BEFORE THE WAITANGI TRIBUNAL **WAI 3325**

UNDER	the Treaty of Waitangi Act 1975
IN THE MATTER OF	the Climate Change Priority Inquiry **(Wai 3325)**
AND	
IN THE MATTER OF	a claim by Mere Brooks, John Hooker, Alan Joseph Fred Hooker and Allen Webb for and on behalf of members of their respective hapū of Ngāruahine **(Wai 3382)**.

MEMORANDUM OF COUNSEL ON PROPOSED EVIDENCE FROM THE CLIMATE CHANGE COMMISSION

Dated this 30th day of March 2026

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WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

Introduction

1. This memorandum of counsel is filed on behalf of Wai 3382, a claim by Mere Brooks, John Hooker, Alan Joseph Fred Hooker and Allen Webb ("claimants") for and on behalf of members of their respective hapū of Ngāruahine.

2. This memorandum relates to the additional cause of action pleaded for Wai 3382 on 2 March 2026, and responds to the memoranda filed by the Crown and by counsel for the Climate Change Commission ("Commission") on 9 March 2026, and the memorandum-directions issued on 13 March 2026.

3. The claimants continue to seek an opportunity to cross-examine a witness appearing on behalf of the Climate Change Commission.[1] This memorandum addresses:

    a) How the additional cause of action pleaded for Wai 3382 fits within the Tribunal Statement of Issues;

    b) Procedural background;

    c) The right to amend pleadings as a question of natural justice;

    d) The question of jurisdiction.

Tribunal Statement of Issues

4. The additional cause of action is repeated here:[2]

> In breach of Te Tiriti o Waitangi, and in breach of the principle of partnership, the Climate Change Commission (a Crown agency) has disestablished its Ohu Iwi/Māori business group, and thereby limited its ability to engage with Māori, and to monitor and advise on the Crown's climate policies from a Māori worldview.

[1] Cross-examining a witness appearing on behalf of the Climate Change Commission is what is meant when it otherwise reads within this memorandum "cross-examining the Commission".
[2] Wai 3325, #1.1.51, at 10.1.

5. It is submitted that this cause of action falls within question 3 of the Tribunal Statement of Issues,[3] which is:

> Has the Crown's conduct (including actions and omissions) in response to climate change been consistent with Tiriti/Treaty principles?

6. In particular, subquestion 3.2 is relevant:

> What steps has the Crown taken to inform itself of the physical, spiritual, cultural, social, health, and economic impacts of climate change on Māori when formulating climate change legislation and policies?

7. Subquestion 3.5 is also relevant:

> How has the Crown engaged with Māori on climate change policies, in light of its Tiriti/Treaty obligations?

8. Flowing from the additional cause of action pleaded, the corresponding relief sought is a recommendation that the Climate Change Commission re-establish a Māori business group, in order to provide monitoring and advice on the Crown's climate change policies from a Māori worldview.[4]

9. The relief sought falls within Question 4 of the Tribunal Statement of Issues, as well as subquestions 4.1 and 4.1:

> 4 What recommendations should the Tribunal make in terms of how the Crown should conduct itself consistently with Tiriti/Treaty principles when forming future climate change legislation and policies?
>
> 4.1. How should the Crown meaningfully engage and consult with Māori as Tiriti/Treaty partners in the development and implementation of climate change related legislation and policies?
>
> 4.2. How should the Crown engage and consult with Māori to enable and assist Māori to develop and implement climate change response, prevention, adaptation, and mitigation strategies in Māori communities?

[3] Wai 3325, #1.4.3
[4] Wai 3325, #1.1.51, at 13.1.14.

10. Counsel continue to submit that the Tribunal has jurisdiction to inquire into the issues raised in the additional cause of action, as discussed in more detail below.

Procedural background

11. The information which is relied upon for the additional cause of action pleaded regarding the existence and disestablishment of the Ohu Iwi/Māori business group ("Ohu Māori") at the Commission has been gathered by way of official information requests by counsel.

12. Counsel (Mr Vincent) disclosed to the Commission, when making these information requests, that counsel was acting for claimants in the Waitangi Tribunal inquiry into climate change.

13. One tranche of relevant information was received from the Commission in October 2024. A second tranche of relevant information from the Commission was received in May 2025. Read together, the information obtained supports the additional cause of action.

14. After reviewing the Crown evidence filed, which did not include evidence from the Commission, counsel determined that it would be necessary to seek the Commission's participation in the inquiry.

