I TE ROOPU WHAKAMANA I TE TIRITI
IN THE WAITANGI TRIBUNAL

WAI 3565
WAI 1781

IN THE MATTER OF	the Treaty of Waitangi Act 1975
AND	Te Tinihanga o Ngā Mātāpono o te Tiriti – the Treaty Principles Reform Urgent Inquiry
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)

BRIEF OF EVIDENCE OF TRACY FRANCIS HILLIER
Dated this 18th day of May 2026

RECEIVED
Waitangi Tribunal
18 May 26
Ministry of Justice
WELLINGTON

WACKROW PANOHO
& ASSOCIATES
Level 5, 50 Kitchener Street
Po Box 461
AUCKLAND
Solicitor Acting: Coral Panoho-Navaja / Jack C Alexander / Alice Madsen
Ph. (09) 379 5026
E mail: coral@wpalawyers.co.nz / jack@wpalawyers.co.nz /
alice@wpalawyers.co.nz

INTRODUCTION

Introduction and Role

1. My full name is Tracy Francis Hillier. I am a descendant of Ngāi Tamahaua hapū and the named claimant for Wai 1781, on behalf of my hapū.

2. I have given evidence in multiple Waitangi Tribunal inquiries over the past decade. In each of those inquiries, I have done so as a hapū spokesperson, bringing the voice of Ngāi Tamahaua directly into Crown forums, regardless of the kaupapa under consideration.

3. My evidence is grounded in lived experience. I regularly engage with local and regional councils, Crown agencies, and decision-makers within my rohe of Ōpōtiki and beyond, advocating for Ngāi Tamahaua interests in matters affecting our whenua, wai, moana, wāhi tapu, and whānau.

4. I am also an applicant under the Marine and Coastal Area (Takutai Moana) Act and have been involved in efforts to protect the coastal and marine environments that are central to Ngāi Tamahaua identity, tikanga, and survival.

5. This brief responds to the Tribunal's request that parties focus on the Cabinet decisions of 23 February 2026 and the proposed removal or downgrading of Treaty principles provisions across legislation.

Ngai Tamahaua as Te Tiriti Partners

6. Ngāi Tamahaua is a hapū of Whakatōhea located in the North-Eastern Bay of Plenty area. Our tīpuna were signatories to Te Tiriti o Waitangi at Ōpōtiki in May 1840.

7. Hapū are Treaty Partners. Ngāi Tamahaua has never ceded its rangatiratanga or agreed to others speaking or making decisions on our behalf.

8. Our understanding of Te Tiriti is not theoretical. It is lived, practical, and exercised kanohi-ki-te-kanohi every time we are required to protect our people and taonga in Crown-controlled spaces.

9. For Ngāi Tamahaua, the Treaty clauses are not abstract constitutional wording. They sit against a history of Crown breaches, raupatu, forced relocation, separation from maunga, awa and wāhi tapu, and environmental degradation in the Whakatōhea rohe. Any weakening of contemporary statutory mechanisms for engagement risks entrenching that same pattern, where Crown decision-making takes precedence, and hapū rights and tikanga are treated as secondary.

Cabinet Decisions

10. I have received a copy of the Cabinet decisions contained in the Cabinet paper dated 23 February 2026 from my lawyers.

11. I was not sent a copy from the Crown despite being a named claimant for Wai 1781 and representative in the Waitangi Tribunal.

12. I was not invited to comment on or make submissions on the proposals. We have been blindsided by the proposals while people in Wellington make decisions for us.

13. What I understand, having now read the document, is that:

    (a) The Crown is repealing several pieces of legislation which contain Treaty clauses;

    (b) The Crown is amending several provisions in legislation which contact Treaty principles provisions;

    (c) The Crown is introducing a standard measure for decision-makers that for any current or future legislation that refers to the Treaty, they need to do no more than “take it into account”.

14. Neither I nor Ngāi Tamahaua has been consulted, has not been a partner in the development of these reforms, and has instead been placed in a position of responding after decisions have already been made.

