

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3325

E PĀ ANA KI
CONCERNING

te Treaty of Waitangi Act 1975

Ā,
AND

te Climate Change Priority
Inquiry

HE PĀNUI WHAKAHAU A KAIWHAKAWĀ STEPHANIE MILROY

*MEMORANDUM-DIRECTIONS OF JUDGE STEPHANIE MILROY CONFIRMING THE
PANEL'S DECISION ON PROPOSED EVIDENCE FROM HE POU A RANGI CLIMATE
CHANGE COMMISSION*

15 Āperira 2026

Purpose

1. This memorandum-directions:
 - (a) confirms the panel's decision on the filing of proposed evidence from He Pou a Rangi Climate Change Commission (Commission); and
 - (b) addresses the Tribunal's proposed consultation with the Parliamentary Commissioner for the Environment.

Procedural history

2. On 17 February 2026, claimant coordinating counsel (coordinating counsel), Bryce Lyall, Michael Sharp and Tania Te Whenua filed a memorandum advising they were in discussions with the Commission regarding evidence to be provided for this inquiry, with the extent of such evidence being worked through (Wai 3325, #3.2.263 at [8]).
3. In memorandum-directions dated 13 March 2026, I outlined the submissions received in response to coordinating counsel's submissions above (Wai 3325, #2.6.24):
 - (a) memorandum of counsel for the Commission, Sarah Leslie and Joanna Judge, in response to coordinating counsel (Wai 3325, #3.2.269);
 - (b) memorandum of coordinating counsel in reply to counsel for the Commission (Wai 3325, #3.2.270);
 - (c) memorandum of counsel for the Climate Change (Ngāruahine) (Wai 3382) claim, Annette Sykes and Sam Vincent, in reply to counsel for the Commission and filing an amended statement of claim (ASOC) adding further allegations regarding the disestablishment of the Commission's Ohu Iwi/Māori business group and related failure to adequately engage with Māori on climate policy (Wai 3325, #3.2.271);
 - (d) memorandum of counsel for the Crown, Jeremy Prebble, Nixon Fong, Grace Seeley and Larissa Tucker, regarding the proposed evidence from the Commission (Wai 3325, #3.2.279); and
 - (e) further memorandum of counsel for the Commission, Andrew Irwin, Ms Leslie and Ms Judge, in response to Ms Sykes and Mr Vincent's submissions on behalf of the Wai 3382 claim (Wai 3325, #3.2.280).
4. I invited counsel for the Wai 3382 claim to file any submissions in reply to the submissions of the Crown and Commission dated 9 March 2026 by 27 March 2026 (Wai 3325, #2.6.24 at [34]).
5. I advised parties that I would further address this matter following the receipt of such submissions (Wai 3325, #2.6.24 at [35]).

Memoranda in reply to the submissions of the Crown and Commission

Further memorandum of coordinating counsel

6. On 30 March 2026, the Tribunal received a memorandum from Mr Lyall, Mr Sharp and Ms Te Whenua (Wai 3325, #3.2.296).
7. Coordinating counsel submit that evidence from the Commission will assist the Tribunal to deal effectually with the matters before it, and therefore, 'arguments about jurisdiction or the Commission's status can be put to one side' (Wai 3325, #3.2.296 at [2] – [4]).

8. Coordinating counsel accordingly seek that the Tribunal issue a direction asking the Commission to provide evidence addressing relevant aspects of the Commission's work, including (Wai 3325, #3.2.296 at [5] – [6]):
 - (a) the role and operation of Pou Herenga in supporting the Commission to fulfil its obligations under section 5M of the Climate Change Response Act 2002 (CCRA), including in relation to the Crown-Māori relationship, te ao Māori and impacts on iwi and Māori;
 - (b) the Commission's approach to consultation with Māori, whether through Pou Herenga or otherwise, in the preparation of its reports; and
 - (c) the roles and responsibilities of the Ohu Iwi/Māori business group at the Commission and its relationship with the Commission's statutory obligations to Māori pursuant to sections 5M and 5N of the CCRA.
9. Coordinating counsel note that the claimants are considering making an application to the Tribunal for it to exercise powers available under clause 8(2) of Schedule 2 of the Treaty of Waitangi Act 1975 due to the limited time available until hearings conclude, however, 'given the Commission's publicly stated willingness to assist', hope this can be avoided (Wai 3325, #3.2.296 at [7]).