15. Counsel wish to make it clear that until December 2025, the efforts of coordinating counsel to have the Commission participate in the inquiry were unrelated to this issue for Wai 3382.

16. Counsel emphasise that this issue should not detract from the importance of those other matters which coordinating counsel have been seeking that the Commission speak to.

17. Counsel became aware of discussions between coordinating counsel and the Commission in early December 2025, after the holding of a meeting between coordinating counsel and the Commission.

18. Counsel notified coordinating counsel then that counsel was preparing to seek the Commission's participation in the inquiry. Counsel briefed coordinating counsel on the information gathered through the official information requests, and

counsel's wish to cross-examine the Commission.[5] Counsel sought that the issue be incorporated into the request for evidence from the Commission.

19. Coordinating counsel then sought from the Commission "details of the role of the Ohu Māori team within the Commission staff between its establishment in October 2022 and the disestablishment of the team in April 2024", as well as how the Commission discharges its obligations to Māori under the Climate Change Response Act, including its consultation obligations to Māori. That request was made on 15 December 2025.

20. Counsel acknowledge that aspects of this issue including the impact of the disestablishment, and the alleged breach of the principle of partnership involved, were only particularised on 2 March 2026. However, the issue is not entirely new to this inquiry. The "existence and disestablishment" of a team at the Commission with the role of implementing the Commission's statutory obligations to Māori was referred to in the written evidence of Alison Cole (a witness for this claim).[6]

21. When the request for evidence on this issue from the Commission was made in December 2025, counsel did not intend for essential aspects of the allegations to be withheld. In fact, counsel anticipated the Commission to understand the issues likely to be raised because of the official information requests and the documents provided in response.

22. In any event, counsel consider that the Commission has adequate time to consider its position before giving evidence (which can only occur in Hearing Eight in the week beginning 15 June 2026).

Right to amend pleadings as a question of natural justice

23. It is submitted that in these circumstances, the claimants should be allowed to amend their pleadings as a question of natural justice.

24. While the facts surrounding the disestablishment of the Ohu Māori only became clear when this inquiry was well underway, it is an important issue to the claimants.

[5] Cross-examining a witness appearing on behalf of the Climate Change Commission is what is meant when it otherwise reads within this memorandum "cross-examining the Commission".
[6] Wai 3325, #A39 *Affidavit of Alison Anitawaru Cole* at [22] and [23].

25. The right to natural justice is enshrined in s 27(1) of the New Zealand Bill of Rights Act 1990:

> Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.

Assessment of the interests of justice

26. The amendment of the claimants' statement of claim should be allowed if it would be in the interests of justice. Relevant to an assessment of the interests of justice is the underlying interest in hearing the issue, whether the amendment would cause prejudice to the other parties, and whether it would cause delay to the proceedings.

Interest in hearing the issue

27. The issues surrounding the existence and disestablishment of the Ohu Māori are important to this inquiry, and they fall within a number of the issues in the Tribunal Statement of Issues (see above at paragraphs [4] to [9]). A response to the submissions of the Crown and the Commission on issues of jurisdiction is provided below.

Question of prejudice

28. There is not significant prejudice to the Commission or to the Crown from the amendment sought to the statement of claim. As noted, this matter has already been addressed in evidence in this inquiry. Counsel do not recall the Crown objecting to that evidence, which is surprising given the current stance it is taking.

Question of delay

29. The amended proceedings are not anticipated to cause delay to the progress of the inquiry. However, counsel acknowledge the constraints on hearing time.

30. A practical approach to conserve hearing time would be for counsel to file questions in writing for the Commission, with responses in writing to be received ahead of Hearing Eight. Cross-examination on this issue would then be limited to any targeted follow-up questions, and questions from other counsel, with Tribunal questions to follow. This approach would have the benefit of making very clear the

scope of the issue for all parties before the matter is reached in hearing time before the Tribunal.

31. Counsel have previously indicated that 45 minutes of cross-examination time on this issue would suffice. If there were to be questions in writing ahead of time, 45 minutes may be more than enough time.

32. Counsel consider it unlikely that the issue raised will spark the need for further evidence from other parties. The essential matters are clear from the amended statement of claim, and they can only be addressed by the Commission.