15. I absolutely oppose the proposed reforms.

The importance of Treaty clauses

16. Treaty clauses in legislation are hugely important to our hapū. They represent the bare minimum recognition in te ture Pākehā of our status as Partners under Te Tiriti o Waitangi. They are not symbolic or optional; they are practical tools that remind Crown institutions and agencies that their obligations extend beyond procedural compliance or "box-ticking".

17. I have seen first-hand the importance of Treaty clauses and related provisions in my work with Councils in the Ōpōtiki area. In those contexts, such clauses have helped to facilitate meaningful relationships between hapū and the Crown and have supported both parties to better fulfil our respective roles as Tiriti partners. Without these provisions, there is a real risk that engagement becomes superficial, inconsistent, or entirely absent.

18. The importance of Treaty clauses is also reflected in how the Courts have interpreted legislation. For example, references to the Treaty within the Marine and Coastal Area (Takutai Moana) Act 2011, in particular sections 4 and 7, have been important in shaping the Court's approach to the legal tests for Customary Marine Title. The sections have supported our hapū to successfully achieve recognition of our customary marine title and to protect our customary rights.

19. That Act provided is an illustration that the rights of all New Zealanders and Māori as Te Tiriti Partner can be balanced and respected for the benefit of all if the Crown allows the law to work as it should do, instead of intervening to change it on a whim.

20. Weakening or removing Treaty clauses would undermine these relationships. It would mean that the Crown no longer is required to act in good faith or to actively uphold its responsibilities. For our hapū, that raises serious concerns as it diminishes our ability to participate meaningfully in decision-making processes that affect us.

21. At a broader level, we are also concerned about the way decision-making power has shifted post-settlement. In many cases, iwi entities are treated as the primary point of engagement, often reflecting Crown-defined structures and processes. This can marginalise hapū voices and diminish the mana of hapū, particularly where those making decisions are not directly connected to the whenua or the day-to-day realities of the people affected. Historically, hapū exercised tikanga-based authority over representation and decision-making. That ability has been weakened by Crown breaches.

22. Treaty clauses are one of the few mechanisms that the Crown has agreed to establish to help to retain accountability and ensure that engagement is not solely determined by Crown preferences.

Effect of Repeals on Treaty Obligations and Ngai Tamahaua rights

23. The Cabinet decisions confirm that Treaty provisions will be repealed, consolidated or amended across a wide range of legislation.

24. For Ngāi Tamahaua, these reforms will cause real, practical prejudice, because they remove or weaken the few statutory mechanisms that currently require the Crown and local authorities to stop, engage with us, and recognise our rangatiratanga in decision-making affecting our rohe.

25. I understand statutes create the law from which policies are then created. If there is no longer a legal requirement to adhere to the Treaty, why would policies follow.

26. I address below the specific impacts of these proposals as they relate to my experience advocating for Ngāi Tamahaua in Crown and local government processes.

<u>Energy Efficiency and Conservation Act 2000 – section 6(d)</u>

27. Section 6(d) currently requires decision-makers to recognise the principles of Te Tiriti o Waitangi when promoting energy efficiency, conservation, and renewable energy.

28. For Ngāi Tamahaua, removing this provision would weaken our ability to uphold our mana whenua and exercise kaitiakitanga within our rohe, particularly when energy or infrastructure projects are proposed.

29. In our experience, government agencies and the groups running projects usually only engage properly with our hapū when they are required to do so.

30. Removing this provision would let agencies focus more on efficiency and economic outcomes than on hapū. It would make it more likely that development goes ahead without Ngāi Tamahaua support or engagement and without any regard for tikanga Māori. It would force our hapū to spend more time, money, and effort responding to decisions that affect our people and rohe.

31. This provision currently makes sure that people making decisions under the Act have to take Treaty principles into account as part of how they manage resources.

