wai 3300, #B81, p 4

⁴⁹¹ Wai 3300, #B81, p 3

⁴⁹² Wai 3300, #B70, p 6

⁴⁹³ Wai 3300, #B67, p 3

⁴⁹⁴ Wai 3300, #4.1.13, pp 32, 119

⁴⁹⁵ Wai 3300, #B48, pp 1-2

⁴⁹⁶ Wai 3300, #B79, p 9

⁴⁹⁷ Wai 3300, #B79, p 9; Wai 3300, #4.1.13, p 159

⁴⁹⁸ Wai 3300, #B74, p 4; Wai 3300, #4.1.13, p 135

⁴⁹⁹ Wai 3300, #B43, p 3; Wai 3300, #B56, p 6; Wai 3300, #B53, p 3; Wai 3300, #B67 p2; Wai 3300, #B62, p 8; Wai 3300, #B74 p 3; Wai 3300, #B82(a), p 2; Wai 3300, #B79, p 4; Wai 3300, #B84, p 1; Wai 3300, #B83, p 2; Wai 3300, #B65 p 3; Wai 3300, #4.1.13, pp 10, 44, 48, 51, 59, 65, 134, 220, 313, 336, 362, 433, 466

⁵⁰⁰ Wai 3300, #B73, p [4]; Wai 3300, #4.1.13, p 369. Ms Royal also affiliates to Ngai Tupoto, Ngāti Here, Ngāti Korokoro, Ngāti Hau (ki Omanaia) and Te Kumutu.

⁵⁰¹ Wai 3300, #B76, p 16; Wai 3300, #B75, p 7; Wai 3300, #B64(b), p 5; Wai 3300, #B67, p 5; Wai 3300, #B67, p 5; Wai 3300, #B52, p 10; Wai 3300, #B56, p 2; Wai 3300, #B48, p 5; Wai 3300, #4.1.13, pp 42, 49, 52, 65, 133

Māori authority’.⁵⁰² Ms Kerr similarly argued that kāwanatanga was a limited set of powers, arguing that ‘the exercise of kawatanga should not entitle the Crown to enact law, make policy and issue directives that require Māori to act in ways that breach tikanga.’⁵⁰³ Professor Mutu asserted that there was ‘no possibility’ that the rangatira who signed te Tiriti would have understood kāwanatanga as equivalent to sovereignty, and noted that as such, the constitutional power of the Crown in Aotearoa ‘is illegitimate’.⁵⁰⁴ Ms Kapa agreed, stating that the Crown has ‘crossed the line between governance and domination’.⁵⁰⁵ Further, representatives for Ngā Matakīrea o Whangārei asserted that kāwanatanga obliged the Crown to ‘look after...Māori interests.’⁵⁰⁶ Instead, the Crown ‘usurped and undermined the mana’ of hapū and iwi, and asserted an illegitimate control over the whenua and taonga.⁵⁰⁷ Representatives from Ngā Toki Whakarururanga asserted that the ‘pretended power’ of the Crown is especially apparent in the international treaty-making space, where Māori are denied the right to make decisions on how and with whom treaties are negotiated.⁵⁰⁸ The Crown has usurped this authority, despite the fact that the ‘constitutional authority of ngā rangatira to treat with other nations’ has never been ceded.⁵⁰⁹ In order to limit the overreach of kāwanatanga, some claimants advocated for a written constitution.⁵¹⁰ Mr Sadler believed this would create ‘[d]efined, concrete limits to the Crown’s powers’.⁵¹¹ Ms Walker argued that returning the authority of the Crown back in line with what was intended in te Tiriti would give legitimacy to the constitutional framework of Aotearoa.⁵¹²

Much of the kōrero at Waitangi centred around the question of how the constitution could be reconfigured to a dual governance model which recognises Māori as an equal partner to the Crown. Mr Clendon shared that his tūpuna agreed to a partnership of equality with the Crown which has not been honoured.⁵¹³ Ms Ormsby described the current constitutional system as ‘broken beyond repair’.⁵¹⁴ The exclusion of Māori from decision-making was consistently identified by speakers as a symptom of this breakdown. Ms Hotere noted that Parliament is not currently required to consult with iwi before passing legislation, and described her own experience in the law-making process as ‘reactive, not proactive’.⁵¹⁵ Mr Theodore shared that even when Māori input is sought, decisions can be changed or implemented without appropriate involvement from Māori.⁵¹⁶ Ms Allen stated that successful partnership requires both Māori and Pākehā to ‘engage with one another in good faith’.⁵¹⁷ Dr Tupara advocated for

⁵⁰² Wai 3300, #B46, pp [3]-[4]; Wai 3300, #B24(b), p [1]. Ms Kapa also affiliates to Te Māhurehure.

⁵⁰³ Wai 3300, #B055, p 5

⁵⁰⁴ Wai 3300, #B52, pp 10, 13

⁵⁰⁵ Wai 3300, #B46, p [4]

⁵⁰⁶ Wai 3300, #4.1.13, p 42. Ngā Matakīrea o Whangārei was represented by Mark Ngāhōia Scott, Hūhana Lyndon, Nicki Wakefield, and Jade Kake.

⁵⁰⁷ Wai 3300, #B47, p 13; Wai 3300, #4.1.13, p 36

⁵⁰⁸ Wai 3300, #B43, p 11

⁵⁰⁹ Wai 3300, #B43, p 10

⁵¹⁰ Wai 3300, #B53, p 4; Wai 3300, #B75, p 1; Wai 3300, #4.1.13, pp 21, 97

⁵¹¹ Wai 3300, #B75, p 1

⁵¹² Wai 3300, #B49, p 4

⁵¹³ Wai 3300, #B74, p 3

⁵¹⁴ Wai 3300, #B70, p 8

⁵¹⁵ Wai 3300, #B53, p 5

⁵¹⁶ Wai 3300, #B64, p 5

⁵¹⁷ Wai 3300, #B82(a), p 5

a power-sharing model that involved ‘engag[ing] in dialogue until we reach a place of mutual consensus’, where Māori and Māori women had a place at the decision-making table.⁵¹⁸ Several speakers argued that this partnership would best be achieved through a co-governance model where two spheres of government operate in tandem with each other.⁵¹⁹ While many speakers articulated these ideas with reference to the powers exercised by Parliament, in contrast Whangaroa claimants argued that any partnership should be directly with the British Crown.⁵²⁰ Representatives of Ngāti Ruamahue envisioned co-governance manifesting in ‘shared spaces for joint decision-making and independent spaces where we govern ourselves’ as Māori and as Pākeha.⁵²¹ Similarly, Ms Kawiti suggested a plural legal system.⁵²² Under such a system, tikanga-based law would govern ‘matters central to Māori life’, while ‘the Crown’s law’ would only operate over Māori ‘when necessary and with clear Treaty-based interfaces’.⁵²³ Many speakers supported the suggestions made in *Matike Mai* on how best to ‘develop and implement a model for an inclusive constitution’ which recognises Māori and the Crown.⁵²⁴

Participants suggested that reconsidering the nature of local government and the electoral system could be a positive step towards a Treaty/te Tiriti-consistent constitution. Several speakers shared that their local and regional councils have little regard for Māori in their decision-making.⁵²⁵ Mr Mitchell stated that it is hard enough to interact with the Crown, but when the Crown’s authority is ‘devolved down further and further to delegated powers’ such as local government, the relationship worsens.⁵²⁶ Mr Sadler shared that Māori feel this lack of inclusion most deeply at the level of local government because this is where the most ‘insidious parts of the Crown’s legislative dominance are played out and performed’.⁵²⁷ By contrast, Ms Walker credited some regional councils for utilising tikanga in their resource consent processes to ensure that Māori voices inform decision-making.⁵²⁸ To ensure that such councils are not the exceptions, Ms Ross argued that the constitution must introduce requirements to ‘make sure the Councils adhere to or recognise our mana’.⁵²⁹ Toni Kingi O’Neill (Ngāti Ruamahue) asserted that local government reforms are needed to require councils to recognise the authority of mana whenua, resource hapū to fully participate in decision-making, and embed tikanga into their everyday operations.⁵³⁰ In addition to feeling ignored at the local government level, claimants shared that the current electoral framework does not adequately support Māori

⁵¹⁸ Wai 3300, #B81, p 3- 4

⁵¹⁹ Wai 3300, #B78 p 4; Wai 3300, #B75, p 8; Wai 3300, #B76, p 16; Wai 3300, #B53, p6; Wai 3300, #B52, pp 3, 13-14; Wai 3300, #4.1.13, p 259

⁵²⁰ Wai 3300, #B67, p 6; Wai 3300, #4.1.13, pp 26, 180, 235, 369

⁵²¹ Wai 3300, #B76, p 16; Wai 3300, #4.1.13, p 221

⁵²² Wai 3300, #4.1.13, p 145

⁵²³ Wai 3300, #B78, p 4

⁵²⁴ Wai 3300, #B52, pp 2, 3-9; Wai 3300, #B52, p 3; Wai 3300, #B52, p 9; Wai 3300, #B75, p 3; Wai 3300, #B53, p 3; Wai 3300, #B67, p 6; Wai 3300, #B76, p 16

⁵²⁵ Wai 3300, #B56, p 4; Wai 3300, #B53, p 7; Wai 3300, #B71, p [5]; Wai 3300, #4.1.13, p 224

⁵²⁶ Wai 3300, #B48, p 7

⁵²⁷ Wai 3300, #B75, p 9

⁵²⁸ Wai 3300, #B49, pp 3, 8. Ms Royal also noted that Auckland Council has made efforts to engage directly with Māori through the establishment of two plans: the Mana Whenua Engagement Plan, and the Unitary Plan (Wai 3300, #4.1.13, p 372).

⁵²⁹ Wai 3300, #B56, p 4

⁵³⁰ Wai 3300, #B76, p 20; Wai 3300, #4.1.13, p 224

interests. Ms Walker argued that the system ‘marginalises Māori voices’, pointing to low Māori voter turn-out in the general elections.⁵³¹ Ms Marks asserted that the constitutional system of Aotearoa needs to change to ‘enable bottom-up decision-making... driven by the community’.⁵³² For Ms Hotere, this requires the representatives in Parliament to ‘whakapapa to the region that they represent’.⁵³³ Finally, Ms Paul suggested that the representation of Māori and non-Māori in Parliament should be adjusted to 50:50 as that would ‘go a long way towards honouring te Tiriti’ by prioritising equity over equality.⁵³⁴

1.4.7 Kōrero Shared on Behalf of the New Zealand Māori Council

This section summarises the kōrero shared on behalf of the New Zealand Māori Council (NZMC) during the wānanga ā-rohe phase. At each of the six wānanga, kōrero was delivered by NZMC representatives associated with the region the wānanga was held in, allowing speakers to both present the overall position of the NZMC and contribute kōrero specific to their rohe. Where a speaker is mentioned, explanatory footnotes indicate which wānanga they attended, whether they were described as speaking on behalf of a particular District Māori Council (DMC), and their role within the NZMC, if this information was provided.

(1) Tikanga Principles Foundational to Māori Constitutionalism

A consistent theme of the NZMC’s kōrero was the role of hapū in Māori self-government. George Ngatai stressed that hapū are ‘the primary unit of Māori self-determination’.⁵³⁵ Chantez Connor-Kingi specified that hapū and in some cases other kin-based or community-based groups form ‘the critical locus of identity and decision-making’, rather than iwi.⁵³⁶ Wiremu Buurman explained that if you examine the structures of Māori society pre-1840, hapū have always been ‘the seat of political authority’.⁵³⁷ Anne Kendall and Mr Ngatai emphasised that hapū were recognised in the Treaty/te Tiriti.⁵³⁸ Sarah Rewi and Hona Eruera Edwards referred to marae and hapū as ‘the site of [Māori] sovereignty’.⁵³⁹ An example of hapū authority in practice was the determination of membership within a hapū and the right to speak, which is customarily dependant on whakapapa and participation.⁵⁴⁰ Natalie Emery commented that

⁵³¹ Wai 3300, #B49, p 6

⁵³² Wai 3300, #B59, p 3

⁵³³ Wai 3300, #B53, p 6

⁵³⁴ Wai 3300, #B58, p 3

⁵³⁵ Wai 3300, #4.1.8, p 3. Mr Ngatai presented at wānanga tuatahi held in Ngāruawāhia. He is Co-Chair of the NZMC and the Tāmaki ki te Tonga DMC.

⁵³⁶ Wai 3300, #B6(h), p 2. Ms Connor-Kingi presented at wānanga tuaono at Waitangi as a representative of Te Tai Tokerau DMC.

⁵³⁷ Wai 3300, #4.1.12, p 52; Wai 3300, #B6(g), p 9. Mr Buurman presented at wānanga tuarima in Te Papaioea (Palmerston North). He is Co-Chair of the Raukawa DMC and spoke on the district’s behalf.

⁵³⁸ Wai 3300, #B6(a), p 5. Ms Kendall presented at wānanga tuatahi in Ngāruawāhia. She is Co-Chair of the NZMC.

⁵³⁹ Wai 3300, #B6(j), p 2. Ms Rewi and Mr Edwards attended wānanga tuaono at Waitangi and spoke as representatives of Te Tai Tokerau DMC.