33. The Emissions Reduction Plans, as commented on by the Ohu Māori and (differently) in the Commission's final monitoring reports, are a tangential issue.[7] There is no intention to delve further into the Emissions Reduction Plans. The particular relevant issue referred to in the additional cause of action of the government failing to prepare in its Emissions Reduction Plans a strategy to mitigate the impacts on Māori of reducing emissions[8] was pleaded in the original statement of claim for Wai 3382, and that has been addressed in cross-examination of Rebecca Prebble.

Jurisdiction

The Tribunal may request information even if the requestee is not part of the Crown

34. Counsel respectfully agree with coordinating counsel that the focus of the Tribunal's decision should be on assistance: will evidence from the Commission assist the Tribunal? However as the Crown and the Commission appear to be under misunderstandings of this Tribunal's jurisdiction and role, jurisdiction is briefly addressed.

35. Here, multiple Māori claimants have claimed Crown actions (and inactions) will, or are likely to, prejudice them — triggering the Tribunal's broad jurisdiction under s 6(1) of the Treaty of Waitangi Act 1975. The Tribunal "must" inquire into every claim submitted to it: s 6(2). There cannot be any serious suggestion that the Tribunal lacks jurisdiction to inquire into the matters in issue in this inquiry.

[7] See as referred to in the amended statement of claim. Wai 3325, #1.1.51, at 10.5, 10.7 and 10.8.
[8] Ibid.

36. Rather, the position of the Crown and the Commission appears to be that the Tribunal cannot inquire into actions of the Commission, as the Commission is not a part of the Crown. Whether that is correct is a difficult constitutional question that is briefly touched on below; but it does not answer the actual issue.

37. Put simply, the Tribunal may — and the claimants submit it should — require the Commission to provide evidence even if the Commission is not part of the Crown. The Tribunal is empowered to (reasonably) require information from any body if those documents would assist it to determine the issues before it; it is a Commission of Inquiry, and such commissions have broad powers to request and receive evidence. This includes the explicit power to issues summons or the production of documents.[9]

38. The Court of Appeal's recent decision in the *Jehovah's Witnesses* case is apposite.[10] There, the appellant argued that the Royal Commission into Abuse in State Care ought be prohibited, jurisdictionally, from requesting information from the Jehovah's Witnesses, claiming the group had never abused children — so, as a body, it was not subject to the jurisdiction of the Commission. The Court dismissed the argument, and particularly said:

> [38] *Even if there was no suggestion that Jehovah's Witnesses had been involved in the abuse of children, this would not have excluded them in a jurisdictional sense.* The Commission could still have sought information and evidence from the Jehovah's Witnesses, or otherwise inquired into their activities, and included reference to the Jehovah's Witnesses in a report if it assisted the Commission in addressing the matters covered by the terms of reference… That information may still have been relevant to the Commission when identifying and reporting on the structural, systemic or practical factors that caused or contributed to the abuse of individuals in the care of faith-based institutions in accordance with the purpose and scope of the inquiry identified by cl 10 set out at [8] above.
>
> (Emphasis added.)

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[9] Treaty of Waitangi Act 1975, sch 2, cl 8.

[10] *Christian Congregation of Jehovah's Witnesses (Australasia) Ltd v Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions* [2024] NZCA 128, [2024] 2 NZLR 534.

39. By analogy, even if the Commission is not part of the Crown, this "would not [exclude it] in a jurisdictional sense". The basic error in the submissions for the Crown and the Commission is to conflate the question of whether the body itself is subject to jurisdiction with the separate question of whether the inquirer can request information from the body. The latter is conclusively answered by the Court of Appeal.

40. The Commission is still plainly likely to hold relevant information and be able to provide evidence which would assist the Tribunal. The Tribunal does not need to consider the merits of the Crown's submission that the Commission is not part of the Crown to make that request and would simply be following its empowering legislation. If the Tribunal does make a request, the Commission is a responsible public agency, a model litigant and its functions are directly recognised in the Treaty clause of the Climate Change Response Act 2002.[11] It would be surprising if the Commission did not wish to assist the Tribunal accordingly — it has publicly stated that it wishes to do so.[12]

The Commission is part of the Crown

41. If the Tribunal does wish to answer this question counsel briefly make the following points.

42. *First*, the Court of Appeal in the LCANZI case was not considering the question of this Tribunal's jurisdiction.[13] Whether the Commission is a Crown entity is not in issue — it is not the same question as whether the Tribunal has jurisdiction. The fact that the Commission may sometimes act independently is not a complete answer to that question (although it may be relevant). The overall reasoning of the judgment recognises the Commission's central role in deciding matters of climate change policy, which plainly is part of the Crown's constitutional role and is central to this inquiry.

43. *Second*, as Courtney J has said, "defining the Crown and identifying those entities that fall within that definition is no easy task. Efforts by both commentators and the judiciary have produced an array of confusing propositions".[14] It is not

[11] Climate Change Response Act 2002, s 3A.
[12] Climate Change Commission "Waitangi Tribunal Climate Change Priority Inquiry (Wai 3325) – request for evidence from the Commission" (10 March 2026) <climatechangecommission.govt.nz>.
[13] Compare *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2025] NZCA 80, [2025] NZAR 115.
[14] *Stafford v Accident Compensation Corporation* [2020] NZCA 164, [2020] 3 NZLR 731 at [118].

altogether clear from the Commission's submissions,[15] but it appears the argument is that the Commission does not meet the "control" test. The "control" test is complex, and it is not correct to say that the Minister cannot control the Commission — that question, which depends significantly on the terms of the Crown Entities Act 2004, among others — divided the Court of Appeal in a different case.[16]

44. *Third*, the "control" test recognises that different entities may be 'part' of the Crown in some contexts, but not in others. It is simply not correct to allege a blanket 'in' or 'out'; "there can be control for some purposes and not others".[17] So for example, Tourism New Zealand is a limited liability company. GNS Science (referred to in evidence in this inquiry) is a Crown entity. Yet Wilkinson-Smith J, in a very recent High Court case, held they were part of the Crown for particular purposes.[18]

45. Finally, even if the "control" test is not met — which appears unlikely — that test is a creature of English law, not Aotearoa law. It plainly was not developed with Te Tiriti and its principles in mind; whether an entity is part of "the Crown" could very easily differ depending on the constitutional context. It is entirely open to this Tribunal to develop indigenous jurisprudence in a way that recognises the realities of government in Aotearoa, including the central relationship between the Crown and Māori. And as the arbiter of its own jurisdiction, the Tribunal can and should feel comfortable doing so.

The Crown cannot avoid Treaty obligations through delegation

46. Importantly, the Tribunal has established that the Crown cannot seek to avoid its Treaty obligations by any delegation of its duties under the Treaty.[19] As identified in counsel's prior memorandum on this issue filed on 2 March 2026, in the Kārewarewa Urupā Report, the Tribunal appeared to consider acts of Heritage New

[15] Memorandum of Counsel for He Pou A Rangi Climate Change Commission in response to Wai 3382 Memorandum dated 9 March 2026 at [14] (acknowledging these are brief submissions) **[Wai 3325, 3.2.280]**.
[16] *Stafford v Accident Compensation Corporation* [2020] NZCA 164, [2020] 3 NZLR 731. Gilbert J declined to answer the question: at [23]. Courtney J answered it against the appellant: at [133]. Williams J answered it for the appellant: at [279].
[17] *Stafford v Accident Compensation Corporation* [2020] NZCA 164, [2020] 3 NZLR 731 at [329] per Williams J.
[18] *Royal Caribbean Cruises Ltd v Tourism New Zealand Ltd* [2024] NZHC 2265.
[19] Waitangi Tribunal *Tauranga Moana, 1886 - 2006* (Wai 215, 2010) Volume 1 at 475.

Zealand (an autonomous Crown entity), which had prejudiced Māori, to fall within its jurisdiction. [20]

Conclusion

47. Counsel seek the opportunity to cross-examine a witness appearing on behalf the Commission, on the basis of the additional cause of action pleaded for Wai 3382.

48. For the reasons provided above, counsel believe this to be in the overall interests of justice.

49. If it assists the Tribunal, counsel can file the documents that would be relied upon in cross-examination of the Commission, or indeed the written questions of cross-examination as discussed.

Dated this 30th day of March 2026

Annette Sykes Sam Vincent

Counsel for the Claimants

[20] Waitangi Tribunal *Kārewarewa Urupā Report* (Wai 2200, 2020) at 67-68 and 76. While the Tribunal's recommendations focused on the underlying statutory scheme rather than the operations of Heritage New Zealand, the Tribunal considered mistakes made by Heritage New Zealand in assessing an application for an exploratory authority (at pp 66-67) and ultimately stated (at p 76): "We make no recommendations here about general matters of consultation and the operations of Heritage New Zealand, which would be more appropriately considered later in our inquiry."