OFFICIAL

I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI **WAI 3565**

WAI 3440

KEI RARO I TE MANA o te ture o te Tiriti o Waitangi 1975

Ā

I TE TAKE O Te Tinihanga o Ngā Mātāpono o te Tiriti (Wai 3565)

E PĀ ANA KI Te pati e tautoko ana i te kerēme o "Toitū Te Tiriti" (Wai3440)

BRIEF OF EVIDENCE OF ERU RUANUI TIA KAPA-KINGI

Dated 19 May 2026

RECEIVED
Waitangi Tribunal
19 May 26
Ministry of Justice
WELLINGTON

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TĒNĀ, E TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

INTRODUCTION

Papaki kau ana ngā tai ki Te Reinga, hei ngā tini raukura kua riro, haere ki Tawhiti Mārearea i ea ai ko te mate. Ko te tira ora kei te whenua e haere ana, ko Rangi kei runga, ko Papa kei raro, ko Tū ki taha mauī, ko Rongo ki taha matau, tīhe wa mauri ora.

1. Ko Eru Ruanui Tia Kapa-Kingi tōku ingoa. I am Te Aupōuri and Ngāpuhi. I am an Academic and Professional Teaching Fellow at the Faculty of Law at Waipapa Taumata Rau, the University of Auckland, where I design and teach compulsory courses on Te Ao Māori me ōna tikanga (the Māori world and its cultural practices).

2. I hold a Bachelor of Laws (First Class Honours) and a Bachelor of Arts (majoring in Te Reo Māori) from Te Herenga Waka (Victoria University). Before my role as a Professional Teaching Fellow, I practised as a lawyer for a few years, specialising in Māori legal services for iwi, hapū, and general Māori business.

SCOPE OF EVIDENCE

3. I previously provided an Affidavit in support of the claim and the application for this urgent inquiry into the Treaty Principles reforms (**the Reforms**).[1] This brief of evidence elaborates on some of the matters raised in that Affidavit and should be read alongside it.

4. The purpose of this brief of evidence is to:

   a. Provide further background on the Toitū Te Tiriti movement, and the support the movement has received since joining this inquiry as an interested party.

   b. Outline my serious concerns regarding the process that the Crown has followed since the last hearing in October 2025 to today, and the prejudice we have suffered as a result.

[1] E Kapa-Kingi, *Affidavit of Eru Ruanui Tia Kapa-Kingi* dated 6 May 2026, Wai 3565, #A2.

c. Summarise the concerns I have on the substance of the Reforms and the effect that it will have on legislation and the Crown-Māori relationship that will continue to undermine and erode the mana of Te Tiriti, as well as a half century of work to develop the principles.

TOITŪ TE TIRITI MOVEMENT

5. I gave the name to the platform Toitū te Tiriti, which I built alongside my comrade Hohepa Thompson, who designed the tohu. This platform feeds into the broader movement and catch-cry which is held by the people. Toitū te Tiriti was also named as a claimant in Wai 3470.

6. Toitū Te Tiriti is a rangatahi-led liberation movement which defends and advocates for tangata whenua rights, as protected in both He Whakaputanga and Te Tiriti o Waitangi. Toitū Te Tiriti exists so all peoples from both current and future generations can thrive in Aotearoa. It is a movement which currently has a supporter base of over 100,000 from Aotearoa and across the world.

7. Toitū Te Tiriti is a relatively new term but is by no means a new movement. This Kaupapa is built off a generational legacy of Māori rights, a pursuit that has existed since 1840. We acknowledge all whose footsteps are carved into the whenua, many of whom have also sat on both sides of this Tribunal. Tēnā rā koutou.

8. When we joined this claim as an interested party, we asked our members who are of Māori descent and who wished to tautoko this claim to register with us so that we could tell the Tribunal how many Māori people we represent as, like we did with the Regulatory Standards Bill Urgent Inquiry. As of today 19 May 2026, there are:

   a. **44,730** people of Māori descent joining Toitū Te Tiriti's tautoko of this claim.

   b. **54,423** people of non-Māori descent who registered to show their support for this claim.

   c. Making a total of **54,423** people supporting Ngāti Hine's claim through Toitū Te Tiriti as an interested party.

THE PROCESS SINCE OCTOBER 2025

9. As I stated in my Affidavit, the Crown has deliberately hidden how far along they were in the Treaty clause review process.

10. The proposed reforms would be on par with the devastation that the Treaty Principles Bill would have caused had it been passed.

11. Māori were unaware of this progress until the Crown provided evidence in the Wai 3553 Urgent Inquiry. By the time we were made aware, Cabinet had already decided what changes were going to be made, and against the advice they received, decided to only consult with the Iwi Chairs Forum at the eleventh hour.

12. When I gave evidence during the Wai 3470 Inquiry, I outlined the limited consultation period the Crown had with both the Treaty Principles Bill and the Regulatory Standards Act.[2]

13. Just like then, this new set of reforms proposes fundamental constitutional changes that will undermine Te Tiriti. While the consultation processes during both previous instances were inadequate, the Crown at least provided some limited means for Māori to provide input on the RSB and TPB.

14. No public consultation has occurred over these proposed reforms, and the consultation recommendations from this Tribunal in *Ngā Mātāpono,* the Regulatory Impact Statement (**RIS**) and the Ministerial Advisory Group (**MAG**) were ignored by Minister Goldsmith. Instead, he wrote a letter to the National Iwi Chairs Forum (**NICF**) in April after Cabinet had already decided to go ahead with the reforms. That's not consultation, that's total disrespect to your Treaty partner.

15. The Government seem determined to go ahead even after the only Māori body they consulted with, the NICF, strongly opposed the changes.

16. I have read the draft brief of evidence of Dr Carwyn Jones. He has outlined the concerns he has with the process that has taken place so far, and the

[2] E Kapa-Kingi, J Bosch, *Joint Brief of Evidence* dated 7 May 2025, Wai 3470, #A14.

level of engagement required for this process considering the constitutional significance of the changes. I agree with his views.

17. In my view, the Crown should have done at least the following with respect to these changes before they had come together and agreed to proceed with the changes:

a. Engaged directly with Māori through a significant period of engagement up and down the motu, to ensure that the effects of these changes were fully and thoroughly understood. If the Crown wants to proceed with a process that will fundamentally change the constitutional arrangements and significantly impact Te Tiriti, this is the level of engagement that is required to ensure our people know what is going on. Finding out that the changes were imminent during an urgent inquiry on a separate matter is insulting to the mana of te Tiriti. I note that the MAG recommended targeted engagement with groups affected by specific changes to legislation, but the Crown has ignored this.[3]

b. Invited feedback from Māori through those hui and in other ways, including written submissions during the development phase of the changes so that a clear and accurate response from Māori toward the changes could be collated. The consultation obligations under Te Tiriti require the Crown to provide accurate and transparent information and opportunities for feedback that is far beyond seeking a rubber stamping by a singular Māori entity.

c. Incorporate feedback into the development process *before* Cabinet agreed to proceed with the changes. I believe that these reforms were a done deal as soon as the Coalition Agreement between the National Party and New Zealand First as signed in 2023 and the Treaty clause review was included that required all of this to happen.[4] This means that any consultation process would already be just a tick box exercise because the commitment to repeal the Treaty Provisions under the review or amend them was already in

[3] *Appendix A: Additional documents of the Crown* dated 16 April 2026, Wai 682, #A15(a), at 38.
[4] Coalition Agreement between the National Party and the New Zealand First Party, dated 24 November 2023, at 10.

place. And unlike Minister Goldsmith, the Coalition Agreement makes it crystal clear that the proposed changes, much like the Treaty Principles Bill, are intended to "reverse measures taken in recent years which have eroded the principle of equal citizenship" rather than to provide "certainty and clarity as the Minister keeps stating.

18. In his brief, Dr Jones outlines different types of Treaty clauses required by varying interests across different legislative contexts.[5] It seems outrageous to me that the Government wants to impose a "one size fits all" clause across the board without first consulting with Māori as Treaty partner.

19. The only one size fits all reform that should be made is the constitutional entrenchment of He Whakaputanga and Te Tiriti, in their entirety, as the founding constitutional documents of Aotearoa.

TE TIRITI WILL BE WEAKENED BY THESE CHANGES

20. I understand the Crown is proposing to repeal the Treaty clauses in the following five pieces of legislation:[6]

    a. Section 6(d) of the Energy Efficiency and Conservation Act 2000.

    b. Section 4 of the Land Transport Management Act 2003.

    c. Sections 4 and 5(1)(b) of the Organic Products and Production Act 2023.

    d. Section 3AB of the Smokefree Environments and Regulated Products Act 1990.

    e. Section 536A(1) of the Education and Training Act 2020;

21. I also understand that the Crown is proposing to amend the Treaty clause wording in the following 10 pieces of legislation to "take into account":[7]

[5] Dr C Jones, *Brief of Evidence* dated 19 May 2026, at [13]-[21].
[6] *Appendix A: Index and appendices to memorandum of counsel for the Crown* dated 15 May 2026, Wai 3565, #3.1.35(a), at 14-15.
[7] *Appendix A: Index and appendices to memorandum of counsel for the Crown* dated 15 May 2026, Wai 3565, #3.1.35(a), at 14-15.

a. The Climate Change Response Act 2002.

b. The Criminal Cases Review Commission Act 2019.

c. The Crown Pastoral Land Act 1998.

d. The Data and Statistics Act 2022.

e. The Digital Identity Services Trust Framework Act 2023.

f. The Environment Act 1986.

g. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

h. The Mental Health and Wellbeing Commission Act 2020.

i. The Pae Ora (Healthy Futures) Act 2022.

j. The Water Services Authority – Taumata Arowai Act 2020.

22. As a lecturer of law, I have seen the impact that the past 50 years of development te Tiriti has had on our legal system, as well as the impact it has had in how we teach the law to our students, particularly to our Māori law students.

23. While the law school has never been free of hostilities toward Māori, recent developments and jurisprudential trends prior to this coalition government had led to an increased acceptance and incorporation of tikanga and te Tiriti in a growing number of disciplines within our legal system, allowing for greater incorporation when we teach.

24. Despite this, rangatahi Māori continue to find it hard to integrate into the wider law school community and this has become harder under this coalition government due to their constant attacks on Te Tiriti over the past few years. It has also made it more difficult for myself as a law lecturer to teach about tikanga and te Tiriti due to increasing political rhetoric against te Tiriti.

25. Resistance to the incorporation of tikanga as a recognised core aspects of the law, the TPB and the RSB, led by the politicians from the Coalition Government using te Tiriti as a political football, has led to an increased polarisation of including te Tiriti in our teaching, and in my view has caused harm and prejudice to the rangatahi Māori I have encountered who study law.

26. In my opinion the widespread reforms proposed to repeal the Treaty clauses in five Acts and change the Treaty clauses in another ten Acts to only "take into account" will have a prejudicial effect on the way that I can teach law, and the way that our rangatahi Māori law students learn about the law and how they experience law school.

27. The changes will heighten the already existing feelings of alienation in these spaces, and the disrespect towards te Tiriti that is already evident among some of the other students and faculty.

28. I believe that it will make it harder for me to teach about the true constitutional significance of te Tiriti and have negative effects on our Māori law students who will be watching the hard-fought wins from the past 50 years by those who came before us disappearing before their eyes.

29. In my view, these proposed changes will create a fundamental shift in how te Tiriti will be recognised in legislation moving forward and disconnect us from half a century of development carefully undertaken by successive government and the Courts through the blood sweat and tears of our people fighting for te Tiriti.

CONCLUSION

30. I have serious concerns about the impact of these wholesale changes on our legislative landscape moving forward.

31. It is clear to me that while the Government tries to label the changes as no more than "clarification", they are deliberately trying to undo 50 years of Tiriti jurisprudence.

32. We are right on the cusp as a nation of having Te Tiriti become recognised and entrenched as our founding constitutional document.

33. The Crown cannot be allowed to drag us back into the past with their ongoing denial of He Whakaputanga and Te Tiriti.

DATED at this 19th day of May 2026.

Eru Ruanui Tia Kapa-Kingi