⁵⁴⁰ Wai 3300, #B6, p 5. This statement of position was attributed to the NZMC generally and was not presented at a specific wānanga.

membership may be ‘characterised by descent but not defined by it’.⁵⁴¹ Ms Connor-Kingi explained that because hapū authority is not currently embedded in the constitution, the Crown makes hapū ‘prove their significance and fight for their status’, and would rather deal with iwi.⁵⁴² For the constitution to be legitimate, he maintained, Māori must determine their own form of representation – that is to say, the Crown should not dictate which groups it may engage with.⁵⁴³ Mr Buurman argued that if iwi want to engage with the Crown – as iwi – this must be decided by consensus of hapū and hāpori.⁵⁴⁴ Ms Rewi discussed the consequences of PSGEs or iwi trusts making agreements without properly consulting hapū: ‘[t]he net effect is that hapū self-determination is diminished: our people feel that decisions are made in their name’.⁵⁴⁵ Ms Connor-Kingi did note that unity between groups and hapū autonomy are not ‘mutually exclusive’ – and that while the constitution must ‘allow for Māori unity when needing kotahitanga’ it must also ‘uphold hapū mana motuhake at all times’.⁵⁴⁶ He cited the Kotahitanga Movement’s 1892 Māori Parliament as an important historical precedent, where the mana of hapū was respected within a collective decision-making body.⁵⁴⁷ Mr Buurman proposed that the Kotahitanga movement’s roots could conceivably be traced back to He Whakaputanga, and offered it as another historic model of self-government that provided for the mana of hapū.⁵⁴⁸ He also described the NZMC as a national body which similarly reflected the role of the local community as the ‘primary political unit of Māori society’ within its structure – through its Māori Committee and District Māori Council representatives.⁵⁴⁹ The NZMC did recognise that in current times, not all Māori are connected to hapū, and so ‘[o]ther forms of representation therefore need to be considered’, while ‘at the same time maintaining that the traditional seat of authority sits at the hāpori/community level’.⁵⁵⁰

A consistent message underpinning the kōrero from the NZMC representatives was that tikanga Māori is a functional legal system that needs to be recognised in Aotearoa New Zealand’s constitution. Ms Kendall and Mr Ngatai acknowledged that while tikanga can refer to many things, they refer to tikanga Māori as ‘Māori law’, explaining the term as ‘the values and thoughts of right and wrong that define us as a people.’⁵⁵¹ Maggie Gordon argued that ‘[a] constitution should reflect the fundamental values of the people it represents’ – emphasising particularly the need to enshrine the central place of the environment in te ao Māori within the

⁵⁴¹ Wai 3300, #4.1.8, p 14. Ms Emery presented at wānanga tuatahi, held in Ngāruawāhia. She identified herself as a member of the Kaunihera Māori Tāmaki Makaurau.

⁵⁴² Wai 3300, #B6(h), p 6

⁵⁴³ Wai 3300, #B6(h), pp 1-2

⁵⁴⁴ Wai 3300, #4.1.12, p 54; Wai 3300, #B6(g)(i), p 9

⁵⁴⁵ Wai 3300, #4.1.13, pp 272, 288

⁵⁴⁶ Wai 3300, #B6(h), p 10

⁵⁴⁷ Wai 3300, #B6(h), pp 9-10

⁵⁴⁸ Wai 3300, #B6(g), p 11; Wai 3300, #4.1.12, p 54. Mr Buurman was specifically referring to article 3 of He Whakaputanga, explaining, ‘(t)his proposed that hapū hold assembly for joint decision making ... It is a demonstration that there are ways in which Māori can be unified’. Article 3 stated that Te Whakaminenga, the Confederation of United Tribes were to meet each ngahuru (autumn) at Waitangi to create laws for the administration of justice, peace and security, fair trade and commerce – see Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty*, p 174.

⁵⁴⁹ Wai 3300, #B6(g), pp 11-12; Wai 3300, #4.1.12, p 55

⁵⁵⁰ Wai 3300, #B6(g), p 11

⁵⁵¹ Wai 3300, #B6(a), p 2

constitution.⁵⁵² Grace Ahipene-Hoete explained that responsibility is deeply embedded in tikanga, and that this framework of obligations (for example, those relating to kaitiakitanga), must be recognised and upheld in the constitution.⁵⁵³ Ultimately, as Ms Connor-Kingi put it, ‘tikanga should be able to apply, where relevant, to Māori as a matter of policy and law’.⁵⁵⁴ Speakers raised several proposals for ways tikanga could be incorporated into the country’s constitutional arrangements. Ms Connor-Kingi suggested ‘a systematic audit and amendment of legislation to recognise tikanga Māori and hapū authority in decision-making processes’.⁵⁵⁵ Mr Durie-McGrath explained that while tikanga does vary across iwi and hapū, there are overarching principles applicable to all Māori – including whakapapa and whanaungatanga, mana, manaakitangi, kaitiakitanga, rangatiratanga, mauri and utu.⁵⁵⁶ While he did not expect each to be explicitly named in the constitution, they could be ‘expressed in general terms under the umbrella of tikanga’.⁵⁵⁷ Generally, the NZMC cautioned against positioning of tikanga and ngā ture Pākehā as ‘rival concepts’ where one might prevail over the other – instead finding ‘bicultural jurisprudence’ a helpful framework.⁵⁵⁸

A recurring theme in the discussion of tikanga was the paramountcy of relationships, characterised through values like whakapapa and whanaungatanga. Mr Durie-McGrath explained that ‘[c]onnection is an intrinsic aspect of tikanga’, and as such ‘tikanga could be framed as a law based on relationships’.⁵⁵⁹ Mr Ngatai distinguished between state governance and Māori governance; while the former is premised on codified laws and rigid structures, the latter is built on whanaungatanga and relationships within and between hapū and hapori.⁵⁶⁰ Tikanga, Mr Ngatai explained, ‘prioritises collective well-being [and] the resolution of conflicts to preserve community harmony and maintenance of mana’.⁵⁶¹ Mr Buurman discussed how the mana of hapū was bestowed on rangatira, whose power was bound by tikanga to be exercised according to responsibilities sourced from one’s tūpuna to maintain whakapapa relationships for the benefit of mokopuna.⁵⁶² Indeed, as Dr Anthony Owen Cole shared, ‘in te ao Māori, the wellbeing of a person is inextricably related to the wellbeing of all kin to whom that individual is related through whakapapa’.⁵⁶³ The NZMC argued that since

⁵⁵² Wai 3300, #B6(b), p 2; 4.1.9, p 13. Ms Gordon presented at wānanga tuarua held in Tūranga-nui-a-Kiwa (Gisborne) as a representative of Te Tai Rāwhiti DMC.

⁵⁵³ Wai 3300, #4.1.10, p 61. Ms Ahipene-Hoete presented at wānanga tuatoru, held in Te Whanganui-a-Tara (Wellington) as a representative of the Wellington DMC.

⁵⁵⁴ Wai 3300, #B6(h), p 12

⁵⁵⁵ Wai 3300, #B6(h), p 16

⁵⁵⁶ Wai 3300, #B6(g), p 5; Wai 3300, #4.1.12, p 49. Mr Durie-McGrath presented at wānanga tuarima held in Te Papaioaea (Palmerston North).

⁵⁵⁷ Wai 3300, #B6(g), p 5; Wai 3300, #4.1.12, p 49

⁵⁵⁸ Wai 3300, #B6, p 3. This idea that tikanga and ngā ture Pākehā can come together to inform the country’s legal system has been discussed by Justice Joe Williams – see Joseph Williams, ‘Can You See The Island?’, *Māori Law Review*, Oct 2015, pp 21-28, <https://maorilawreview.co.nz/2015/10/can-you-see-the-island-justice-joseph-williams/>, accessed 25 February 2026. There, he advocates for a ‘re-imagined system in which two sources of law were recognised and normalised [...] [a] nation not only bi-cultural but bi-legal; in short a Treaty partnership in the very bones of our constitutional arrangements.’

⁵⁵⁹ Wai 3300, #B6(g), p 5

⁵⁶⁰ Wai 3300, #4.1.8, p 3; Wai 3300, #B6(a), pp 2, 8

⁵⁶¹ Wai 3300, #4.1.8, p 3

⁵⁶² Wai 3300, #B6(g), p 9

⁵⁶³ Wai 3300, #4.1.9, p 36. Dr Cole presented at wānanga tuarua held in Tūranga-nui-a-Kiwa (Gisborne) for the Takitimu DMC.

one of the functions of a constitution is to ‘provide safeguards for people and the wellbeing of society’ there should be a ‘constitutional law for responsibility’.⁵⁶⁴ This would recognise Māori rights of self-government to carry out obligations ‘for the wellbeing of whānau, hapū and community’, in accordance with tikanga.⁵⁶⁵ David Stoeverlaar explained that these relational obligations extend beyond interpersonal relationships, to the whenua and te taiao – underpinned by whakapapa connections to whenua and ‘celestial connections tracing back to Pāpātūānuku [sic] and Ranginui’.⁵⁶⁶ In his words, ‘Te Ao Māori by its structure, collapses the divide between people and the environment through the principle of interconnectedness.’⁵⁶⁷ The NZMC explained that these kaitiakitanga responsibilities towards environmental wellbeing are also intergenerational – owed to one’s ancestors, and to one’s descendants.⁵⁶⁸ As Ms Ahipene-Hoete explained, ‘[t]his is more than just a moral view’ – it is ‘a constitutional principle grounded in whakapapa and atua’.⁵⁶⁹

(2) Wānanga Participants’ Discussion of Inquiry Themes

The dominant thread of much of the kōrero shared across the wānanga concerned mana motuhake and tino rangatiratanga. Mr Ngatai and Ms Kendall articulated the NZMC’s view that mana motuhake was ‘our own Māori term’, whereas tino rangatiratanga was a word introduced by missionaries.⁵⁷⁰ As such, while both terms describe ‘Māori self-government as an absolute and inherent authority’, mana motuhake was stated as the preferred term of the NZMC, as Māori rights ‘should be defined by our own cultural terms rather than by those from outside’.⁵⁷¹ Mr Durie-McGrath noted that ‘while ‘Māori as a distinct group are implicitly recognised vis a vis the Treaty’, the ‘[f]ull expression of Māori status is [...] constrained by the nature of the instrument that frames the Māori-Crown relationship’.⁵⁷² A separate and explicit recognition of Māori as tangata whenua, who hold tino rangatiratanga and mana motuhake, may be required – to affirm a ‘distinct political status’ for Māori, ‘rather than just as a Treaty partner to the Crown’.⁵⁷³ Though acknowledging that rights of self-determination

⁵⁶⁴ Wai 3300, #B6(c), pp 1. This statement of position is attributed to the NZMC generally, and was not directly presented at a wānanga, though the idea of responsibility as a constitutional responsibility was discussed generally by Wellington DMC representatives at wānanga tuatoru, held in Te Whanganui a Tara (Wellington).

⁵⁶⁵ Wai 3300, #B6(c), pp 1-2

⁵⁶⁶ Wai 3300, #B6(b), p 5; 4.1.9, p 15. Mr Stoeverlaar presented at wānanga tuarua held in Tūranga-nui-a-Kiwa (Gisborne) for the Te Tai Rāwhiti DMC. Mead discusses how ira tangata (human life) traces descent from ira atua (the gods), explaining that ‘the first woman was created by the Gods and the seed of human life was planted by Tāne, son of Rangī and Papa, the primeval parents of the Māori cosmos’ – see Mead, *Tikanga Māori*, pp 42.

⁵⁶⁷ Wai 3300, #B6(b), p 5; 4.1.9, p 15. In recent years the New Zealand Parliament has recognised significant natural features in law as ‘persons’, including former Te Urewera National Park (2014); Whanganui River (2017); and Taranaki Maunga/Te Kāhui Tupua (2025). Andrew Geddis and Jacinta Ruru call these developments ‘constitutional in nature’ as it highlights the role of law in debates over fundamental values including views on land, authority and colonisation – see Andrew Geddis and Jacinta Ruru, ‘Places as Persons: Creating a New Framework for Māori-Crown Relations’, in *The Frontiers of Public Law*, ed Jason NE Varuhas and Shona Wilson Stark eds (Oxford : Hart Publishing, 2019), p 257.

⁵⁶⁸ Wai 3300, #B6(c), p 3

⁵⁶⁹ Wai 3300, #4.1.10, p 59

⁵⁷⁰ Wai 3300, #B6(a), p 1. The Te Paparahi o Te Raki Tribunal explored the early use of the term tino rangatiratanga in its Stage I report, including use of the word rangatiratanga to translate ‘kingdom’ in the Bible – see Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty*, pp 415-417.

