

IN THE WAITANGI TRIBUNAL

WAI 3300

**IN THE MATTER
AND**

of the Treaty of Waitangi Act 1975

IN THE MATTER

of te Tomokia Ngā Tatau o Matangireia – the
Constitutional Kaupapa Inquiry (Wai 3300)

JOINT MEMORANDUM OF COUNSEL

Dated 23 March 2026

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Waitangi Tribunal

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Ministry of Justice
WELLINGTON

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Introduction

1. This joint memorandum is filed with the support of those counsel listed at Appendix A (**the Claimants**), and in response to memorandum-directions dated 24 Huitānguru 2026 (**the Directions**),¹ which state the following:

6. We convened Te Wānanga Tuaono of the wānanga ā-rohe phase from 1 to 4 December 2025, at Te Tii Marae Waitangi, Te Tai Tokerau.

7. A major point of discussion during that wānanga centred around the clarification of when precisely practical sovereignty in Te Raki was acquired by the Crown.

8. This question was raised most notably by the claimants who presented on behalf of Matakīrea as part of the Constitutional (Wakefield & Others) (Wai 3389) claim (Wai 3300, #B83).

....

Decision

12. As noted above, the question of when precisely the Crown acquired practical sovereignty in Te Raki was raised by many claimants across the four days of Te Wānanga Tuaono. I acknowledge this issue is of particular importance to claimants in Te Paparahi o Te Raki. I remind parties that the claims participating in this inquiry are being heard as part of a broader national inquiry into all claims concerning the constitution, local government, and the electoral system.

13. Accordingly, this Tribunal does not have sufficient evidence to be able to answer appropriately the question of if, how and when practical sovereignty in Te Raki was acquired by the Crown. The Wai 1040 panel has heard and reported on a wide range of historical issues in its report. I therefore determine that this issue is to be referred back to the Wai 1040 panel for consideration.

14. I further determine that all other relevant constitutional issues raised by Ngāpuhi claimants, including the legitimacy of the current constitutional arrangements, will be dealt with in this inquiry by the Wai 3300 panel.

2. The Claimants seek clarification of this decision.
3. They note the following background matters:
 - a. The Wai 3389 claim was filed on 19 April 2024,² after the cut-off date for historic claims. Nevertheless, as identified by Chief Judge Fox at wānanga

1 Wai 3300, #2.6.82

2 Wai 3389, #1.1.1

tuaono, the issue of the Crown's asserted contemporary constitutional legitimacy as progressed by the Wai 3389 claimants in the Wai 3300 inquiry, will be "important for providing context for what we are being asked to do in our inquiry."³

- b. As of October 2025, the list of inquiry themes proposed by the Tribunal maintains issues that specifically incorporate the core theme of constitutional legitimacy:⁴

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.

- c. Because of the nationwide nature of the Crown's sovereignty asserted, kōrero relating to themes one and two formed the basis of the Claimants kōrero at wānanga nationwide, and the basis of numerous claims before the Wai 3300 Tribunal (i.e. beyond the rohe and whakapapa of Ngāpuhi). This is highlighted throughout the Wai 3300 Draft Wānanga ā-Rohe Report #2.6.83(a), where the sovereignty of the Crown, and the broader question of constitutional legitimacy, was a major point of disagreement between the Crown and the Claimants. In other words, a significant number of claimants in the Wai 3300 inquiry raise these issues, but do not have a historical claim and/or whakapapa basis to the Wai 1040 inquiry, and so are not eligible to participate in any reconvened Wai 1040 inquiry.
- d. The Wai 3389 claimants have not used the expression "practical sovereignty" in any of their claim documents or presentations.⁵ Instead, this expression has been used by Tribunal in the above decision.
- e. The Claimants maintain the Crown has never legitimately acquired sovereignty in this country whether by discovery, occupation, cession, conquest, prescription or any other means.
- f. As repeated in the Directions, the letter of transmittal of the Wai 1040 Stage 1 Report, Judge Coxhead stated:

In this report, we have not identified precisely when the sovereignty the Crown holds and exercises today was acquired, nor have we

³ Wai 3300, #4.1.13 p68

⁴ Wai 3300, #2.6.73; Wai 3300, #2.6.73(b)

⁵ See Wai 3389, #1.1.1, Wai 3300, B083 and Wai 3300, B083(a).

considered its legitimacy in a contemporary context – those questions may feature in the Waitangi Tribunal’s forthcoming kaupapa inquiry into constitutional issues.

- g. The Wai 1040 panel is arguably *functus officio* on the issue of if, how and when practical sovereignty in Te Raki was acquired by the Crown.
 - h. A related issue is that it is unclear whether the Chair of a sitting of the Tribunal or, separately, the Chairperson independently, can refer a matter back to a panel whose chair has already stated that they will not consider a particular matter further.
 - i. The decision was made without benefit of any legal submissions from the Claimants.
4. Given this background, the clarification sought by the Claimants is whether the “legitimacy of the current constitutional arrangements” include hearing evidence and submissions, and considering making findings and recommendations, that the Crown is in breach of Te Tiriti by maintaining that it legitimately acquired sovereignty in New Zealand by a series of jurisdictional steps that it says was complete by October 1840,⁶ and that no sovereignty in any form has ever legitimately been acquired by the Crown.

Dated at Wellington this 23rd day of March 2026



Tom Bennion / Emma Whiley / Kudrat
On behalf of the Claimants

⁶ These steps include the signing of Te Tiriti, the 21 May 1840 Hobson proclamations, and the publication of these on 2 October 1840 in the London Gazette see Wai 1040, #3.3.402 at [9 at 10]. This repeats the position put to the Wai 1040 Inquiry, see Wai 3300, #B14(c) at [35].