32. Its repeal would remove an important requirement on decision-makers, including the Minister for Energy and relevant agencies, to recognise Ngāi Tamahaua rights and interests and to have regard to our tikanga and rights under Te Tiriti when making decisions about projects in our rohe and how resources are accessed and used.

33. Ngāi Tamahaua has a long history of upholding our role as kaitiaki in our rohe. Removing this provision will create additional costs and practical barriers for our hapū to undertake these responsibilities.

34. Without a clear obligation on decision-makers, the burden will shift onto Ngāi Tamahaua to monitor, respond to, and challenge proposals that affect our taonga. This will place strain on our limited resources and create unnecessary hurdles for our hapū in carrying out our kaitiaki responsibilities. It also increases the risk of conflict where our role is overlooked or disregarded.

Land Transport Management Act 2003 – section 4

35. Section 4 currently requires all persons exercising functions under the Act to take account of the principles of Te Tiriti o Waitangi. That obligation is not abstract. It is reinforced in practice by NZTA/Waka Kotahi's own engagement framework, which recognises that engagement with Māori is intended to foster partnership in National Land Transport Fund investment decision-making, and expects both NZTA and approved organisations to engage appropriately with mana whenua.[1]

36. For Ngāi Tamahaua, these provisions have had a real, practical effect. Our hapū have engaged extensively with NZTA/Waka Kotahi and local authorities on transport projects affecting our rohe, including in respect of state highways, bridges, and infrastructure intersecting with rivers, wāhi tapu, and access to marae. This engagement has not been tokenistic. It has involved working directly alongside engineers, contractors, and project teams to influence outcomes on the ground.

37. For example, during works along State Highway 35 near Ōpape, where the road was at risk due to instability near the river, Ngāi Tamahaua engaged directly with contractors, including Higgins. Through that relationship, we undertook karakia, provided cultural oversight, and worked together to ensure both the safety of workers and the protection of the environment. We raised concerns that modifications to the road and the surrounding environment from the proposed works could adversely impact the riverbed and water table, including by altering water levels and affecting ground stability. Rather than opposing the project, our involvement supported better, more sustainable engineering solutions.

38. That engagement also created wider benefits. Local whānau were employed in roles such as traffic management, and relationships were formed with cultural advisors within project teams, including Māori staff

[1] New Zealand Transport Agency Waka Kotahi "*Engaging with Māori policy*" (2024) NZTA Planning and Investment Knowledge Base <https://nzta.govt.nz/planning-and-investment/planning-and-investment-knowledge-base/202427-nltp-investment-requirements/202427-nltp-principles-and-policies/assessment-2/engaging-with-maori-policy>

from other hapū. These interactions reflect what genuine partnership can look like in practice: early engagement, shared problem-solving, and outcomes that protect both infrastructure and cultural values.

39. While engagement has not always been easy, sSection 4 has provided a critical legal footing. It has enabled Ngāi Tamahaua to insist on being engaged with as mana whenua, grounded in tikanga.

40. Repealing this provision risks undoing that progress. It would remove the clear obligation to engage early and substantively with hapū, and weaken expectations that transport decision-making be informed by tikanga Māori. In practical terms, it risks sidelining cultural considerations, including the protection of wāhi tapu, and undermining the collaborative relationships we have built over time.

41. Without that statutory backing, engagement is likely to become more reactive, occurring only when issues escalate into conflict. This would return Ngāi Tamahaua to a position where meaningful influence is limited, and where the primary avenues left to protect our interests are protest or litigation. That is not consistent with partnership, nor does it lead to better infrastructure outcomes.

42. Ngāi Tamahaua remain responsible as kaitiaki for protecting our whenua, awa, and wāhi tapu. Removing the mechanisms that enable us to work constructively alongside decision-makers does not remove that responsibility; it simply makes its exercise more difficult, more adversarial, and less effective for all parties.

<u>Organic Products and Production Act 2023 – sections 4 and 5(1)(b)</u>

43. Section 4 of the Organic Products and Production Act requires consultation with Māori who are likely to be affected by reviews of fees, charges, or levies that support how the Act is run. It also requires consultation when rules or notices are made to support or change organic standards, and it requires Māori membership on advisory groups set up under the Act.

44. For Ngāi Tamahaua, this matters because it gives us a place at the table when decisions are being made about organic systems, food production, and the protection of taonga species.

45. We do not support moves away from organic systems or changes that weaken their integrity, including the introduction of genetically modified products. From our perspective, organic systems are tied to tikanga and our responsibility as kaitiaki. When fees, standards, or rules are changed, it can feel like decisions are being made about our food systems and taonga without us being properly involved.

46. For Ngāi Tamahaua, these protections are important because they help make sure our voice is heard in decisions about taonga species, mātauranga Māori, and how these resources are managed.

47. MBIE has also recognised the Waitangi Tribunal's findings in Wai 262 that the current intellectual property system does not properly protect mātauranga Māori, taonga works, or taonga species.[2]

48. This reinforces what we already see in practice that Māori knowledge and taonga are not always properly protected in Crown systems.

49. For Ngāi Tamahaua, this is real in our everyday lives. We are connected to our whenua, our native plants and animals, and the knowledge passed down to us. If these protections are weakened, there is a real risk that our mātauranga could be used without our consent, our role as kaitiaki over taonga could be ignored, and decisions will continue to favour commercial interests over tikanga-based protection.

[2] Ministry of Business, Innovation and Employment, "*Mātauranga and taonga Māori and the intellectual property system*" Ministry of Business, Innovation and Employment <https://www.mbie.govt.nz/business-and-employment/business/intellectual-property/matauranga-and-taonga-maori-and-the-intellectual-property-system\>

50. If these provisions are removed or weakened, Ngāi Tamahaua would have less say in decisions that directly affect our taonga, our knowledge, and our ability to exercise kaitiakitanga in our rohe.

Smokefree Environments and Regulated Products Act 1990 – section 3AB

51. Section 3AB(d) of this Act currently requires the Minister of Health to consider the impacts on Māori when regulating smoked tobacco products.

52. The repeal of this provision continues the wider removal of Treaty-based protections from this Act, including earlier provisions that supported engagement and partnership with Māori.

53. For Ngāi Tamahaua, this is happening in our communities. Smoking and tobacco harm are still affecting our whānau more than others. There has been some progress through Māori-led work, including what I have been part of with Te Hunga Auahi Kore Moana Toi, as well as community engagement, marae-based initiatives, and collective action, but that progress is still at risk.

54. At a local level, we, including myself, have seen strong efforts through groups such as Te Hunga Auahi Kore Moana Toi in the Bay of Plenty, have assisted in campaigns to support smokefree marae and kōhanga. Over time, however, support and resourcing for these initiatives have reduced. Because of this, vaping has become widespread, particularly among rangatahi. There are ongoing concerns about access, including retailers supplying young people, and the targeting of lower-income communities with cheap and harmful tobacco products.

55. Section 3AB currently provides an important recognition of Treaty principles within smokefree policy. Its repeal would remove one of the last remaining statutory requirements for the Crown to consider the specific impacts on Māori. In practical terms, this creates a real risk that those impacts will be overlooked.

56. For Ngāi Tamahaua, these risks will undo the gains made through Māori-specific public health approaches. It is likely to result in increased preventable illness and further early deaths among our people. This is not speculative; it directly affects the health and well-being of our hapū and future generations.

57. Recent Ministry of Health data reflects the ongoing inequity. In 2024/25, daily smoking rates for Māori were 15.0%, compared with 5.7% for European/Other and 4.5% for Asian adults. Daily vaping rates for Māori were 27.5%.[3] These disparities show that Māori continue to carry a disproportionate burden of harm and show the importance of retaining strong Treaty-based protections in this legislation.

Making Treaty provisions "more specific" in the Data and Statistics Act 2022 and HSNO Act 1996

58. I understand the Crown is proposing to amend section 14(a) of the Data and Statistics Act 2022 and section 8 of the Hazardous Substances and New Organisms Act 1996 to make them more specific.

59. From what I have seen, the Data and Statistics Act already appear clear, especially with section 15 requiring engagement with Māori.

60. The same applies to the Hazardous Substances and New Organisms Act. It already requires decision-makers to take into account Treaty principles, and I have not seen evidence that this is not working or that it needs to be "more specific".

61. At the moment, it feels like the Crown is moving to narrow Māori engagement rather than strengthen it.

[3] Ministry of Health, "*Trends in smoking and vaping*" Ministry of Health <https://www.health.govt.nz/monitoring-statistics/surveys/new-zealand-health-survey/publications/202425-survey-publications/trends-in-smoking-and-vaping\>

62. For Ngāi Tamahaua, this raises concerns that Māori data sovereignty could be limited and that hapū knowledge may carry less weight in decisions affecting us.

63. It is clear that EPA guidance already recognises the importance of these relationships under the Act, including iwi and hapū connections to taonga and the environment.

64. This guidance is based directly on the statutory obligations in the Act and reflects how those obligations are meant to be applied in practice.

65. There is a real risk that hapū-specific knowledge and risk assessments under the HSNO framework will be given less weight in decision-making.

66. From my experience working with agencies on environmental matters across our rohe, when Treaty obligations are weakened or made less clear, it reduces the ability of hapū voices to influence outcomes in a meaningful way. These outcomes directly affect our people and our ability to care for and protect our whenua.

<u>Education and Training Act – section 536A(1)</u>

67. This section requires dispute resolution scheme ("DRS") operators to contribute to an education system that honours Te Tiriti o Waitangi and supports Māori–Crown relationships. It does this by requiring disputes to be resolved with regard to tikanga Māori and in a manner consistent with the principles of Te Tiriti o Waitangi. It also requires DRS operators to take account of the concerns and interests of Māori in the administration and operation of their scheme.

68. From a Ngāi Tamahaua point of view, our Tamariki are already in a system that has not been working well for Māori learners.

69. Our Tamariki do best when teaching reflects mātauranga Māori and when the system actually understands and supports who they are. That is what makes learning work for all children, not just Māori.

70. In places like Ōpōtiki, we are seeing high levels of truancy, around three times the national average. That does not happen in isolation. It comes from things like poverty, stress at home, and long-term disadvantage that the system has not properly dealt with. Our whānau are already doing a lot of the work through kōhanga reo and local kaupapa in places like Waioweka and Ōmarumutu. But the wider system still is not keeping up or giving enough support where it is needed, especially in the Ōpotiki area.

71. We do not think it is fair to blame whānau. A lot of the decisions that affect our kids, like resourcing, teacher numbers, and classroom support, are made by the system itself. And right now, those decisions are not working for our Tamariki. We also feel that tikanga Māori often gets talked about only when there is a dispute or problem. It should be part of how the system is built from the start, not something added in later when things go wrong.

72. Currently, in our schools' classrooms, we see one teacher and sometimes one teacher aide trying to manage large groups of children, including many with high learning needs. In those conditions, it is really hard for kids to get the support they need.

73. What we need is a fair system that properly invests in teachers, Māori language and literacy, and learning support at every level, not just in theory but in practice in the classroom. For Ngāi Tamahaua, this is simple. Our kids deserve the same chance as everyone else, and right now the system is not delivering that.

74. Removing this provision will place our most vulnerable Tamariki at greater risk, as it weakens the safeguards that ensure their needs, voices, and wellbeing are properly considered in decision-making.