⁵⁷¹ Wai 3300, #B6(a), pp 1-2

⁵⁷² Wai 3300, #B6(g), p 2

⁵⁷³ Wai 3300, #B6(g), p 3

are inherent to Māori, the NZMC also said that greater recognition of Māori self-determination is affirmed by the Treaty/te Tiriti. Ms Kendall and Mr Ngatai argued that the meaning of te Tiriti should prevail, given the Māori text is what rangatira ‘almost always signed’.⁵⁷⁴ Mr Edwards and Ms Rewi used the words sovereignty, self-determination, and tino rangatiratanga interchangeably, explaining that sovereignty ‘has always been conceptualised as our tino rangatiratanga’, and that self-determination is ‘expressed through our right to autonomously manage our own natural resources within our rohe’, as validated by whakapapa and mana whenua.⁵⁷⁵ They argued that future measures to strengthen Māori self-government should ‘always be based upon the kawa, tikanga, and mātauranga’ of the marae throughout the motu – as ‘our people are diverse and not homogenous in our views and practices of self-governance’.⁵⁷⁶

The legitimacy of the current constitution was challenged by participants, opposing what they saw as an overreach of the Crown’s kāwanatanga powers. Mr Edwards and Ms Rewi maintained that ‘sovereignty was never ceded’, arguing that sovereignty ‘has always been conceptualised as our tino rangatiratanga’.⁵⁷⁷ Ms Kendall and Mr Ngatai explained that anything ceded by Māori through article 1 was ‘given subject to the self-governing rights of Māori’.⁵⁷⁸ Kāwanatanga powers of governance can exist, ‘but not as an absolute sovereignty that extinguishes Māori rangatiratanga’.⁵⁷⁹ Ms Emery said her ‘issue’ with kāwanatanga is that the Crown has centred power and resources upon itself, which needs to be shared.⁵⁸⁰ Ms Kendall and Mr Ngatai expressed their desire for a ‘workable outcome’ in which Māori respect ‘the authority of the state to govern but only in terms of the Treaty of Waitangi’, that provides for an independent sphere of Māori governance ‘inside the Crown’s sphere of territorial governance’.⁵⁸¹

Wānanga participants that spoke on behalf of the NZMC discussed their aspirations for a renewed constitutional framework that reflects the dual governance arrangements envisioned by the Treaty/te Tiriti partnership. Ms Connor-Kingi noted his support for *He Puapua’s* conception of a ‘multisphere arrangement’ where hapū and iwi governance structures are not only acknowledged but play a decisive role, and asked that the Tribunal endorse these ideas as the basis for constitutional transformation.⁵⁸² If the constitution is to recognise the tino rangatiratanga sphere in a legitimate way, he argued that the form of Māori representation

⁵⁷⁴ Wai 3300, #B6(a), p 4

⁵⁷⁵ Wai 3300, #B6(j), p 2

⁵⁷⁶ Wai 3300, #B6(j), p 2

⁵⁷⁷ Wai 3300, #B6(j), p 2

⁵⁷⁸ Wai 3300, #B6(a), p 4

⁵⁷⁹ Wai 3300, #B6(h), p 11

⁵⁸⁰ Wai 3300, #4.1.8, p 8

⁵⁸¹ Wai 3300, #B6(a), p 4

⁵⁸² Wai 3300, #4.1.13, pp 290-291. Drawing explicitly on *Matike Mai, He Puapua* conceptualises a constitutional model based around ‘spheres of authority’. The rangatiratanga sphere represents Māori governance over people and places. The kāwanatanga sphere reflects Crown governance. The sphere between the two is a relational or joint sphere intended to reorient the balance and reflect co-governance – see Claire Charters, Kayla Kingdon-Bebb, Tāmami Olsen, Waimirangi Ormsby, Emily Owen, Judith Pryor, Jacinta Ruru, Naomi Solomon and Gary Williams, *He Puapua: Report of the working group on a plan to realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand* (commissioned report, Wellington : 2019), <https://www.tpk.govt.nz/documents-1732-A>, accessed 26 February 2026.

‘must be determined by Māori ourselves’.⁵⁸³ While a national Māori assembly or upper house could be an option, delegates ‘should be selected at the hapū or community level’.⁵⁸⁴ It was important that any constitutional redesign to account for the respective spheres of Māori and Crown authority ‘be ratified by hapū themselves through hui-a-hapū and other tikanga processes’.⁵⁸⁵ Mr Durie-McGrath explained that recognising Māori authority at the ‘appropriate level’ and ‘primarily through hapū, would restore balance to the constitutional relationship between Māori and the Crown’, and enhance the legitimacy of the constitutional framework.⁵⁸⁶

1.4.8 The Crown’s Position

(1) The Crown’s Understanding of the Principles of Constitutionalism

The underlying principle of the country’s constitutional arrangements, as described by the Crown, is democracy – a principle it also articulated as ‘representative government’.⁵⁸⁷ Parliament’s legitimacy is sourced from its ‘democratic credentials’, as it is composed of representatives who are elected every three years.⁵⁸⁸ This ensures the legislature remains accountable to the electorate.⁵⁸⁹ The Crown described Parliament as exercising ‘the sovereignty of the people’, as in practice, ‘political authority resides in all the people of New Zealand collectively who elect Members of Parliament’.⁵⁹⁰ In exercising this power, Parliament seeks to balance the diverse interests of the population.⁵⁹¹ Importantly, the Crown acknowledged the ‘multi-textured’ nature of democracy, and that allowing Māori specific participation rights in State institutions is not in itself inconsistent with the principle of democracy.⁵⁹² Though not named as a discrete constitutional principle, the Crown nonetheless asserted that the ‘fundamental value’ of equality is expressed through this principle of democracy.⁵⁹³

This principle of democracy is closely linked with the standard of conduct required under the principle of responsible government, which ensures the executive is ultimately responsible to the voting public. The Crown describes this as ‘a key accountability mechanism within New Zealand’s constitutional framework’.⁵⁹⁴ The executive has similar ‘democratic credentials’ to

⁵⁸³ Wai 3300, #B6(h), pp 1-2. This SOP is attributed to the NZMC generally, with representatives from Ngāti Kahu o Torongare. It was presented at wānanga tuaono at Waitangi.

⁵⁸⁴ Wai 3300, #B6(h), p 9. This SOP is attributed to the NZMC generally, with representatives from Ngāti Kahu o Torongare. It was presented at wānanga tuaono at Waitangi.

⁵⁸⁵ Wai 3300, #B6(h), p 14. This SOP is attributed to the NZMC generally, with representatives from Ngāti Kahu o Torongare. It was presented at wānanga tuaono at Waitangi.

⁵⁸⁶ Wai 3300, #B6(g), p 13. This SOP is attributed to the NZMC generally and was presented at wānanga tuarima in Te Papaioea.

⁵⁸⁷ Wai 3300, #B14, p 3

⁵⁸⁸ Wai 3300, #B14 p 3

⁵⁸⁹ Wai 3300, # B14, p 4

⁵⁹⁰ Wai 3300, #B14(c), p 1

⁵⁹¹ Wai 3300, #B14(c), p 7

⁵⁹² Wai 3300, #4.1.14, p 39

⁵⁹³ Wai 3300, #B14(d), p 5

⁵⁹⁴ Wai 3300, #B14, pp 4-5

Parliament in the sense that Ministers are also elected MPs, and many of its powers are sourced in parliamentary statute.⁵⁹⁵ The executive is ‘held accountable to the legislature through parliamentary questions, debates, and select committees’.⁵⁹⁶ The executive must retain the confidence of the House to remain in power.⁵⁹⁷ Additionally, the executive may not spend public money, tax, or borrow without an Act of Parliament, ensuring there is democratic accountability for resource decisions.⁵⁹⁸

Another core constitutional principle highlighted by the Crown is the rule of law. Though the rule of law ‘is not comprehensively codified in any one place’, the Crown described it as ‘one of New Zealand’s key constitutional principles.’⁵⁹⁹ Essentially, the principle provides that ‘every person is equal before the law and is subject to it’, including the Government.⁶⁰⁰ Another component of the rule of law is that law ‘should be clear and clearly enforceable’, by an impartial and independent judiciary.⁶⁰¹ The law must also be constitutionally sound and accessible so that ‘[a]ll New Zealanders have access to justice and can pursue their legal rights’.⁶⁰² The Attorney-General is recognised as having a responsibility to uphold the rule of law, and the Legislative Design and Advisory Committee also has a mandate to advise on potential rule of law issues in legislation.⁶⁰³ Importantly, the Crown accepted that tikanga, to the extent that it is captured in statute and reflected in the common law, also forms a component of the rule of law.⁶⁰⁴ The Crown clarified that in an international context, ‘New Zealand is bound by the international rule of law, to the extent that legally binding treaties and customary international law apply to it’ but that these obligations do not carry the same enforcement machinery as domestic law. These obligations therefore do not form part of the domestic rule of law, except to the extent that international law obligations are directly incorporated in statute or influence the development of the common law. The Crown did however note that ‘many directions and recommendations of international bodies are not legally binding, but the New Zealand government will receive and consider them carefully.’⁶⁰⁵

Another constitutional principle named by the Crown is the principle of non-interference, otherwise described as the separation of powers. The functions and roles of the three branches of government are balanced in such a way as to provide a set of ‘checks and balances’ on each other, while not intruding upon each other’s primary functions.⁶⁰⁶ The government consists of three branches – the legislature, the executive, and the judiciary.⁶⁰⁷ Parliament, the legislature,

⁵⁹⁵ Wai 3300, #B14, p 3

⁵⁹⁶ Wai 3300, #B14(c), pp 7-8

⁵⁹⁷ Wai 3300, #B14, p 4

⁵⁹⁸ Wai 3300, #B14(c), p 8

⁵⁹⁹ Wai 3300, #B14, p 5

⁶⁰⁰ Wai 3300, #B14, p 5; Wai 3300, #4.1.14, p 10

⁶⁰¹ Wai 3300, #B14, p 5; Wai 3300, #B14(c), p 7

⁶⁰² Wai 3300, #B14(c), p 7. The Legislation Design and Advisory Committee expands on this in its guidelines, which state that the law ‘should be publicly accessible and able to be easily understood by all to whom it applies’ – see Wai 3300, #6.2.10, p 23.

⁶⁰³ Wai 3300, #B14, p 6

⁶⁰⁴ Wai 3300, #4.1.14, p 40

⁶⁰⁵ Wai 3300, #3.2.418, pp 1-2

⁶⁰⁶ Wai 3300, #B14(c), p 8

⁶⁰⁷ Wai 3300, #B14, p 8

is responsible for passing, amending, and repealing statute law.⁶⁰⁸ The executive consists of Ministers of the Crown, themselves elected members of Parliament, as supported by the public service.⁶⁰⁹ The role of the executive is to develop policy and govern within the laws set by the judiciary and by Parliament.⁶¹⁰ The judiciary both develops the common law and interprets and applies the statute law created by Parliament.⁶¹¹ The executive must operate within the laws set by Parliament, and while the courts cannot invalidate legislation or intrude on parliamentary process, they can review executive action for compliance with statute.⁶¹² There are also constitutional safeguards to preserve the independence of the judiciary.⁶¹³

One of the defining principles of the country's constitutional arrangements, as described by the Crown, are the powers held by Parliament, which it argued reinforce several other constitutional principles. As set out in the Constitution Act 1986, Parliament has full power to make laws.⁶¹⁴ Since Parliament's legitimacy 'stems from its democratic mandate', this principle means 'New Zealanders retain ultimate authority through their elected representatives'.⁶¹⁵ As stated above, the courts cannot invalidate legislation, which means that 'elected representatives make fundamental policy choices'.⁶¹⁶ Parliament has exclusive authority to regulate its own procedure – one Parliament cannot bind another, meaning the Parliament of the day can respond to changing democratic will.⁶¹⁷ One caveat to this is the high threshold for repeal of certain laws of a constitutional nature, like aspects of the Electoral Act 1993.⁶¹⁸ The Crown asserted that the supremacy of Parliament 'maintains the constitutional separation of power', as it enables the legislature to 'work free from impediments and to discharge its constitutional functions effectively in the public interest'.⁶¹⁹ The Crown did accept, however, that while the Treaty/te Tiriti and international covenants like UNDRIP do not act as formal legal constraints on parliamentary supremacy, they do 'act as a constraint [...] that guides and influences the ways in which Parliament chooses to act'.⁶²⁰

The Crown emphasised the role of fundamental human rights in the exercise of public power, which it linked closely to equality.⁶²¹ It explained that fundamental human rights 'uphold the inherent dignity of people as human beings' and help to define 'acceptable limits of public power'.⁶²² These fundamental rights are affirmed in the NZBORA and in international rights

⁶⁰⁸ Wai 3300, #B14, 24

⁶⁰⁹ Wai 3300, #B14(a), p 4

⁶¹⁰ Wai 3300, #B14(a), p 8

⁶¹¹ Wai 3300, #B14, p 7

⁶¹² Wai 3300, #B14, p 7; Wai 3300, #B14(c), p 8

⁶¹³ Wai 3300, #B14, pp 5-6. The Constitution Act 1986, for example, provides that judicial salaries may not be reduced during their commission – see s 24.

⁶¹⁴ Wai 3300, #B14, p 8

⁶¹⁵ Wai 3300, #B14(c), p 22, 8

⁶¹⁶ Wai 3300, #B14(c), p 22

⁶¹⁷ Wai 3300, #B14(c), p 22

⁶¹⁸ Wai 3300, #B14(a), p 6. Under s 258 of the Electoral Act 1993, several key electoral provisions cannot be amended or repealed except by either a 75 per cent majority in Parliament or a majority of votes in a public referendum. These entrenched provisions relate to matters like the minimum voting age and the term of Parliament.

