I TE ROOPU WHAKAMANA I TE TIRITI
IN THE WAITANGI TRIBUNAL

WAI 682
WAI 1781
WAI 2214

IN THE MATTER OF	the Treaty of Waitangi Act 1975
AND	an application for urgent inquiry by the Ngāti Hine Lands, Forests and Resources claim (Wai 682)
AND	a claim by Tracy Hillier and Rita Wordsworth on behalf of themselves and for the benefit of the hapū of Ngāi Tamahaua (Wai 1781)
AND	the Wai 2214 claim by Margaret Mutu on behalf of herself, Te Rūnanga-a-Iwi o Ngāti Kahu Charitable Trust and Ngāti Kahu (Wai 2214)

JOINT MEMORANDUM OF COUNSEL IN SUPPORT OF WAI 682 APPLICATION AND SEEKING INTERESTED PARTY STATUS
Dated this 28th day of April 2026

RECEIVED
Waitangi Tribunal
28 Apr 26
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL:

INTRODUCTION

1. This Joint Memorandum of Counsel is filed on behalf of:

   (a) Wai 2214, a claim by Professor Margaret Mutu on behalf of herself, Te Rūnanga-a-Iwi o Ngāti Kahu Charitable Trust and Ngāti Kahu; and

   (b) Wai 1781, a claim by Tracy Hillier and the late Rita Wordsworth on behalf of themselves and for the benefit of the hapū of Ngāi Tamahaua.

   Together referred to as ("the **Claimants**").

2. On 21 April 2026, an application for an urgent inquiry was filed on behalf of Wai 682, the Ngāti Hine Lands, Forests and Resources claim concerning:

   (a) the Crown's proposal to repeal or amend Treaty provisions in legislation;[1]

   (b) the Government decision to set an upper limit on the Crown's duties and obligations under Te Tiriti as being no more than an obligation to "take into account" Te Tiriti o Waitangi/the Treaty of Waitangi ("the **Standardisation Approach**"); and

   (c) the Government proposal to apply the Standardisation Approach to prospective legislation which is the subject of current Crown policies and to all future legislation.[2]

3. In Memorandum-Directions dated 22 April 2026, and by way of email from the Registrar dated 22 April 2026, Deputy Chairperson Judge Sarah Reeves directed any interested parties to respond to the application for an urgent inquiry no later than midday, 28 April 2026.[3]

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[1] Wai 682, #2.114.
[2] Cabinet Paper "Review of References to the Principles of the Treaty of Waitangi in Legislation: Next Steps" SOU-25-SUB-0184 at [27]; Wai 682, #A015(a) at p 5.
[3] Wai 682, #2.116 at [3].

4. We respectfully seek leave to file this Memorandum shortly after 12pm and submit no party will be prejudiced should the leave sought be granted.

CLAIMANTS INTERESTS IN URGENT INQUIRY

5. The Claimants support the application for an urgent hearing as filed and seek leave to participate pursuant to section 4A of the Commissions of Inquiry Act 1908 both:

   (a) As interested parties to the application for urgency; and

   (b) As interested parties with substantive participation rights including the ability to file discrete and targeted submissions and evidence, and appear at any hearings, should the urgent application be granted.

6. The Claimants submit they have an interest in the application (and any subsequent inquiry granted) apart from any interest in common with the general public in that Rangatira of the hapū and iwi they represent signed Te Tiriti o Waitangi in 1840, creating a Tiriti Partnership. The rights which flow from this Tiriti Partnership are distinctly and materially different from any rights of the general public.

Ngāti Kahu (Wai 2214)

7. The Wai 2214 claim by Professor Margaret Mutu is brought on behalf of Ngāti Kahu, one of the five iwi of Muriwhenua in the far north of Te Tai Tokerau. The iwi of Ngāti Kahu consists of 15 kāinga, hapū and marae.

8. Professor Mutu is a Professor of Māori Studies at the University of Auckland. She has a PhD in Māori Studies specialising in linguistics and is a leading academic in the areas of tikanga, Māori rights and sovereignty, and constitutional transformation, among others. Professor Mutu is co-Chair of Pou Tikanga for the National Iwi Chairs Forum and participated in the Tribunal's previous inquiry into the Crown's Treaty Principles Bill and Treaty Clauses Review policies.

9. Ngāti Kahu have not agreed any settlement of their historic Te Tiriti o Waitangi claims with the Crown. Accordingly, there is no settlement legislation which would protect their interests from the impacts of the Crown's Standardisation Approach.