<u>Re-setting Treaty standards to "take into account"</u>

75. The Government is seeking to set a maximum standard for Treaty provisions at "take into account".

76. The Crown is proposing to reduce the standard of Treaty provisions in the following 10 statutes:

(a) Climate Change Response Act 2002;
(b) Criminal Cases Review Commission Act 2019;
(c) Crown Pastoral Land Act 1998;
(d) Data and Statistics Act 2022;
(e) Digital Identity Services Trust Framework Act 2023;
(f) Education and Training Act 2020;
(g) Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012;
(h) Mental Health and Wellbeing Commission Act 2020;
(i) Pae Ora (Healthy Futures) Act 2022; and
(j) Water Services Authority – Taumata Arowai Act 2020.

77. It is also proposing to set this standard for all future legislation which, may include a Treaty clause.

78. Ngāi Tamahaua strongly opposes this approach. We did not agree to this standard and, as Te Tiriti Partner, the Crown has no place in changing or setting the standards without us.

79. Grouping all Treaty provisions into a single, lower threshold undermines the relationship with the Crown and reduces the Crown's responsibility to properly uphold and give effect to Te Tiriti o Waitangi.

80. Reducing all provisions to "take into account" does not clarify the law; it changes it. It lowers the standard of engagement and weakens protections that have been developed over time.

81. From my experience, when "take into account" is used as the standard, it is often treated as permission to proceed regardless of Māori opposition. Where stronger Treaty language exists, there is at least genuine

engagement. Removing that distinction will reduce meaningful participation and weaken hapū influence in decisions that affect our rohe.

82. For Ngāi Tamahaua, this direction risks further eroding the Crown–Māori relationship and entrenching decision-making processes where Māori are consulted but not really heard.

83. The cumulative effect of these changes is significant. Rather than strengthening clarity or consistency, they reduce the level of obligation on the Crown and its agencies and weaken the practical mechanisms through which hapū like Ngāi Tamahaua are able to participate in decision-making.

Application of standardisation to future legislation

84. Cabinet's decision to apply this approach to future legislation is particularly concerning.

85. For Ngāi Tamahaua, it signals a shift in how decisions will be made going forward. It suggests that future reforms will be developed without hapū being properly centred, that Treaty protections will not be strengthened but instead limited, and that Crown policy will continue to be designed first, with Māori engagement coming later.

86. This is not a genuine partnership approach. It places Māori in a reactive position, responding to decisions that have already been shaped, rather than being part of their development from the beginning.

87. Over time, this approach risks entrenching intergenerational prejudice and further undermining confidence in Crown processes across all kaupapa that affect our people, our whenua, and our role as kaitiaki.

Conclusion

88. For Ngāi Tamahaua, the impact of these changes is real and felt in how decisions are made.

89. Lowering Treaty obligations to a "take into account" standard reduces our role to something that can be acknowledged and then set aside. In practice, this means hapū input can be heard but not followed, and decisions can still go ahead in ways that affect our whenua, our taiao, and our people without our agreement.

90. We have already seen how this happens. When engagement is treated as a formality, hapū are left reacting to decisions instead of helping shape them. That leads to outcomes that do not reflect our knowledge, our responsibilities as kaitiaki, or the needs of our people.

91. For those of us working in our rohe, this means having little real say in decisions that directly affect our communities, our whenua, our environment, our health, and our tamariki. These decisions are not removed from us; they shape our everyday lives.

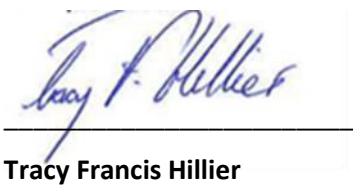
92. These changes will make that worse. They make it easier for agencies and decision-makers to move ahead without meaningful engagement, and harder for Ngāi Tamahaua to influence what happens in our own rohe.

93. Over time, this shifts the balance further away from partnership. The Crown controls the process, and hapū are left trying to respond to or challenge decisions after they have already been made.

94. This places ongoing pressure on our people to constantly advocate just to be heard.

95. For Ngāi Tamahaua, that is the real prejudice.

Dated 18th day of May 2026



_____

Tracy Francis Hillier