⁶¹⁹ Wai 3300, #B14(c), p 23

⁶²⁰ Wai 3300, #4.1.14, p 41

⁶²¹ Wai 3300, #B14(c), p 9

⁶²² Wai 3300, #B14, p 6

instruments like the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.⁶²³ Linked closely to these fundamental human rights is the broader concept of equality. The Crown asserted that ‘the idea that we are all of equal value is fundamental to the concept of human dignity’.⁶²⁴ Equality was characterised by the Crown as a foundational value that informed several other constitutional principles – like the equality before the law mandated under the rule of law.⁶²⁵ This equality also underpins the electoral system, where everyone has ‘the right to participate equally in free and fair elections’ and this universal suffrage enhances the democratic credentials of Parliament.⁶²⁶ The Crown’s description of equality as a foundational constitutional value focused on these elements of formal equality, rather than equity – though the Crown did note the conceptual differences between formal equality and substantive equality, stating that ‘[a]chieving substantive equality may require differential treatment to address existing inequities’, as recognised both in the NZBORA and international instruments.⁶²⁷ The Crown further noted the intersection between concepts of equality and the Treaty of Waitangi, arguing they are consistent with article 3 of the Treaty/te Tiriti, which affords Māori the same rights and duties as British subjects.⁶²⁸ However, the Crown did note that article 3 sits alongside article 2, which provides for Māori rights and interests and accepted equity as a principle of the Treaty/te Tiriti.⁶²⁹

The Crown did not acknowledge the Treaty of Waitangi/te Tiriti o Waitangi as a distinct constitutional principle.⁶³⁰ The Crown did however accept that the Treaty/te Tiriti is a source of Aotearoa New Zealand’s constitution, ‘a founding document of the government of New Zealand’, and one of the ‘critical steps’ through which the Crown’s ‘sovereignty was applied in New Zealand’.⁶³¹ It stated that the Treaty/te Tiriti established (and for some continued) a dynamic relationship between Crown and Māori ‘with mutuality and reciprocity at its core’. The Crown highlighted that the Treaty/te Tiriti was not intended ‘to fossilise a status quo, but to provide a direction for future growth and development’, and that the Treaty/te Tiriti relationship has evolved since 1840.⁶³² The Crown identified the Treaty/te Tiriti as a major thread of ‘modern day civic discourse’ and something that affects, in varied ways and to varied

⁶²³ Wai 3300, #B14, p 7

⁶²⁴ Wai 3300, #B14(b), p 2

⁶²⁵ Wai 3300, #B14(c), p 9. As part of this kōrero, the Crown referenced article 26 of the International Covenant on Civil and Political Rights, an international instrument that Aotearoa New Zealand is a party to. Article 26 states that ‘[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’ – see International Covenant on Civil and Political Rights, 19 December 1966, A/RES/21/2200.

⁶²⁶ Wai 3300, #B14(c), p 1; Wai 3300, #B14(b), p 3

⁶²⁷ Wai 3300, #B14(c), p 9; Wai 3300, #B14(b), p s2. s 19(2) of the New Zealand Bill of Rights Act 1990 provides that ‘[m]easures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of Part 2 of the Human Rights Act 1993 do not constitute discrimination’.

⁶²⁸ Wai 3300, #B14(b), p 3

⁶²⁹ Wai 3300, #B14(b), p 9; Wai 3300, #4.1.14, p 46

⁶³⁰ See Wai 3300, #B14(c) generally and Wai 3300, #4.1.14, pp 36-37

⁶³¹ Wai 3300, #B14, pp 1-2; Wai 3300, #4.1.14, p 35

⁶³² Wai 3300, #B14(c), p 6

extents, the exercise of public power, and informs the application of other constitutional principles.⁶³³ The Crown articulated several ways in which the country’s constitution enables recognition of the Treaty/te Tiriti. For example, Parliament, through democratically accountable processes, has enacted legislation recognising Treaty/te Tiriti rights and interests, though the Crown noted that as with all statutes these laws may be amended or repealed.⁶³⁴ Decision-makers have an obligation or discretion to consider the Treaty within certain statutory frameworks – and while the Treaty is not directly justiciable in the courts, its principles are prominent in a range of legislation in a way that is justiciable.⁶³⁵ The Tribunal was named by the Crown as another mechanism for assessing the Treaty-consistency of the Government’s actions. The Crown also noted Parliament’s ability to refer Bills to the Tribunal under the Treaty of Waitangi Act 1975 for consideration, though acknowledged that this power has never been exercised.⁶³⁶

The Crown further accepted that Aotearoa New Zealand’s constitutional arrangements ‘ought to be consistent with the Crown’s Treaty obligations under the Treaty’, including ‘what the Treaty requires in terms of any right to self-government’ for Māori.⁶³⁷ However, the Crown also argued it should maintain the core constitutional principles of representative government and democracy, rule of law, responsible government, separation of powers, the powers of Parliament, and fundamental human rights.⁶³⁸ Arrangements consistent with the rights and interests Māori have under the Treaty must, for example, continue to ‘ensure all New Zealanders have equal rights to participate in civic and political life’.⁶³⁹ While the Crown accepted that its listed constitutional principles are not themselves sourced in the Treaty/te Tiriti, the Crown did not see them as inherently inconsistent with the Crown’s Treaty/te Tiriti obligations.⁶⁴⁰ One of the tensions between the desire for Treaty-consistency and the desire to maintain existing constitutional principle was discussed in Sir Kenneth Keith’s essay ‘On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government’. We note that this essay is included in the introduction to the *Cabinet Manual 2023* and was filed by the Crown alongside its statement of position.⁶⁴¹ The Crown submitted this essay ‘is strictly not part of the Manual’ but serves as constitutional context ‘intended to support understanding of the broader context in which the procedure and guidance [of the Cabinet Manual] operate[s].’⁶⁴² In that essay, Sir Kenneth noted that ‘[a] balance has to be struck between majority power and minority right, between the sovereignty of the people

⁶³³ Wai 3300, #B14, p 3; Wai 3300, #B14(c), p 6

⁶³⁴ Wai 3300, #B14(c), p 23. This statement from the Crown is particularly relevant at the moment, as the Treaty clauses in 23 statutes (as of May 2025) are the subject of an ongoing Treaty clause review – a process this Tribunal has already issued findings on – see Waitangi Tribunal, *Ngā Mātāpono/The Principles: Part III of the 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 – Pre-publication Version* (Wellington: Waitangi Tribunal, 2025), pp 25; 46-50.

⁶³⁵ Wai 3300, #B14, p 3; Wai 3300, #B14(c), p 23

⁶³⁶ Wai 3300, #B14(c), pp 23-24

⁶³⁷ Wai 3300, #B14(c), p 23; Wai 3300, #4.1.14, p 44

⁶³⁸ Wai 3300, #B14(c), pp 7-9; Wai 3300, #B14(d), p 3

⁶³⁹ Wai 3300, #B14(c), p 20

⁶⁴⁰ Wai 3300, #4.1.14, pp 29, 35-36

⁶⁴¹ Wai 3300, #B14(a)

⁶⁴² Wai 3300, #3.2.418

exercised through Parliament and the rule of law'.⁶⁴³ He argued that '[t]he answer cannot always lie with simply majority decision-making', and that those exercising public powers in the majority's interest often 'recognise that their authority is limited' by several things, including the Treaty/te Tiriti.⁶⁴⁴ Mr Kibblewhite acknowledged that providing protection for minorities within majority rule is 'the challenge inherent always in democratic institutions' – and noted the protections afforded by fundamental human rights and the ways the Treaty/te Tiriti has been provided for in current constitutional arrangements.⁶⁴⁵ Andrew Irwin, speaking for the Crown, acknowledged that these protections were not, however, legal 'fetters to the absolute sovereignty of Parliament'.⁶⁴⁶ Mr Kibblewhite further acknowledged article 2 of the Treaty/te Tiriti, noting those rights 'are guaranteed and do need protection'.⁶⁴⁷

(2) The Crown's Commentary on the Inquiry Themes

On the inquiry theme of Māori autonomy, self-government, and tikanga the Crown made similar points as in its discussion of the place of the Treaty/te Tiriti in the constitution generally. While the Crown stated that the constitution should be consistent with the rights and interests Māori have under the Treaty/te Tiriti (presumably including those of tino rangatiratanga), the constitution must also maintain broader constitutional principles like the rule of law and democratic accountability through representative government.⁶⁴⁸ In terms of tikanga, the Crown acknowledged that tikanga 'is fundamental to Māori society and collective wellbeing' and noted the Supreme Court's ruling that tikanga forms part of the law of Aotearoa New Zealand.⁶⁴⁹ The Crown also explained that the intersection between tikanga and the constitution 'is not straight forward', and that just as tikanga principles may be difficult to reconcile with common law principles, they may be difficult to reconcile with existing constitutional principle – requiring 'careful weighing'.⁶⁵⁰

On the second inquiry theme, which covers broader constitutional legitimacy and sovereignty, as well as parliamentary powers, the Crown remained steadfast in its claim to legitimacy. It acknowledged that questions about the source of the Crown's constitutional authority and sovereignty are of 'fundamental importance to the claimants'.⁶⁵¹ The Crown nonetheless maintained that its exercise of sovereignty today through representative democracy is legitimate.⁶⁵² It further noted that its position on sovereignty has not changed since its submissions in the Te Paparahi o Te Raki inquiry.⁶⁵³ The Crown referenced its closing

⁶⁴³ Wai 3300, #B14(a), p 5

⁶⁴⁴ Wai 3300, #B14(a), p 5

⁶⁴⁵ Wai 3300, #4.1.14, p 24

⁶⁴⁶ Wai 3300, #4.1.14, p 27; Wai 3300, #4.1.14(a), p [2]

⁶⁴⁷ Wai 3300, #4.1.14, p 25

⁶⁴⁸ Wai 3300, #B14(c), p 20

⁶⁴⁹ Wai 3300, #B14(c), p 20. Here, the Crown refers to the recent *Ellis v R* decision, where tikanga principles, including mana, were used to inform the Supreme Court's decision to allow the appeal of a Pākehā man against a criminal conviction to continue after his death – see *Ellis v R* [2022] NZSC 114.

⁶⁵⁰ Wai 3300, #B14(c), p 20

⁶⁵¹ Wai 3300, #B14(c), p 3

⁶⁵² Wai 3300, #B14(d), p 7

⁶⁵³ Wai 3300, #B14(c), p 13

submissions in Stage Two of that inquiry, where it accepted that the Treaty/te Tiriti resulted in ‘two kinds of authority’ – tino rangatiratanga and kāwanatanga – but maintained that Māori would have understood that while their chieftainship over their people and lands continued, the Governor would have a ‘new over-arching authority over all people and places within New Zealand’.⁶⁵⁴ The Crown asserted that its governing authority today is ‘exercised through representative democracy and responsible government’ – with Parliament’s legitimacy and power to make law stemming directly from periodic elections ‘in which all citizens participate equally’.⁶⁵⁵ It relied on the existing provisions for recognition of the Treaty/te Tiriti in the constitution, as well as the specific Māori representation in Parliament afforded through Māori electorates.⁶⁵⁶

On the proposed inquiry theme of international treaty-making, the Crown emphasised the role of the executive in negotiating international instruments. The executive negotiates international agreements ‘on behalf of all New Zealanders’, and is accountable to Parliament for its conduct.⁶⁵⁷ International instruments only have domestic legal force if incorporated into statute by Parliament, and Parliament can also scrutinise and comment on significant treaties before they are ratified by the Executive.⁶⁵⁸ The Crown argued these processes are consistent with key constitutional principles, and reflect the ‘practical considerations concerning the nature of international negotiations’.⁶⁵⁹ The Crown noted, however, that at ‘a level of principle’, existing practice is for the New Zealand Government to consult with Māori about international arrangements, if there is a need to do so.⁶⁶⁰

The Crown also made comments on the inquiry theme of electoral systems. The Crown emphasised the fundamental human right of every person to ‘participate equally in free and fair elections’.⁶⁶¹ It argued current electoral arrangements are consistent with the principles of representative democracy, as all citizens have an equal right to vote and the MMP system enhances representation within Parliament.⁶⁶² It noted parts of the Electoral Act are entrenched, reflecting the fundamental nature of these matters to democracy.⁶⁶³ The Crown highlighted that Māori electorates provide a specific mechanism for Māori representation in Parliament, and that registration on the Māori electoral roll ‘directly influence[s] how many dedicated Māori

⁶⁵⁴ Wai 1040, #3.3.402, pp 24-30

⁶⁵⁵ Wai 3300, #B14(c), pp 13-14

⁶⁵⁶ Wai 3300, #B14(c), pp 23-24. The Crown lists several ways the ‘constitution has enabled the recognition of the Treaty/te Tiriti’, including the enactment of legislation recognising Treaty rights and interests across numerous policy areas, the fact that decision-makers ‘may have an obligation or a discretion to consider the Treaty/te Tiriti within certain relevant statutory frameworks’, and the jurisdiction of the Tribunal.

⁶⁵⁷ Wai 3300, #B14(c), p 25

⁶⁵⁸ Wai 3300, #B14(c), p 25; Wai 3300, #B14(a), p 6. However, there is legal presumption that Aotearoa New Zealand will act in accordance with its international obligations. While no international instrument ‘may defeat the clear meaning of a statute’, the courts typically interpret domestic statute in a way consistent with international law obligations where possible – see Joseph, *Joseph on Constitutional and Administrative Law*, pp 609-610.

⁶⁵⁹ Wai 3300, #B14(c), p 25

⁶⁶⁰ Wai 3300, #4.1.14, p 49

⁶⁶¹ Wai 3300, #B14(c), p 1

⁶⁶² Wai 3300, #B14(c), p 27

⁶⁶³ Wai 3300, #B14(c), p 27

seats there are in Parliament.’⁶⁶⁴ The Crown acknowledged, but did not substantively address, claimant kōrero about low Māori voter turnout.⁶⁶⁵

In presenting its position on the inquiry theme of local government, the Crown asserted that local government is not the Crown – local authorities are separate legal entities established by Parliament. Each local authority is democratically elected by their local communities.⁶⁶⁶ Local authorities are accountable to Parliament, and Parliament has vested certain powers and obligations in local government through legislation.⁶⁶⁷ Some of these conferred obligations are Treaty/te Tiriti obligations – though local authorities are not directly subject to the Treaty/te Tiriti as they are separate to the Crown.⁶⁶⁸ The Crown notes that some statutory frameworks include specific mechanisms for Māori participation in local government, and for consideration of Māori interests in local government – for example certain provisions in the Local Government Act 2002.⁶⁶⁹ Mr Irwin noted that ‘tino rangatiratanga is a sphere of authority that [operates] at a local level’, and so local government is often, for example, required to play a role in Treaty settlement arrangements.⁶⁷⁰ The Crown nonetheless maintained that local government is not a party to the Treaty/te Tiriti.⁶⁷¹

The Crown also provided its position on the relationship between the Treaty/te Tiriti and both human rights and citizenship rights. The Crown argued that ‘citizenship and the Treaty/te Tiriti serve different constitutional functions’ – citizenship is a universal framework of legal rights for citizens while the Treaty/te Tiriti recognises distinct Māori rights and interests.⁶⁷² Similarly, the Crown argued that human rights legislation is about ‘universal individual rights’, in contrast to the rights provided for Māori under the Treaty/te Tiriti.⁶⁷³ The NZBORA, for example, protects civil and political rights like freedom from discrimination, reflecting New Zealand’s international obligations under the International Covenant on Civil and Political Rights (ICCPR).⁶⁷⁴ On both themes, the Crown emphasised the continuing authority of Parliament. It noted that Parliament determines citizenship criteria as it is a legal status regulated by statute. It argued that the principles for the rule of law and equality should inform any consideration of citizenship – with citizenship criteria applied equally to all.⁶⁷⁵ In the human rights context, the Crown noted that international human rights instruments only have direct legal effect domestically when incorporated into legislation by Parliament, though courts may consider international instruments when interpreting legislation.⁶⁷⁶ For instance, the Crown noted that while in 2010 New Zealand announced its support of the UNDRIP, a non-binding declaration,

⁶⁶⁴ Wai 3300, #B14(d), pp 11-12

⁶⁶⁵ Wai 3300, #B14(c), p 27; Wai 3300, #B14(d), p 11

⁶⁶⁶ Wai 3300, #B14(c), p 29

⁶⁶⁷ Wai 3300, #B14(c), pp 29-30

⁶⁶⁸ Wai 3300, #B14(c), p 29

⁶⁶⁹ Wai 3300, #B14(c), p 29, footnote 106

⁶⁷⁰ Wai 3300, #4.1.14, p 31

⁶⁷¹ Wai 3300, #4.1.14, p 30

⁶⁷² Wai 3300, #B14(c), p 34

⁶⁷³ Wai 3300, #B14(c), p 31

⁶⁷⁴ Wai 3300, #B14(c), p 31

⁶⁷⁵ Wai 3300, #B14(c), p 34; Wai 3300, #B14(d), p 15

⁶⁷⁶ Wai 3300, #B14(c), p 32

it also noted that it will rely upon ‘its own distinct processes and institutions that afford opportunities to Māori for such involvement’ in decision-making.⁶⁷⁷

The Crown also generally discussed future constitutional change in the country, in response to the claimants’ challenges to current constitutional arrangements. It noted that the laws establishing the country’s constitutional framework can change, but argued that any such changes need to be scaffolded by broad public discussion and that ‘broad public support [is needed] to be seen as legitimate’.⁶⁷⁸ The Crown did acknowledge that the ‘historical development of New Zealand’s democratic institutions’ is a part of the context for contemporary discussions of constitution arrangements.⁶⁷⁹ The Crown further highlighted that while there is an ongoing discussion about the place of tino rangatiratanga and the Treaty/te Tiriti in the country’s constitutional arrangements, that discussion ‘takes place within the context of New Zealand being a modern liberal democracy’.⁶⁸⁰ Constitutional change, the Crown argued, cannot result from a confined Tribunal inquiry, but that this inquiry is an ‘important contribution to a broader national conversation’.⁶⁸¹ As highlighted by Sir Kenneth, Parliament’s supremacy means that theoretically many parts of the constitution could be amended by a simple majority in Parliament – but that power is ‘restrained by law, convention, practice, and public acceptance’.⁶⁸² The Crown made similar points about the role of tikanga in the country’s constitution – arguing that ‘[g]iving practical effect to the intersection [between tikanga and existing constitutional principles] should be the subject of broad public discussion and support’.⁶⁸³

1.5 POINTS OF CONSENSUS AND DIVERGENCE IN THE KŌRERO PRESENTED DURING THE WĀNANGA Ā-ROHE PHASE

In this section, we capture the main points of consensus and divergence in the kōrero presented during the wānanga ā-rohe phase. We concentrate first on the points of divergence within the claimant kōrero on the principles of tikanga relevant to Māori understandings of constitutionalism and the proposed inquiry themes, noting that elements of consensus within the claimants’ positions are self-evident in the sections summarising the wānanga above. We then move on to discuss the commonalities in the kōrero of the claimants and the Crown on the key principles of constitutionalism, before noting the key points on which their understandings diverge. We then discuss the respective positions of the claimants and the Crown on the proposed inquiry themes – noting that these positions are preliminary at this early stage of the inquiry. We note that in their responses to the Crown’s statement of position, several claimants

⁶⁷⁷ Wai 3300, #B14(c), p 32

⁶⁷⁸ Wai 3300, #B14(c), pp 1-2

⁶⁷⁹ Wai 3300, #B14(c), p 27

⁶⁸⁰ Wai 3300, #B14(c), p 14

⁶⁸¹ Wai 3300, #B14(c), pp 1-2

⁶⁸² Wai 3300, #B14(a), p 6. This idea is sometimes described as the ‘extra-legal constraints’ on Parliamentary supremacy – while Parliament can theoretically pass any law, public opinion is ‘a critical check on governmental and parliamentary power’. At a certain point, the voting population will simply disobey laws that are tyrannical or unduly oppressive – see Joseph, *Joseph on Constitutional and Administrative Law*, pp 601-602.

⁶⁸³ Wai 3300, #B14(c), pp 20-21

recorded their desire to respond more fully to the matters raised by the Crown later on in the inquiry process. This overview of major points of agreement and disagreement has been done to assist the Tribunal and the parties in future inquiry planning and should not be interpreted as substantive Treaty/te Tiriti analysis, or reflective of the views of the Tribunal.

1.5.1 Divergence Within the Claimants' Kōrero

(1) Diverging Kōrero on the Tikanga Principles Foundational to Māori Constitutionalism

Throughout their kōrero on the tikanga relevant to constitutionalism, the claimants named a range of different social structures within te ao Māori as focal points for the exercise of authority. Most claimants agreed about the primacy of hapū as a political unit. Ms Rewi emphasised the role of hapū in the context of the Treaty/te Tiriti text and signing,⁶⁸⁴ while Mr Dargaville explained that 'Mana Motuhake is the self-determining right of hapū who have always been in their rohe'.⁶⁸⁵ Others also noted the role of whānau in the exercise of Māori self-determination, including Ms Knight who articulated that mana motuhake is about 'empowering our whānau and people to make decisions based on our own tikanga and kawa'.⁶⁸⁶ While acknowledging the role of whānau, Mr Harold also highlighted the self-determination of the individual – stating that the 'absolute line in the sand should be autonomy of one's own body'.⁶⁸⁷ The role of larger groups in the exercise of Māori authority was also recognised by some speakers. Mrs Greensill explained that '[t]he mana to make decisions should primarily reside with smaller polities such as marae and hapū, and when necessary, iwi and waka confederations can be engaged'.⁶⁸⁸ The importance of kotahitanga between different groups was a common thread in the kōrero of the wānanga ā-rohe phase, with some claimants citing historic examples of self-determination like the Kiingitanga, Te Whakaminenga, and Te Kotahitanga Parliaments or calling for greater recognition of modern pan-tribal entities like the Iwi Chairs Forum and the New Zealand Māori Council.⁶⁸⁹ Ms Connor-Kingi noted that maintaining hapū autonomy within the constitution, but also providing for unity between groups when kotahitanga is called for, are not 'mutually exclusive' aspirations.⁶⁹⁰ In this way, though the critical role of hapū in the exercise of mana motuhake was consistently recognised, claimants also acknowledged the various ways Māori organise themselves to express their self-determination.

There was broad consensus across all six wānanga that whakapapa and mana whenua connections are key constitutional tikanga principles, but speakers noted the varied experience Māori have of these principles in their exercise of self-determination. Several claimants saw these connections as the primary source of their rights to Māori authority. For example, Mr Matehaere argued rangatiratanga can only be held by Māori, as it has its origins in the

⁶⁸⁴ Wai 3300, #4.1.13, p 271s

⁶⁸⁵ Wai 3300, #B69, p 1

⁶⁸⁶ Wai 3300, #4.1.8, p 87; Wai 3300, #4.1.9, pp 112, 85

⁶⁸⁷ Wai 3300, #B41, p 4; Wai 3300, #4.1.12, p 37

⁶⁸⁸ Wai 3300, #4.1.11, p 59; Wai 3300, #4.1.11, p 14

⁶⁸⁹ Wai 3300, #B36, pp 3, 7; Wai 3300, #B13, pp 4-5; Wai 3300, #B52, pp 8-9; Wai 3300, #B30, p 3

⁶⁹⁰ Wai 3300, #B6(h), p 10

whenua.⁶⁹¹ Ms Te Tua argued mana motuhake was not a ‘generic New Zealand Māori thing’ – it sits with hapū and whānau.⁶⁹² Ms Boasa-Dean linked mana motuhake directly to the whenua – explaining that ‘[f]or us in Te Urewera, mana motuhake is woven into the very ngahere, it is in the mists of the morning, in the wai that flows, and in the silence of our maunga’.⁶⁹³ In contrast, others noted that today, many Māori are not aware of their whakapapa and, as such, have chosen to gather in collectives that are not necessarily linked to a tūrangawaewae or hapū. While Mr Tana described tino rangatiratanga as ‘an ancestral right, tied to being on and off the land’, he pointed out that some disenfranchised urban Māori lack ‘the strength of an iwi voice or a hapū voice’, but nonetheless need to be provided for in the constitution.⁶⁹⁴ Mr Berryman gave an example of such a modern lived experience of Māori self-determination in the Mongrel Mob Kingdom, which he described as an urban reflection of hapūtanga.⁶⁹⁵ Ms Ormsby argued that Māori must have the space to ‘evolve their models of governorship and Tino Rangatiratanga’ to reflect the modern reality of Aotearoa.⁶⁹⁶

While claimants consistently emphasised the need for tikanga to be constitutionally recognised, they differed in their approach to incorporation of tikanga into the country’s constitutional arrangements. Dr Wiri described tikanga as ‘Māori laws’, Mr Raureti referred to it as ‘a binding constitutional order’, and Ms Kururangi asserted that only by recognising tikanga will Aotearoa attain ‘a just and equitable constitutional framework’.⁶⁹⁷ However, opinion varied about the best way to incorporate tikanga in the constitution. Mrs Greensill suggested tikanga be embedded as a source of law ‘on an equal footing’ with ngā ture Pākehā.⁶⁹⁸ By contrast, other claimants argued that legislating or writing down the specifics of tikanga in a fixed constitution would be inappropriate. The Whangaroa-based claimants, for example, noted that doing so could ‘risk making tikanga static and general by infusing it with Pākehā laws and traditions’ – arguing that the exercise and determination of tikanga must be left to individual hapū to determine for themselves.⁶⁹⁹ Ms Boasa-Dean offered a way forward that balanced both the need to constitutionally recognise tikanga, while respecting the diverse nature of tikanga and its application. She noted that the exact manifestation of tikanga may differ, but suggested that some common tikanga could be codified by bringing Māoridom together to identify ‘a common set of principles’.⁷⁰⁰

(2) Diverging Kōrero Relevant to the Inquiry Themes

The claimants were generally in agreement in their discussion of the inquiry themes – the most consistent thread of kōrero being that current constitutional arrangements do not provide for adequate recognition of mana motuhake or tino rangatiratanga, as befits the Treaty/te Tiriti