Ngāi Tamahaua Hapū (Wai 1781)

10. The Wai 1781 claim by Tracy Hillier and the late Rita Wordsworth in brough on behalf Ngāi Tamahaua hapū of Te Whakatōhea, located in the North-Eastern Bay of Plenty. Ngāi Tamahaua have a long history of advocating for Crown recognition of their hapū rangatiratanga, including through various Waitangi Tribunal inquiries and the Marine and Coastal Area (Takutai Moana) Act 2011 regime.

11. The Standardisation Approach poses a significant risk to the ability of Ngāi Tamahaua to continue to exercise their tino rangatiratanga. Ngai Tamahaua are particularly active in matters of resource management and other environmental matters which will be directly affected by the proposed changes. In particular decision-makers under the new policy settings will be permitted to prioritise any and all other factors they consider relevant over the rights and interests of Ngāi Tamahaua as Tiriti Partners.

12. The Crown's failure to engage, or even consult, with hapū before taking decisions is an erasure of the status of hapū as Tiriti Partners and is a clear breach of the Crown's obligation of good faith and therefore of the principle of partnership to the prejudice of Ngāi Tamahaua.

SUPPORT FOR URGENT APPLICATION

13. The Claimants support the submissions by counsel for Wai 682 and do not wish to repeat the matters raised there. Additionally, the claimants submit as follows:

Significant and irreversible prejudice

14. The Claimants interests in the application are such that they too will suffer or are likely to suffer significant and irreversible prejudice if the

proposed legislative amendments and in particular, Standardisation Approach is applied.

15. The adoption of an upper limit on the standard which may be used in any Treaty Clauses will enable Māori interests to be discounted in favour of any other factors a decision-maker may consider relevant.

16. The Cabinet Paper "Review of References to the Principles of the Treaty of Waitangi in Legislation: Next Steps" SOU-25-SUB-0184 ("the **Cabinet Paper**") which is the basis of the Crown's proposals acknowledges the risk of prejudice the Crown's decisions pose to the Claimants and Māori more generally, noting that "[d]ecisions to repeal or reduce obligations under Treaty provisions have the potential for wide-ranging impacts on Māori interests. It has not been possible to fully explore or quantify those impacts in the time available and without consultation with Māori".[4]

17. This decision represents a deliberate usurpation of the rights hapū are afforded under Te Tiriti including active protection of their tino rangatiratanga and role as Te Tiriti partner. The blatant disregard of clear advice makes the breach even more egregious.

No alternative remedy available

18. This Government appears committed to implementing every aspect of the Coalition Agreements with political expediency prioritised over genuine engagement, clear policy rationale and/or reasonableness. There is no prospect whatsoever of engaging in any mediation or other process with a Government who continues to ignore Māori rights and interests. The Waitangi Tribunal has become the forum of last resort for Māori groups who are suffering at the hands of a brutal and unprincipled attack on their hard-fought rights.

19. Given the Crown has had insufficient time to properly assess the potential impacts of its decisions following the Review, it is submitted the Tribunal is the only forum available to hear the claim and provide some assessment of the likely impacts of the Crown's decisions on

[4] Cabinet Paper, above n 2 at [52], p 9.

Māori before legislation effecting those decisions is introduced to the House.[5]

20. Counsel submit the proposed Select Committee engagement is not a viable alternative remedy to a Tribunal inquiry, particularly given the lack of time available for a fulsome Select Committee process to be conducted before the House is adjourned ahead of the 2026 General Election.[6] Counsel for the Crown have indicated in their memorandum seeking an extension to respond to the application that their instructions are the proposed legislation would not be introduced before "early-August 2026".[7] With the final adjournment of the House is expected to occur on 24 September 2026, this leaves almost no time for a full Select Committee process to occur before Parliament dissolves.[8] Counsel submit it is highly likely that a reduced Select Committee process will be adopted where the Select Committee will pick and choose which Māori voices, if any, they want to hear from. This means there is significant risk the Claimants will not be heard in relation to the Crown's actions unless the Tribunal grants this urgent inquiry.

Utility of holding a further inquiry

21. Although the Tribunal has previously inquired into the removal of Treaty provisions and reported to the Crown with recommendations, Counsel submit the substantive changes and developments in the Crown's policy since the Tribunal's previous inquiry and the unprecedented attack on Te Tiriti and Māori interests the policy now represents necessitate a further inquiry be convened.

Development of the policy

22. At the time of the Tribunal's previous inquiry, the Crown had not yet taken decisions regarding any amendments or repeals of Treaty

[5] Ibid.
[6] At [43], p 7.
[7] Wai 682, #2.118 at [2].
[8] https://www3.parliament.nz/en/visit-and-learn/parliament-in-election-year/election-2026-timeline/

Provisions under review.[9] Accordingly, the Tribunal's report was focused on the progress of the policy and the process of the review, and the associated risks of the same.[10]

23. Now that the Crown has taken decisions on specific amendments and repeals, particular breaches and prejudice flowing from those amendments and repeals, which the Tribunal was not previously able to inquire into and report on, have become evident.