Further memorandum of Annette Sykes & Co.

10. On 30 March 2026, counsel for the Wai 3382 claim, Ms Sykes and Mr Vincent, filed a memorandum in reply to the submissions of the Crown and Commission dated 9 March 2026 (Wai 3325, #3.2.297).

Procedural background

11. Ms Sykes and Mr Vincent advise that the claimants' additional cause of action relies upon information gathered by way of requests to the Commission under the Official Information Act 1982, through which counsel's involvement in the inquiry was disclosed to the Commission. Counsel submit that, after reviewing the Crown evidence filed, they determined it would be necessary to seek the Commission's participation in this inquiry (Wai 3325, #3.2.297 at [11] – [14]).
12. Ms Sykes and Mr Vincent clarify that until December 2025, the efforts of coordinating counsel to have the Commission participate in the inquiry were unrelated to the issues of the Wai 3382 claimants. Counsel submit these matters should not detract from the importance of those other matters which coordinating counsel seek the Commission speak to (Wai 3325, #3.2.297 at [15] – [16]).
13. Ms Sykes and Mr Vincent further submit that the issue is not entirely new to this inquiry, having been referred to in the written evidence of claimant witness Alison Cole (Wai 3325, #A39 at [22] – [23]). Counsel contend that the Commission has adequate time to consider its position before giving evidence, which can only occur in hearing week eight (15 – 19 June 2026) (Wai 3325, #3.2.297 at [20] & [22]).

Jurisdictional response

14. Ms Sykes and Mr Vincent agree with coordinating counsel that the focus of the Tribunal's decision should be on whether evidence from the Commission will assist the Tribunal. Counsel argue that even if the Commission is not part of the Crown, the Tribunal can require the production of documents that would assist it as part of the Tribunal's jurisdiction (Wai 3325, #3.2.297 at [34] – [40]).

15. Ms Sykes and Mr Vincent maintain that the Commission is part of the Crown and submit that the Commission has a central role in deciding matters of climate change policy. Counsel cite the minority decision of Justice Williams in *Stafford v Accident Compensation Corporation* [2020] NZCA 164 in support of their position (Wai 3325, #3.2.297 at [44]).
16. Counsel further submit that the Crown cannot avoid Treaty obligations through delegation of its duties under Te Tiriti o Waitangi (Wai 3325, #3.2.297 at [46]).
17. Counsel reiterate their request to cross-examine a representative from the Commission based on the additional cause of action pleaded for in the Wai 3382 ASOC (Wai 3325, #3.2.297 at [47]).

Panel decision

18. The panel has considered all submissions on the matter and determine that it would be useful for the Commission to provide evidence in writing in this inquiry. Such evidence will assist the Tribunal in determining whether legislation ensures Treaty compliance across the bodies responsible for administering climate change policy and the Crown-Māori relationship.
19. In addition, the panel considers that evidence in writing from the Parliamentary Commissioner for the Environment (Commissioner), Rt Hon Simon Upton, may be of assistance to the Tribunal. Accordingly, I instructed Tribunal staff to approach the Commissioner's office to enquire whether the Commissioner has any evidence in relation to the Tribunal Statement of Issues (Wai 3325, #1.4.3) that may assist the Tribunal in its inquiry.
20. The Commissioner's office advise that the Commissioner is able to assist based on his previous work within the scope of this inquiry and will be available to answer any questions the Tribunal has, based on this work, in writing by mid-May 2026.
21. Accordingly, I invite parties to file, by no later than **5 pm, Thursday 23 April 2026**, any questions in writing:
 - (a) further to those outlined at [8] above, for the Commission; and
 - (b) for the Commissioner.

Next steps

22. The panel will issue the final list of questions for the Commission and the Commissioner following receipt of parties' submissions. The Commission and the Commissioner are to file their responses to the final list of questions by no later than **5 pm, Thursday 21 May 2026**.

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki ērā ki te rārangi whakamōhio mō Wai 3325, the Climate Change Priority Inquiry.

The Registrar is to send this direction to all those on the distribution list for Wai 3325, the Climate Change Priority Inquiry.

WHAKAPŪMAUTIA ki Kirikiriroa i te 15 o te Āperira 2026



Kaiwhakawā Stephanie Milroy
Te Mana Whakahaere

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI