BEFORE THE WAITANGI TRIBUNAL **WAI 3565**
TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Tinihanga o Ngā Mātāpono o te Tiriti – the Treaty Principles Reform Urgent Inquiry

AND

IN THE MATTER OF a claim by **SHERIDAN AROHA WAITAI and others** on behalf of themselves as individual Māori, as a representative of Wai 262 Taumata Whakapūmau, and on behalf of all Māori generally

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BRIEF OF EVIDENCE OF SHERIDAN AROHA WAITAI

18 MAY 2026

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Waitangi Tribunal
19 May 26
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

I, Sheridan Aroha Waitai, Executive Trustee, Research Lead, Advisory, of/ Te Hiku o te Ika say:

INTRODUCTION

1. My full name is Sheridan Aroha Waitai, Ngāti Kurī, and Te Rarawa. I am one of the mokopuna of Saana Waitai-Murray, who was one of the original claimants in the WAI 262 claim.

2. My passion is to build up and grow the future generation of Ngāti Kurī. I coordinate a range of activities to bring our people home to help with biological audits on our land that include our schools, whānau and hapū working together to reconnect with our natural world and taonga.

3. I have repatriated taonga species and taonga back to Ngāti Kuri. I have led Ngāti Kuri's connections and work across our rohe including our Islands.

4. I manage and coordinate a range of relationships and partners, to achieve shared prosperity, community resilience, and mana motuhake for whānau, hapū, and iwi.

5. I have been instrumental in the continuation of the WAI 262 Fauna and Flora Claim for Ngāti Kuri. I have maintained relationships with other claimant whānau and iwi over many years since the WAI 262 report issued and been an active participant in Wai 262 Taumata Whakapūmau.

Wai 262 Taumata Whakapūmau

6. In 2020, we formed the Wai 262 Taumata Whakapūmau, which is made up of the descendants of the original WAI 262 claimants and their six iwi, Ngāti Kurī, Te Rarawa, Ngāti Wai, Ngāti Porou, Ngāti Kahungunu, and Ngāti Koata.

7. The role and purpose of Wai 262 Taumata Whakapūmau is to maintain the mauri and uphold the vision of WAI 262, a claim which examined the impacts of law and policy on Māori culture and identity, and sought recognition and protection of the rights of Māori in relation to taonga, intellectual property,

genetics and biological resources, and data, and the relationship Māori has with the environment, taonga, the conservation estate, te reo Māori, mātauranga Māori, rongoā Māori, and international instruments.

8. Wai 262 Taumata Whakapūmau has advanced its work by developing a tikanga led protection framework for the recognition and protection of the rights of Māori in relation to taonga, intellectual property, genetics and biological resources, and data, and the relationship Māori has with the environment, taonga, the conservation estate, te reo Māori, mātauranga Māori, rongoā Māori, and international instruments.

9. Wai 262 Taumata Whakapūmau represents the group advocating on behalf of the original WAI 262 claimants to ensure the aspirations of the WAI 262 claim are realised.

CHANGES TO TE TIRITI PROVISIONS PROPOSED BY CABINET

10. The WAI 3565 proceeding is an urgent inquiry into the Crown's proposals to repeal or amend Te Tiriti o Waitangi / Treaty of Waitangi ("Te Tiriti") provisions in legislation ("Reforms").

11. Cabinet has introduced a bill in this Parliamentary term to standardise clauses that reference Te Tiriti and make other changes to statutes referencing the principles within Te Tiriti o Waitangi / The Treaty of Waitangi.

12. Although the WAI 262 claim was an all-of-government claim, given the short time available to me, I have chosen to focus my evidence on the areas within my specific area of expertise, and those statutes that face amendment, which are most closely aligned to the issues raised in the WAI 262 claim.

13. The proposed amendments I will focus on include:

    (a) the consolidation of the Te Tiriti principles provisions and repealing aspects the Crown considers redundant in the Plant Variety Rights Act 2022;

    (b) amending the Te Tiriti principles provision in the Hazardous Substances and New Organisms Act 1996; and

(c) amending the Te Tiriti principles provision in the Data and Statistics Act 2022.

14. The proposed changes intend to:

(a) repeal section 54 of the Plant Variety Rights Act 2022, which provides guidance and an overview of what Part 5 of the Plant Variety Rights Act 2022 contains;

(b) amend section 4 of the Plant Variety Rights Act 2022 to merge with section 54 as Cabinet is of the view section 4 and section 54 duplicate each other;

(c) amend section 4 of the Plant Variety Rights Act 2022 to standardise the reference to the Treaty and the formulation of the duty;

(d) amend section 8 of the Hazardous Substances and New Organisms Act 1996 to standardise the language used and to make the treaty principles provision more specific;

(e) amend sections 3(e), 4 and 14 of the Data and Statistics Act 2022 to change the statutory directive from “give effect” to “take into account”; and

(f) “further specify” section 14(a) of the Data and Statistics Act 2002, to be more specific about the Māori interests the Statistician is required to recognise when performing statutory functions.

15. Cabinet has undertaken these reviews without consultation with Māori and without consideration of the broader impacts these changes will have on Māori, our taonga, the issues raised in the WAI 262 claim, the recommendations in the WAI 262 report, the work that has been undertaken (including legislative amendments) since the release of the WAI 262 report, and in general, the Crown’s obligations under Te Tiriti.

16. I note that Cabinet also agreed to:

(a) invite the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office;

(b) note the Minister of Justice's intention to consult the National Iwi Chairs Forum following Cabinet approval and prior to the final approval of the Bill;

(c) authorise the Minister of Justice, in consultation with the Ministerial Oversight Group and the Minister responsible for each Act, to make further decisions, in line with the policy decisions agreed to by Cabinet and for the Minister of Justice to make any further minor and technical issues arising during drafting of the Bill; and

(d) apply the standardisation approach to future legislation (unless it is inappropriate to do so) 'to ensure that the benefits of increased certainty across the statute book is maintained' and to use the Cabinet approved standard form descriptive provision as the presumed preference unless inappropriate in the circumstances.

WAI 262

17. The WAI 262 claim was filed in October 1991, and after two series of hearings, the report issued in July 2011.

18. The claim sought to restore "tino rangatiratanga" of whānau, hapū and iwi of Aotearoa over taonga (both intangible and tangible).

19. The claim considered the impact of a broad spectrum of legislation, policies, and frameworks adopted by the Crown, across all of government, and its impact on the relationship between Māori and our taonga.

20. The claim was known as the 'intellectual property' claim, because the claim raised concerns about the impact of the intellectual property legislation (including the Plant Variety Rights Act 1987, which was in force at the time) on the relationship between Māori and our taonga.

21. The claim was also known as the 'flora and fauna' claim, because the claim raised concerns that Crown legislation, policies, and procedures had adversely impacted on the relationship between Māori and our native flora and fauna.

22. At the time the WAI 262 claim was filed, the impact of the digital world was not fully known, but the Tribunal has since asserted that Māori data is a taonga[1], and therefore, the issues raised in the WAI 262 report apply equally to the relationship that Māori have with our data. An important tool we use to inform work we do at Ngāti Kurī on the protection of our taonga.

23. The WAI 262 report made a number of recommendations including a number of recommended amendments to the Plant Variety Rights Act 1987, the Hazardous Substances and New Organisms Act 1996, and recommendations on the Crown's role in supporting, recognising, and protecting the relationship between Māori and taonga.[2]

24. I do not propose to summarise the breadth and depth of evidence that was filed in the WAI 262 claim in this brief of evidence, but I rely on that evidence to support the statements I make here and to support the concerns of Wai 262 Taumata Whakapūmau with the proposed amendments to the Plant Variety Rights Act, the Hazardous Substances and New Organisms Act, and the Data and Statistics Act.

25. Wai 262 Taumata Whakapūmau was established to continue the work of the WAI 262 claim. As part of that work, the Wai 262 Taumata Whakapūmau has developed the Tiaki Taonga framework[3], a stand alone sui generis framework, which is activated in every instance where there is activity relating to taonga Māori, through the application of identified principles and values to the relevant activity.

Plant Variety Rights Act 2022

26. The passing of the Plant Variety Rights Act 1987 (the predecessor of the Plant Variety Rights Act 2022) and the granting of intellectual property rights over varieties of native flora and fauna was one of many reasons behind the filing of the WAI 262 claim. The claimants considered there existed a significant risk for this Act to have ongoing negative impacts on Māori culture and identity, the rights of Māori in relation to taonga, intellectual property,

[1] See Waitangi Tribunal *Report on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (Wai 2522, 2021) pp 180.

[2] See Waitangi Tribunal, *Ko Aotearoa Tēnei: a Report into the claims concerning New Zealand law and policy affecting Māori Culture and Identity* (Wai 262, 2011) (**the WAI 262 report**).

[3] Tiaki Taonga handout 1July23.

genetics and biological resources, and data, and the relationship Māori has with the environment, taonga, the conservation estate, te reo Māori, mātauranga Māori, and rongoā Māori.

27. This proved to be the case, because the WAI 262 report recommended a number of amendments to the Plant Variety Rights Act 1987, but these amendments were not implemented immediately.

28. In 2018, the Crown commenced consultation on the amendments needed to the Plant Variety Rights Act 1987 to ratify the International Convention for the Protection of New Varieties of Plants (UPOV 91), which New Zealand was required to ratify as part of the Crown's obligations under the Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP).[4]

29. As part of that consultation, the Crown also undertook specific and targeted consultation, including with Māori, on the amendments required to give effect to the Crown's obligations under Te Tiriti related to the Plant Variety Rights Act 1987. This consultation included consideration of the recommendations in the WAI 262 report on amendments needed to the Plant Variety Rights Act and scheme.

30. WAI 2522 asked the Tribunal to review the consultation process and the amendments proposed to the Plant Variety Rights Act. The Tribunal concluded the Crown's process for engagement on the proposed amendments and the Crown's policy on whether New Zealand's should accede to UPOV 91 was consistent with the Crown's Te Tiriti obligations to Māori.[5]

31. The Tribunal supported the Crown policy (including the amendments to the Plant Variety Rights Act 1987), because the Tribunal considered this policy and the amendments not only implemented some of the Tribunal's recommendations in the WAI 262 report, but included additional measures to recognise and protect the interests of kaitiaki in taonga species and in non-indigenous species of significance.[6]

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[4] See Plant Variety Rights Act Review | Intellectual Property Office of New Zealand and Plant Variety Rights Act 1987 review | Ministry of Business, Innovation & Employment.

[5] Waitangi Tribunal, *Report on the Crown's Review of the Plant Variety Rights Regime*, pp 41-42.

[6] Waitangi Tribunal, *Report on the Crown's Review of the Plant Variety Rights Regime*, pp 25.

32. As representatives of the WAI 262 claimants, the Wai 262 Taumata Whakapūmau has taken the view that the amendments to the Plant Variety Rights Act 1987 did not go far enough to address the claimant concerns, and the amendments did not provide for the full expression of tino rangatiratanga of those who are kaitiaki of the plants themselves, and the mātauranga held about those plants. Nevertheless, it had been acknowledged that there had been some progress.

33. Therefore, Wai 262 Taumata Whakapūmau is now very concerned that the legal impact of the newly proposed amendments to the Plant Variety Rights Act 2022, without due consultation or consideration of the broader impacts, will reverse the advances made in the Plant Variety Rights framework to address the concerns raised in the WAI 262 claim, to implement the recommendations made by the Tribunal in the WAI 262 report, and for the Crown to meet its obligations under Te Tiriti.

Impact of international instruments

34. International instruments have heavily influenced the development of the intellectual property system in Aotearoa New Zealand at the expense of Māori culture and identity, the rights of Māori in relation to taonga, intellectual property, genetics and biological resources, and data, and the relationship Māori has with the environment, taonga, the conservation estate, te reo Māori, mātauranga Māori, and rongoā Māori.[7]

35. There exists an ongoing risk that the Crown's international obligations take precedence over Māori rights and interests in taonga. This is evident by the following Minister's comments in the Cabinet paper:

> 'Officials will work with PCO to ensure any amendments to the Plant Varieties Rights Act 2022 do not conflict with New Zealand's obligations under the International Convention for the Protection of New Varieties of Plants (UPOV 91).'