⁶⁹¹ Wai 3300, #B16, p 2

⁶⁹² Wai 3300, #4.1.9, p 112

⁶⁹³ Wai 3300, #B30, p 2

⁶⁹⁴ Wai 3300, B21, p 1; Wai 3300, #4.1.0, pp 46-47

⁶⁹⁵ Wai 3300, #4.1.8, pp 29, 36-37

⁶⁹⁶ Wai 3300, #B70, p 3

⁶⁹⁷ Wai 3300 #B36, p 3; Wai 3300, #B34, p 6; Wai 3300, #4.1.9, p 93

⁶⁹⁸ Wai 3300, #4.1.11, p 57

⁶⁹⁹ Wai 3300, #B67, p 4

⁷⁰⁰ Wai 3300, #4.1.10, p 33

partnership. However, participants did not always agree on which term to use to describe Māori authority and self-determination. Some used the terms *mana motuhake*, *tino rangatiratanga*, and sovereignty interchangeably, while others sought to differentiate between the terms. The term *mana motuhake* was typically described as a right to self-government that is ‘inherent’ to Māori, and, as Ms Kururangi stated, ‘not something to be granted or negotiated.’⁷⁰¹ *Tino rangatiratanga* was often spoken about as a right affirmed in *te Tiriti* – ‘a deliberate and powerful reaffirmation’ in the words of Mark Ngāhōia Scott (*Te Waiariki*).⁷⁰² Sovereignty was a notion woven throughout discussions of both concepts. For example, Ms Ormsby defined *tino rangatiratanga* as ‘the absolute expression of Māori sovereignty’, whereas Ms Hurst used sovereignty to describe *mana motuhake*.⁷⁰³ In contrast, Mr Paki rejected the use of the term sovereignty in a modern context, and Mr Mahanga explained that the term ‘sits uncomfortably with Māori constitutional ideas’.⁷⁰⁴ Some participants also viewed *mana motuhake* and *tino rangatiratanga* as distinct concepts. Mr Sadler described *tino rangatiratanga* as a ‘contrived’ term that originated from *te Tiriti*.⁷⁰⁵ In a similar vein, the NZMC expressed the view that *mana motuhake* was ‘our own Māori term’, whereas *tino rangatiratanga* was a word introduced by missionaries.⁷⁰⁶ Despite this delineation, the NZMC went on to assert that *mana motuhake* and *tino rangatiratanga* essentially ‘describe the same thing – Māori self government’.⁷⁰⁷ Other speakers also emphasised the considerable overlap between the two concepts.⁷⁰⁸ Certainly, there was a vast consensus amongst participants that, irrespective of nomenclature used, Māori rights to self-determination had not been ceded in any form and must be honoured in any future constitutional arrangements.

While the participants all agreed change is necessary to achieve dual governance arrangements more reflective of the Treaty/*te Tiriti*, there were a range of proposals for reform to the constitution – with some seeking transformation of the existing constitutional order entirely, and others focussing on reform to increase the Māori voice within existing constitutional bodies. Ms Kereopa expressed desire for a renewed, alternative approach, insisting Māori did not want ‘inclusion into a broken system’.⁷⁰⁹ Multiple speakers advocated for a high-level reconceptualization of the country’s constitutional arrangements that accommodated parallel spheres of *kāwanatanga* and *tino rangatiratanga* authority, as advocated for in the *Matike Mai* report; and this model was repeatedly discussed by claimants during the final *wānanga* held at Waitangi.⁷¹⁰ Ms Kapa explained that this would require constitutional provision for a sphere in which Māori can operate free from Crown authority in the determination of their own affairs.⁷¹¹ Others suggested targeted reforms to existing constitutional bodies to increase provision for *tino rangatiratanga* – including by increasing Māori representation in Parliament

⁷⁰¹ Wai 3300, #4.1.9, p 91

⁷⁰² Wai 3300, #4.1.13, p 52

⁷⁰³ Wai 3300, #B70, p 6; Wai 3300, #4.1.12, p 28

⁷⁰⁴ Wai 3300, #B79, p 9; Wai 3300, #4.1.8, p 5

⁷⁰⁵ Wai 3300, #4.1.13, p 256

⁷⁰⁶ Wai 3300, #B6(a), p 1

⁷⁰⁷ Wai 3300, #B6(a), pp 1-2; Wai 3300, #4.1.10, p 18; Wai 3300, #B23, p [4]

⁷⁰⁸ Wai 3300, #B41, pp 2-3; Wai 3300, #B32, p 3; Wai 3300, #4.1.9, p 53; Wai 3300, #B23, p [4]

⁷⁰⁹ Wai 3300, #B42, p 3

⁷¹⁰ Wai 3300, #4.1.13, pp 160, 220, 281, 422, 482

⁷¹¹ Wai 3300, #B46, p [3]; Wai 3300, #4.1.11, p 58

or the introduction of a bicameral House with some form of ‘iwi senate’.⁷¹² This spectrum of suggestions for constitutional reform was also reflected in claimant kōrero about changes to the legal system. Ms Kawiti advocated for a pluralist system where tikanga-based law governed ‘matters central to Māori life’, and a parallel system of Crown law for ‘matters appropriately within the Crown’s remit’, with points of interface between the two.⁷¹³ Alternatively, Mr Kemara supported further incorporation of tikanga into the existing legal framework, ‘providing legal authority to Maaori cultural practices and values, making them enforceable within certain contexts such as land disputes, family law and criminal law.’⁷¹⁴ This would include the establishment of specialist courts, akin to the Māori Land Court, to resolve disputes amongst Māori in accordance with tikanga.⁷¹⁵ Despite this variability, the claimants were unanimous that significant constitutional reform is required to better reflect the guarantees of the Treaty/te Tiriti.

In their discussions of the place of Māori self-determination in the constitution, participants throughout the wānanga phase placed varying levels of importance on the role of He Whakaputanga as a constitutional document for Aotearoa. Some described it as a key foundational document – with the likes of Mr Kemara arguing He Whakaputanga is ‘the basis of indigenous sovereignty’⁷¹⁶, and representatives for Ngā Toki Whakarurunga describing He Whakaputanga and te Tiriti as ‘the constitutional foundations of... Aotearoa.’⁷¹⁷ In contrast, kōrero from wānanga tuatoru, held in Te Whanganui-a-Tara, did not mention He Whakaputanga at all, focusing instead on the Treaty/te Tiriti.⁷¹⁸ Irrespective of which wānanga they attended, participants who had whakapapa links to the rangatira who signed He Whakaputanga tended to place the most importance on incorporating He Whakaputanga in the constitution. For example, Jade Kake noted that the rights and responsibilities established in He Whakaputanga and Te Tiriti should be ‘constitutionally enshrined’ through law,⁷¹⁹ and Ms Black, whose tupuna Te Wherowhero signed He Whakaputanga, said it should be treated as a legally binding document.⁷²⁰ This is not to say that those whose tūpuna did not sign He Whakaputanga did not value it. Malcolm Kingi, for example, shared that He Whakaputanga ‘underpins mana motuhake [and] the need to honour the Treaty’.⁷²¹ Likewise, Professor Mutu described the ‘broad consensus’ found in *Matike Mai* from hapū around the motu that He Whakaputanga offers an example for how Māori could exercise self-determination going forward.⁷²² Mr Sadler similarly advocated for the wider recognition of He Whakaputanga – stating that ‘it is not a Ngāpuhi only document... It is legitimate for all Māori to have reference to He Whakaputanga’.⁷²³

⁷¹² Wai 3300, #B58, p 3; Wai 3300, #4.1.11, p 14

⁷¹³ Wai 3300, #4.1.13, pp 145, 160

⁷¹⁴ Wai 3300, #B1, p 13

⁷¹⁵ Wai 3300, #B1, p 13

⁷¹⁶ Wai 3300, #4.1.8, p 80

⁷¹⁷ Wai 3300, #B43, p 5

⁷¹⁸ See Wai 3300, #4.1.9 generally.

⁷¹⁹ Wao 3300, #4.1.13, p 65

⁷²⁰ Wai 3300, #4.1.8, p 127

⁷²¹ Wai 3300, #4.1.10, p 53

⁷²² Wai 3300, #B52, p 8

⁷²³ Wai 3300, #B75, p 2

1.5.2 Consensus and Divergence Within the Claimant and Crown Kōrero on the Principles of Constitutionalism

(1) Consensus on the Principles of Constitutionalism

Though articulated in different ways, collective decision-making was emphasised as a significant constitutional value by both the Crown and the claimants during the wānanga ā-rohe phase. The Crown explained that Parliament's legitimacy stems from its democratic mandate, as 'political authority resides in all the people of New Zealand collectively who elect Members of Parliament'.⁷²⁴ In exercising its decision-making powers in accordance with this democratic mandate, Parliament seeks to 'balance diverse interests and perspectives across the whole population'.⁷²⁵ The authority of the collective is similarly the basis of the self-determination exercised by Māori. Professor Mutu explained that while hapū were led by ariki or rangatira, that mana was held on behalf of the collective.⁷²⁶ In Mr Kemara's words, 'the perpetual and collective authority of hapū' is the 'ultimate authority' for Māori.⁷²⁷ Mr Clendon articulated this authority, which is 'relational and lateral [and] shared among the people' as true sovereignty.⁷²⁸ Several speakers explained how in te ao Māori, decision-making is guided by the interests and welfare of the collective.⁷²⁹ Under guiding tikanga like whanaungatanga, decision-making is collaborative and 'consider[s] the wellbeing of all affected parties', as Ms Knight emphasised.⁷³⁰ In their response to the Crown's statement of position, counsel for the NZMC noted that while individual rights are a focus of many of the constitutional principles named by the Crown, '[t]he claimants do not see why recognition of tikanga, collective value and provision for collective rights need to be presented as at odds with already existing constitutional principles'.⁷³¹

Another shared theme in the claimant and Crown kōrero about the principles of constitutionalism was the importance of accountability in the exercise of power. This manifested in the Crown's kōrero about the accountability of Parliament to the voting public, and in turn the way in which the executive is held accountable to the legislature through the mechanisms of responsible government.⁷³² Accountability was also an essential element of tikanga-consistent exercise of authority as discussed by the claimants. While a rangatira may exercise authority on behalf of a hapū, that authority was conditional. Mr Sadler advised that the authority of a rangatira is earned through their mana, which 'comes from the people' and as such 'can ebb and wane'.⁷³³ Mr Buurman explained the power of a rangatira was 'bound by tikanga' and obligations to maintain relationships of whakapapa.⁷³⁴ Ms Knight stated that rangatiratanga 'emphasises leadership that is accountable' and 'accountable to the people'.⁷³⁵

⁷²⁴ Wai 3300, #B14(c), pp 1, 8, 22

⁷²⁵ Wai 3300, #B14(c), p 7

⁷²⁶ Wai 3300, #B52, pp 5, 7

⁷²⁷ Wai 3300, #4.1.8, p 80

⁷²⁸ Wai 3300, #B74, p 4; Wai 3300, #4.1.13, p 135

⁷²⁹ Wai 3300, #4.1.8, pp 3, 108; Wai 3300, #B3, p [3]; Wai 3300, #B82(a), p 3; Wai 3300, #B6(c), pp 1-2

⁷³⁰ Wai 3300, #4.1.8, p 88

⁷³¹ Wai 3300, #B14(l), p 10

⁷³² Wai 3300, #B14, pp 3-5; Wai 3300, #B14(c), pp 7-8

⁷³³ Wai 3300, #B75, p 5

⁷³⁴ Wai 3300, #B6(g), p 9

⁷³⁵ Wai 3300, #4.1.8, p 88

Both Ms Allen and Mr Stoeverlaar discussed how the exercise of authority in te ao Māori is about honouring relationships and obligations – to each other, to past and future and generations, and to the whenua and taiao.⁷³⁶ This idea of collective responsibility is '[c]entral to tikanga', in the words of Ms Dally-Paki.⁷³⁷ Indeed, the power to be kaitaki, and 'protect everything and everyone' is named as one of the 'specifics of power' by Dr Moana Jackson in his discussion of mana.⁷³⁸ The NZMC advocated for a 'constitutional law of responsibility' in light of this, providing for the exercise of Māori self-government in recognition of a 'relational paradigm sourced in the obligation for the wellbeing of whānau, hapū and community'.⁷³⁹ While the form of accountability discussed by the Crown is much narrower than that discussed by the claimants in a tikanga context, both parties recognise the need for decision-making power to be exercised consistently with the obligations and responsibilities those in power have to those they serve.