Expansion of the policy

24. Additionally, the current policy decisions represent a significant and fundamental change in the Crown's position since the Tribunal's previous inquiry. Formerly, the Crown's apparent intention was to assess Treaty Provisions in terms of their provision for 'the promotion of the fundamental human rights and equality of all New Zealanders and the importance of equality before the law for all in a modern democratic society'.[11] The Tribunal ultimately found that any consideration of this at all in the review would be inconsistent with the principles of the Treaty.[12]

25. However, the Crown has ignored the clear warnings and recommendations given by the Tribunal and doubled down on the approach by introducing an upper limit on all Treaty Provisions so as to "promote the balanced consideration of all relevant factors in decision-making".[13] This shift in focus now permits Māori rights and interests to be subjugated to any and all 'relevant factors' with seemingly unlimited discretion to do so being afforded to decision-makers. This was not a stated purpose of the review at the time of the Tribunal's previous inquiry, which shows a lack of transparency on the part of the Crown as Te Tiriti Partner in a clear demonstration of bad faith.

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[9] *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* Waitangi Tribunal 2025 at p 2.
[10] At pp 49 – 50.
[11] *Ngā Mātāpono Part III*, above n 9 at p 49.
[12] At p 47.
[13] Cabinet Paper, above n 2 at [27], p 5.

26. Crown documents suggest that this expansion of the policy was a "late addition" that was not only proposed by the Minister of Justice after the Tribunal had concluded its previous inquiry, but after the Ministerial Advisory Group had issued its report and without sufficient time to allow for the impacts of the proposal to be fully understood.[14] It is therefore imperative that Tribunal inquire into the new approach.

27. Furthermore, the Crown's intention to apply the Standardisation Approach to future legislation represents an additional expansion of the policy from what was previously before the Tribunal. Formerly, the policy was only directed at reviewing current legislation to ensure the provisions were "clear and specific" about how Te Tiriti applies in the context of each legislative regime to provide a "tighter definition of what Parliament actually means".[15] However, the application of the Standardisation Approach to all future legislation will have the effect of pre-determining that Parliament, and therefore the Crown, will never intend for Te Tiriti to apply in any context beyond being a mere relevant factor in decision-making. While the Treaty Clauses Review has always been directed at increasing consistency in the statute book, the policy did not previously have this forward facing and substantive dimension.

An unprecedented response to an unprecedented issue

28. The Claimants say the Executive cannot, by modern policy preference, rewrite the guarantees solemnly affirmed in Te Tiriti o Waitangi. Any purported derogation can be seen as no more than a simple nullity with delusions of legitimacy.

29. The Crown's present course is unprecedented in its scale and candour. Never before has Te Tiriti been so directly diminished through contemporary executive action absent meaningful engagement with Māori. As the Crown's own advice warns, such conduct gives rise to immediate and significant prejudice to Māori interests. It is submitted that this conduct in violation of the principle

[14] Regulatory Impact Statement "Providing certainty on legislative references to the Treaty of Waitangi" (13 November 2025); Wai 682, #A015(a) at pp 89, 91.
[15] Wai 3300, #A030 at p4.

of active protection further gives rise to immediate and significant prejudice to the Tiriti Partnership itself. In these circumstances, ordinary processes are insufficient. The Claimants respectfully seek an urgent interim report recommending the Government immediately refrain from implementing the impugned measures pending a fully inquiry.

PARTICIPATION

30. As a result of the above, the Claimants seek to have their claims aggregated for participation in this inquiry on an interested party basis. The Claimants seek to file affidavit evidence and submissions in support. If leave to participate as interested parties is granted, the Claimants are ready to proceed to hearing and will liaise with the Applicant and other parties to avoid duplication of evidence and submissions to ensure a focused and expeditious inquiry is able to occur.

31. The Claimants are aware of resource and time constraints involved in the prioritisation of urgent inquiries and will abide the Tribunal's decision regarding the need for viva voce presentation of evidence in the circumstances.

CONCLUSION

32. For the reasons set out above the Claimants consider the application meets the criteria for urgent inquiry and therefore seek the Tribunal urgently convene an inquiry into the Crown's conduct.

Dated at Auckland this 28th day of April 2026

C Panoho-Navaja / J Alexander / A Madsen
Counsel for the Claimants