36. Wai 262 Taumata Whakapūmau remains concerned that the Crown continues to implement its international obligations without proper regard for its obligations under Te Tiriti in relation to Māori culture and identity, the

[7] See WAI 262 report, Chapter 8.

rights of Māori in relation to taonga, intellectual property, genetics and biological resources, and data, and the relationship Māori has with the environment, taonga, the conservation estate, te reo Māori, mātauranga Māori, and rongoā Māori. Wai 262 Taumata Whakapūmau stands in solidarity with other Māori practitioners and pūkenga who are experts in this area of Te Tiriti obligations in the international fora, and we have a working relationship with Ngā Toki Whakarururanga[8] in this context.

Hazardous Substances and New Organisms Act 1996

37. The WAI 262 claim and report also considered the provisions of the Hazardous Substances and New Organisms Act 1996 and the impact this Act had on Māori culture and identity, the rights of Māori in relation to taonga, intellectual property, genetics and biological resources, and data, and the relationship Māori have with the environment, taonga, the conservation estate, te reo Māori, mātauranga Māori, and rongoā Māori.

38. The WAI 262 report made recommendations on amendments required to the Hazardous Substances and New Organisms Act 1996 and the broader regime, the majority of which have not yet been implemented, to provide better protection and recognition of the rights of Māori in relation to taonga, intellectual property, genetics and biological resources, and data, and the relationship Māori have with the environment, taonga, the conservation estate, te reo Māori, mātauranga Māori, and rongoā Māori.

39. Wai 262 Taumata Whakapūmau are concerned the proposed amendments to the Hazardous Substances and New Organisms Act 1996 will adversely impact on the Crown's ability to implement those recommendations at a later date, especially given the delays already taken to implement those recommendations, and to actively engage with Māori communities about solutions to a protection framework that centres us as kaitiaki, and our mātauranga. That is what our framework "Tiaki Taonga" is about – but we will be prejudiced by amendments which are not consistent with that framework.

[8] See www.ngatoki.nz

Data and Statistics Act 2022

40. Data has become a critical tool we use to inform decisions on how we maintain and protect our culture and identity, how we maintain and protect our taonga, genetics and biological resources within our rohe, and how we maintain our relationship with the environment, our taonga, the conservation estate, te reo Māori, mātauranga Māori, and rongoā Māori.

41. Wai 262 Taumata Whakapūmau consider that Māori data is a taonga, and therefore, the issues raised in the WAI 262 report equally apply to the relationship that Māori have with our data.

42. To reflect this position, Wai 262 Taumata Whakapūmau has developed fact sheets to guide how the principles of WAI 262 can be applied in the digital world.[9]

43. Wai 262 Taumata Whakapūmau are concerned the proposed amendments to the Data and Statistics Act will adversely impact on the Crown's ability to meet their Te Tiriti obligations and give effect to the relationship Māori have with data.

Future proposals

44. Wai 262 Taumata Whakapūmau had developed a tikanga led protection framework called Tiaki Taonga for the recognition and protection of the rights of Māori in relation to taonga, intellectual property, genetics and biological resources, and data, and the relationship Māori has with the environment, taonga, the conservation estate, te reo Māori, mātauranga Māori, rongoā Māori, and international instruments.

45. The preferred model is for the framework to be implemented by way of legislation, which is then supported by a network of solutions including Codes of Conduct, contractual provisions, research guidelines, and educational material.

46. Wai 262 Taumata Whakapūmau remains of the view that the issues raised in the WAI 262 claim remain unresolved, and recommends the adoption of the

[9] See Factsheets-2025_DIGITAL-WORLD_WEB.pdf and Application Paper AI Digital World.

Tiaki Taonga framework to guide how the Crown addresses the impacts of law and policy on Māori culture and identity, and how the Crown recognises and protects the rights of Māori in relation to taonga, intellectual property, genetics and biological resources, and data, and the relationship Māori has with the environment, taonga, the conservation estate, te reo Māori, mātauranga Māori, rongoā Māori, and international instruments.

Sheridan Aroha Waitai