The inherent dignity of all people was a common thread in both Crown and claimant discussion of the principles of constitutionalism. The Crown named fundamental human rights as a core constitutional principle that helps to define 'acceptable limits of public power' and 'uphold the inherent dignity of people as human beings'.⁷⁴⁰ The Crown further asserted that '[t]he idea that we are all of equal value is fundamental to the concept of human dignity' and informs these fundamental human rights.⁷⁴¹ For the claimants, inherent human dignity was also an essential element of the tikanga that informed their understandings of constitutionalism. Mr Clendon explained that '[h]uman rights derive from mana and tapu, the sacred essence within each person gifted by Atua', and that these rights are 'divine and inalienable'.⁷⁴² Much of the kawa applicable to gatherings is designed to 'safeguard the dignity of every person present'.⁷⁴³ Ms Knight emphasised manaakitanga as a key constitutional tikanga that informs decision-making, as it 'ensures that policies are compassionate and uphold the dignity of individuals and communities'.⁷⁴⁴ For the Te Waimate Taiamai ki Kaikohe claimants, dignity was an essential component of Treaty/te Tiriti consistent constitutional arrangements, and a reason why such arrangements should be pursued. In response to the Crown's statement of position, counsel for these claimants cited John Bluck's statement that '[b]icultural development, based on the Treaty of Waitangi, sees one nation shared by two peoples of equal dignity, two cultures of equal value'.⁷⁴⁵ For the Ngāti Ruamahue claimants, the ability of 'Māori to live according to Tikanga' cannot be separated from their human dignity.⁷⁴⁶ Mr Harold argued it was 'essential to restore mana motuhake' as it 'upholds the dignity, autonomy and wellbeing of all Māori, now and in the future'.⁷⁴⁷

⁷³⁶ Wai 3300, #B6(b), p 5; Wai 3300, #4.1.9, p 15; Wai 3300, #B82(a), p 3

⁷³⁷ Wai 3300, #B4, p [4]

⁷³⁸ Wai 3300, #B43, pp 7-8

⁷³⁹ Wai 3300, #B6(c), pp 1-2

⁷⁴⁰ Wai 3300, #B14, p 7

⁷⁴¹ Wai 3300, #B14(b), p 2

⁷⁴² Wai 3300, #B74, p 5

⁷⁴³ Wai 3300, #B76(c), pp 14-15

⁷⁴⁴ Wai 3300, #B13, p 6

⁷⁴⁵ Wai 3300, #B14(m), p 1

⁷⁴⁶ Wai 3300, #B76, p 21

⁷⁴⁷ Wai 33300, #B41, p 3

(2) Divergence on the Principles of Constitutionalism

The major point of contention between the Crown and the claimants regarding the principles of constitutionalism related to the Crown's decision to not name the Treaty of Waitangi/te Tiriti o Waitangi as a distinct constitutional principle.⁷⁴⁸ The Crown did accept that the Treaty/te Tiriti is a source of the country's constitution, and that the country's constitutional arrangements should be consistent with its Treaty obligations, but described the Treaty/te Tiriti as something that informs the application of other constitutional principles, rather than a constitutional principle in and of itself.⁷⁴⁹ The Treaty/te Tiriti should be honoured, but in a way that maintains existing constitutional principle like representative democracy and the rule of law.⁷⁵⁰ This position contradicts that of many claimants who participated in the wānanga, and argued for the Treaty/te Tiriti to be central within the country's constitutional arrangements – like Mrs Greensill who argued that te Tiriti should be entrenched as the 'first law' of the nation, rather than an 'optional guiding principle'.⁷⁵¹ Several different claimants argued that without according the Treaty/te Tiriti priority as a constitutional principle, the Crown's conceptions of constitutionalism resemble the British Westminster system, rather than the distinct values of Aotearoa New Zealand.⁷⁵² Other claimant responses to the Crown criticised the Crown's treatment of the texts of te Tiriti and the Treaty as interchangeable in its articulation of constitutional principle.⁷⁵³ Dr Lomax argued that the Crown presented a 'wish for what our constitutional principles might be if it ignores the provisions of Te Tiriti'.⁷⁵⁴ The claimants further criticised the existing provisions for the Treaty/te Tiriti in the current constitution which the Crown named. William Grant Douglas Hori (Te Hapū o Ngāti Kawau) and Ms Puru noted that these protections for Treaty/te Tiriti rights do not enjoy any particular constitutional protection and can be repealed or amended at any time – as evidenced by the ongoing Treaty clause review.⁷⁵⁵ Ms Kapa also emphasised the lack of firm constitutional provision for Treaty/te Tiriti rights – arguing that 'the Crown's approach renders Māori autonomy illusory by affirming it rhetorically while stripping away the institutional mechanisms needed to realise it'.⁷⁵⁶ Counsel for Wai 1194, Wai 1212, Wai 3342, Wai 2494, and Wai 2872 asserted that subordination of te Tiriti to Western constitutional principle as the Crown proposes 'would leave Te Tiriti o Waitangi and existing law and policy disconnected, and adrift'.⁷⁵⁷

The claimants and the Crown also disagreed about the extent of the constitutional nature of tikanga. For the claimants, tikanga was a functioning legal order foundational to Māori constitutionalism, that should not be positioned as subordinate to Western constitutional

⁷⁴⁸ See Wai 3300, #B14(c) generally and Wai 3300, #4.1.14, p 37

⁷⁴⁹ Wai 3300, #B14, pp 1-3; Wai 3300, #B14(c), pp 6, 21; Wai 3300, #4.1.14, p 44

⁷⁵⁰ Wai 3300, #B14(c), pp 7-9; Wai 3300, #B14(d), p 3

⁷⁵¹ Wai 3300, #4.1.11, p 61, Wai 3300, #B33, p 4

⁷⁵² Wai 3300, #B14(n), p 4; Wai 3300, #3.2.408, pp 1-2, 6

⁷⁵³ Wai 3300, #B14(g), p 2; Wai 3300, #B14(k), p 1; Wai 3300, #B14(p), p 2

⁷⁵⁴ Wai 3300, #B31(a), p 2

⁷⁵⁵ Wai 3300, #B14(t), p 2

⁷⁵⁶ Wai 3300, #B24(c), p 1

⁷⁵⁷ Wai 3300, #B14(g), p 5

models or laws.⁷⁵⁸ Mr Raureti described tikanga as a ‘binding constitutional order’,⁷⁵⁹ and the Ngāti Koata panel argued that ‘[t]ikanga is not just a cultural reference,’ but ‘a source of legal and political authority’.⁷⁶⁰ The Crown did not acknowledge tikanga to be as foundational to constitutionalism as the claimants. Instead, it accepted that tikanga forms a part of the constitutional principle of the rule of law – to the extent that is captured in statute and reflected in the common law.⁷⁶¹ Several claimants criticised the Crown for this limited acknowledgment of tikanga, arguing the Crown was ‘attempt[ing] to perpetuate the doctrine of unbridled parliamentary sovereignty, rather than being open to a deeper discussion regarding New Zealand’s constitutional framework.’⁷⁶² The Crown further argued that tikanga may be difficult to reconcile with existing constitutional principle, and that ‘[g]iving practical effect’ to the intersection between the two will require ‘careful weighing’ and ‘should be the subject of broad public discussion and support’.⁷⁶³ Ms Puru and Mr Hori argued that making constitutional incorporation of tikanga conditional on broad public support ‘is not what te Tiriti envisioned’ – it is instead a discussion to be had between the Crown and hapū.⁷⁶⁴ Counsel for the Wai 775, Wai 1341, Wai 1359, and Wai 3374 claimants made similar points about constitutional change to better recognise the Treaty/te Tiriti – since ‘Crown duties exist regardless of majoritarian approval’, it is inappropriate for the Crown to require such reform to be supported by the public.⁷⁶⁵

Another point of dispute between the claimants and the Crown related to the Crown’s emphasis on the principle of representative democracy. Several claimants challenged the Crown’s assertion that Parliament is reflective of and accountable to the voting public, arguing that Māori have always been and continue to be disenfranchised by the electoral system.⁷⁶⁶ Mrs Greensill argued that representative democracy is inherently inconsistent with te Tiriti, as it allows for a tyranny of the majority to overwhelm Māori rights and interests, particularly when exercised in conjunction with Parliament’s absolute law-making authority.⁷⁶⁷ Dr Lomax posited that in its emphasis on representative democracy, the Crown is ‘ignoring the constitutional role of Māori in Aotearoa/New Zealand’.⁷⁶⁸ Counsel for the NZMC submitted that recognition of te Tiriti rights are not irreconcilable with democracy – rather, Aotearoa New Zealand, as a ‘modern democracy founded by te Tiriti/the Treaty’, can provide Māori a ‘protected and elevated status’ as indigenous peoples.⁷⁶⁹ Such proposals may contrast with the Crown’s emphasis on formal legal equality and the need to ‘ensure all New Zealanders have equal rights to participate in civic and political life’,⁷⁷⁰ but counsel for the NZMC argues these

⁷⁵⁸ Wai 3300, #4.1.9, pp 54, 93; Wai 3300, #B21, p 2; Wai 3300 #B36, p 3; Wai 3300, #4.1.11, p 57; Wai 3300, #B30, p 5

⁷⁵⁹ Wai 3300, #B34, p 6

⁷⁶⁰ Wai 3300, #B32, p 2

⁷⁶¹ Wai 3300, #4.1.14, p 40

⁷⁶² Wai 3300, #B14(n), pp 7-8

⁷⁶³ Wai 3300, #B14(c), pp 20-21

⁷⁶⁴ Wai 3300, #B14(t), p 1

⁷⁶⁵ Wai 3300 #B14(p), p 5

⁷⁶⁶ Wai 3300 #3.2.408, pp 3-4; Wai 3300, #B14(n), p 3

⁷⁶⁷ Wai 3300, #4.1.11, p 58

⁷⁶⁸ Wai 3300, #B31(a), p 2

⁷⁶⁹ Wai 3300, #B14(l), pp 8-9

⁷⁷⁰ Wai 3300, #B14(c), p 20

measures could provide for substantive equality and equitable outcomes for Māori, in the spirit of the partnership envisioned by te Tiriti as the country's founding document.⁷⁷¹ In the words of the Wai 2377, Wai 762, Wai 2894, Wai 2382, and Wai 1531 claimants, Māori rights 'are not linked to majoritarian democracy', but instead to the Treaty/te Tiriti agreement.⁷⁷²

The differing approaches of the claimants and the Crown to the principles of constitutionalism came to the fore in their respective discussions of the rule of law. The Crown maintained that the rule of law was a core constitutional principle – that 'everybody is equal before the law' and that law 'should be clear and clearly enforceable'.⁷⁷³ Multiple claimants and claimant counsel criticised reliance on the rule of law principle in their reply submissions, given the reality of parliamentary sovereignty – noting that while the Government of the day is meant to be subject to the rule of law, the executive, acting through the legislature, may overturn judicial decisions which affect it – as it has done in the past with judgments which favour the interests of Māori.⁷⁷⁴ Other claimant kōrero diverged from the Crown's conception of the rule of law in the sense that they advocated for a separate legal order for Māori, to realise tino rangatiratanga in Māori matters. Mr Koia asked why Māori are 'assimilate[d]... into a one law for all policy' and argued 'Māori have a constitutional right to their own laws and institutions'.⁷⁷⁵ Ms Kawiti also called for 'parallel spheres of governance', with 'Tikanga-based law for Māori affairs, and the Crown's law for matters appropriately within the Crown's remit'.⁷⁷⁶ It should be noted that not all claimants argued for a separate code of law to apply to Māori – some advocated for tikanga to be woven into the country's legal arrangements with equal status to Pākehā law, taking precedence in matters relating to Māori where appropriate.⁷⁷⁷ Counsel for the NZMC explained that '[i]t should not be assumed that accepting tikanga necessitates negative outcomes for [the] non-Māori population', citing in particular the environmental benefits of recognising kaitiakitanga at a constitutional level.⁷⁷⁸

The claimants further criticised the Crown's focus on the powers of Parliament as a core constitutional principle. The Crown argued the full law-making powers Parliament holds reinforce other constitutional principles like representative democracy.⁷⁷⁹ The Crown, did however accept that the Treaty/te Tiriti influences the way Parliament chooses to act – though this does not amount to a formal legal constraint on parliamentary sovereignty under current constitutional arrangements.⁷⁸⁰ Several claimants argued this unchecked power of Parliament is inconsistent with the Treaty/te Tiriti, and leaves what limited Treaty/te Tiriti protections there are in the law exposed to amendment or repeal.⁷⁸¹ Counsel for the Wai 3351 claimants submitted that the imposition of parliamentary law-making powers over Māori is beyond the scope of the kāwanatanga powers envisioned by te Tiriti, and that '[a]ctual consideration of

⁷⁷¹ Wai 3300, #B14(l), pp 8-9, 17-18

⁷⁷² Wai 3300, #B14(n), p 19

⁷⁷³ Wai 3300, #B14, p 5; Wai 3300, #B14(c), p 7; Wai 3300, #4.1.14, p 10

⁷⁷⁴ Wai 3300, #B14(n), p 11; Wai 3300, #3.2408, pp 3, 5

⁷⁷⁵ Wai 3300, #B14(o), pp 10, 28

⁷⁷⁶ Wai 3300, #4.1.13, p 160

⁷⁷⁷ Wai 3300, #B76, p 18; Wai 3300, #B61, p 7

⁷⁷⁸ Wai 3300, #B14(l), p 9

⁷⁷⁹ Wai 3300, #B14, p 8

⁷⁸⁰ Wai 3300, #4.1.14, p 41

⁷⁸¹ Wai 3300, #B34, p 7; Wai 3300, #B32, p 5; Wai 3300, #B81, p 4

Aotearoa[’s unique constitutional context] would include recognition that parliamentary, executive and judicial power are all fettered by Māori tino rangatiratanga guaranteed in te Tiriti’.⁷⁸² To remedy this, several claimants suggested constitutional reform to create legal limits for Parliament’s power through a written and entrenched constitution.⁷⁸³ Mr Kemara, for example, suggested entrenched legislation requiring all legislation and governmental decisions to comply with te Tiriti, and empowering the judiciary to enforce compliance.⁷⁸⁴ Such a proposal stands in direct opposition to the constitutional importance the Crown places on parliamentary sovereignty.

1.5.3 Key Points of Difference Between the Claimants and the Crown Regarding the Proposed Inquiry Themes

In the previous section, we saw that there were some commonalities in the claimants’ and the Crown’s understandings of the principles of constitutionalism, alongside notable differences. However, there is little common ground in the parties’ respective positions on the proposed inquiry themes. In this section we discuss the major points of contention on each of the distinct inquiry themes currently accepted by the Tribunal (see section 1.3), except for ‘dual governance’ – as this theme was not a specific focus of the Crown’s statement of position, nor the claimants’ responses to the Crown. We note however, that the relationship between kāwanatanga and mana motuhake is a prominent thread in the claimant and Crown kōrero about the first and second inquiry themes, as is reflected below.

The Crown and the claimants diverged significantly on their aspirations for the recognition of mana motuhake and tino rangatiratanga within the country’s constitution. While the Crown agreed that the country’s constitutional framework ought to be consistent with ‘what the Treaty requires in terms of any right to self-government’ for Māori, and that article 2 Treaty/te Tiriti rights need protection, it also maintained that these rights should be provided for in a way consistent with existing constitutional principles – including those of representative democracy and the powers of Parliament.⁷⁸⁵ In essence, the Crown was not willing to entertain a vision of a constitution where parliamentary sovereignty was limited. This is the key point of contention between the Crown and many of the claimants – whose vision for a te Tiriti consistent constitution includes provision of a tino rangatiratanga sphere free from the Crown’s overarching legislative authority. Ms Kapa, for example, explained that the ‘rightful autonomy’ guaranteed under article 2 includes ‘the ability of hapū and whānau to determine their own affairs [...] without subordination to external authority’.⁷⁸⁶ Similarly, Florence Karaitiana argued constitutional reform must ‘reflect the true constitutional status of Māori as a Treaty partner who has equal standing as a sovereign constitutional power to the Crown.’⁷⁸⁷ Mr Kemara proposed creating ‘autonomous or self-governing regions’ within the country for

⁷⁸² Wai 3300, #3.2.408, pp 2, 5

⁷⁸³ Wai 3300, #B34, p 7; Wai 3300, #B41, p 1; Wai 3300, #B39, pp 1-2; Wai 3300, #4.1.11, p 28

⁷⁸⁴ Wai 3300, #B14(f), p 3

⁷⁸⁵ Wai 3300, #B14(c), pp 7-9, 23; Wai 3300, #B14(d), p 3; Wai 3300, #4.1.14, pp 25, 44

⁷⁸⁶ Wai 3300, #B46, p [3]

⁷⁸⁷ Wai 3300, #4.1.9, p 110

Māori,⁷⁸⁸ while Ms Kendall and Mr Ngatai advocated for provision of an independent sphere of Māori governance ‘inside the Crown’s sphere of territorial governance’.⁷⁸⁹ Counsel for the Wai 1194, Wai 1212, Wai 3342, Wai 2494 and Wai 2872 claimants explained that the ‘constitutional authority’ associated with the tino rangatiratanga sphere – ‘including in relation to laws, values, governance arrangements, political institutions and processes [...] need to be exercised on equal terms with Kāwanatanga’.⁷⁹⁰ In order for the level of Māori autonomy envisioned by these proposals to exist within the constitution, parliamentary sovereignty must be limited, at least to some extent – an idea not currently contemplated by the Crown.

The sovereignty of the Crown, and the broader question of constitutional legitimacy, was another major point of disagreement between the Crown and the claimants. The Crown maintained that its exercise of sovereignty today through representative democracy is legitimate, describing the Treaty/te Tiriti as one of the ‘critical steps’ through which the Crown’s ‘sovereignty was applied in New Zealand’.⁷⁹¹ Several claimants disputed this, arguing that the kāwanatanga provided for in te Tiriti was administrative in nature and intended only to apply to British subjects.⁷⁹² The claimants were steadfast in the position that their tūpuna did not cede sovereignty in 1840, and criticised the Crown for its refusal to accept the findings of the Te Raki Tribunal.⁷⁹³ Multiple claimants emphasised that the Treaty/te Tiriti did not provide the Crown with authority to pass laws applying to Māori.⁷⁹⁴ To be legitimate, any laws passed by the Crown must be ‘the result of partnership, consultation and participation’ with and from Māori, in the words of Malcolm Kingi.⁷⁹⁵ Mr Koia argued ‘the Crown was not empowered through a legal chain of constitutional process to become a legitimate de jure sovereign’.⁷⁹⁶ Several other claimants agreed, asserting that the Crown’s ‘claim to dominion relies on the coercion of Māori rather than their popular support’.⁷⁹⁷ Counsel for the Wai 3389 claimants described the claimant and Crown position on sovereignty as ‘diametrically opposed’,⁷⁹⁸ and indeed that was apparent throughout the wānanga ā-rohe phase. As summarised by Mr Kemara in his response to the Crown, ‘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’.⁷⁹⁹

There were common threads in the claimant and Crown kōrero about electoral systems, but divergence about whether the current electoral system is fit for purpose. While the Crown acknowledged claimant kōrero about low Māori voter turnout and agreed that the historic context of the development of Aotearoa New Zealand’s democratic institutions is relevant to the constitutional conversation today, it maintained that current electoral system arrangements

⁷⁸⁸ Wai 3300, #B1, p 13

⁷⁸⁹ Wai 3300, #B6(a), p 4

⁷⁹⁰ Wai 3300, #B14(g), p 7

⁷⁹¹ Wai 3300, #4.1.14, p 35; Wai 3300, #B14(d), p 7

⁷⁹² Wai 3300, #B12, p 5; Wai 3300, #4.1.9, pp 91, 53-54; Wai 3300, #B13, pp 6-7; Wai 3300, # B30 p 4

⁷⁹³ Wai 3300, #B14(s), p [3]; Wai 3300, #B14(t), p 1; Wai 3300, #B14(p), p 2

⁷⁹⁴ Wai 3300, #B12, p 5; Wai 3300, #B30, p 5; Wai 3300, #B41, p 4

⁷⁹⁵ Wai 3300, #B19, p 2

⁷⁹⁶ Wai 3300, #B14(o) p 27

⁷⁹⁷ Wai 3300, #B14(n), p 16

⁷⁹⁸ Wai 3300, #B14(s), p [3]

⁷⁹⁹ Wai 3300, #B14(f), p 5

are consistent with the principles of representative democracy, where all citizens have an equal right to vote.⁸⁰⁰ In contrast, the claimants were intensely critical of the electoral system. Counsel for the Wai 1194, Wai 1212, Wai 3342, Wai 2494 and Wai 2872 claimants emphasised the historic foundations of the electoral system – arguing that Māori democratic participation was introduced in a ‘systemically biased process’ to limit the agency of Māori – ‘starting with the individual property and male franchise to the quarantine of Māori votes in Native seats to universal franchise once settlers were in a clear majority.’⁸⁰¹ Counsel for the NZMC asserted that the modern electoral system continues to disadvantage Māori disproportionately – citing the blanket ban on all prisoner voting.⁸⁰² More broadly, the claimants argued that the majoritarian democracy the electoral system gives rise to is inconsistent with the guarantees of the Treaty/te Tiriti (see the discussion of the ‘powers of Parliament’ as a constitutional principle in the section above). Counsel for the Wai 3059 and Wai 3462 claimants submitted that in this system, ‘Māori are unlikely to be able to adequately protect their interests given that they represent a minority of all eligible voters’.⁸⁰³ Though the Māori seats are important, as Dr Wiri acknowledged, they are ‘insufficient to ensure genuine Māori participation in governance’.⁸⁰⁴

The main point of divergence between the claimants and the Crown on the inquiry theme of local government related to the applicability of the Treaty/te Tiriti to local government bodies. The Crown emphasised that local government is not the Crown – local authorities are separate legal entities established by Parliament. Each is democratically elected by their local communities.⁸⁰⁵ While the Crown may confer Treaty/te Tiriti obligations upon local authorities, they are not directly subject to the Treaty/te Tiriti as they are separate to the Crown.⁸⁰⁶ Multiple claimants argued that local government should be subject to Treaty/te Tiriti duties in the exercise of their powers, as said powers are ultimately derived from the Crown.⁸⁰⁷ Ms Rump believed local government should be directly subject to the Treaty/te Tiriti, as Māori are impacted daily by local government decisions, ‘just as much, if not more than central government’.⁸⁰⁸ In her response to the Crown’s statement of position, Ms Kapa made similar points, asserting that ‘[a]ny suggestion that Treaty obligations sit solely with the central government, while local authorities exercise practical control over Māori land, waters, resources and taonga, effectively removes Article 2 tino rangatiratanga from the point where it must operate.’ While the Crown maintains the position that local authorities are separate to the Crown, Ms Kapa argued that local government bodies ‘do not possess independent constitutional standing to the Crown’, as ‘[a]ll powers exercised by local authorities remain Crown powers in substance’.⁸⁰⁹

⁸⁰⁰ Wai 3300, #B14(c), p 27; Wai 3300, #B14(d), p 11

⁸⁰¹ Wai 3300, # B14(g), p 3

⁸⁰² Wai 3300, #B14(l), p 11

⁸⁰³ Wai 3300, #B14(h), pp 1-2

⁸⁰⁴ Wai 3300, #B36, p 5

⁸⁰⁵ Wai 3300, #B14(c), p 29

⁸⁰⁶ Wai 3300, #B14(c), p 29

⁸⁰⁷ Wai 3300, #B41, p 5; Wai 3300, #B36, p 5; Wai 3300, #B14(t), p 3

⁸⁰⁸ Wai 3300, #B35, p 6

⁸⁰⁹ Wai 3300, #B24(c), p 2

In regard to the inquiry theme of human rights and the Treaty/te Tiriti, while both the Crown and the claimants recognised the significance of human rights, they diverged significantly in their kōrero on the nature of human rights and their need for constitutional protection. The Crown described fundamental human rights as a constitutional principle, affirmed in the NZBORA and the ICCPR.⁸¹⁰ The Crown argued that human rights legislation is about ‘universal individual rights’, in contrast to the distinct Māori rights provided under the Treaty/te Tiriti – the two serve different constitutional functions.⁸¹¹ The claimants disagreed with this position, categorising the distinct rights of Māori as indigenous peoples under the Treaty/te Tiriti and international instruments like UNDRIP, which are collective in nature, as human rights. Ms Kereopa argued that human rights need to be reinterpreted ‘through a te Tiriti lens to protect [Māori] authority as whānau, hapū, and iwi.’⁸¹² Mr Raureti asserted, contrary to the Crown’s position, that te Tiriti is ‘the primary human rights instrument in Aotearoa’.⁸¹³ Counsel for the NZMC commented that ‘[w]hile necessary, the human rights instruments that the Crown accepts as fundamental to the constitutional arrangements [...] cannot go far enough to recognise Māori rights and interests as indigenous peoples’.⁸¹⁴ The lack of protection for the indigenous human rights of Māori was often discussed by the claimants in the context of the UNDRIP. The Crown maintained that while ratified by Aotearoa New Zealand, the UNDRIP lacks direct enforceability at law without being incorporated into statute.⁸¹⁵ The Crown did, however, acknowledge that relevant international law may be used in the interpretation of statutes and ergo influence the development of the common law, and that while not a part of the domestic rule of law, the recommendations of international bodies are received and considered carefully by the New Zealand government.⁸¹⁶ Mr Tana called for change to the legal standing of UNDRIP – arguing that the ‘UNDRIP must be fully incorporated into New Zealand’s legal framework to ensure the protection of Māori rights’, a sentiment shared by several other claimants.⁸¹⁷

The main point of disagreement between the claimants and the Crown on the inquiry theme of citizenship rights concerned where decision-making powers around citizenship should lie. The Crown emphasised that citizenship is a legal status, regulated by statute and therefore by the legislature. It argued the rule of law should inform consideration of citizenship status – with its criteria applied equally to all.⁸¹⁸ In response to the Crown, counsel for the NZMC asserted that, in fact, citizenship status is not ‘applied equally or consistently’. In their view, ‘[t]ikanga would be the most appropriate process to follow in the citizenship decision-making process’, whereby Māori could lead the authentication process for whakapapa connections. The Treaty/te Tiriti

⁸¹⁰ Wai 3300, #B14, p 7

⁸¹¹ Wai 3300, #B14(c), p 31

⁸¹² Wai 3300, #4.1.12, p 65

⁸¹³ Wai 3300, #B34, p 8

⁸¹⁴ Wai 3300, #B14(l), p 17

⁸¹⁵ Wai 3300, #B14(c), p 32

⁸¹⁶ Wai 3300, #3.2.418, pp 1-2

⁸¹⁷ Wai 3300, #B21, p 3; Wai 3300, #B14(l), p 17; Wai 3300, #B30, p 6; Wai 3300, #B36, p 5; Wai 3300, #B39, p 6

⁸¹⁸ Wai 3300, #B14(c), p 34; Wai 3300, #B14(d), p 15

should also form part of the citizenship framework, ‘because equity must dictate a different set of rights for Māori in recognising their inherent mana whenua.’⁸¹⁹

⁸¹⁹ Wai 3300, #B14(1), p 16