BEFORE THE WAITANGI TRIBUNAL

WAI 3575
WAI 2494

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 **(WAI 3565)**

AND

IN THE MATTER OF **Donna Awatere-Huata** of Ngāti Porou, Ngāti Whakaue and Ngāti Hine, on behalf of herself and all Māori **(Wai 2494)**

BRIEF OF EVIDENCE OF DONNA AWATERE-HUATA
I tēnei rā, te 18 o Mei 2026

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. My name is Donna Awatere-Huata. I am of Ngāti Porou, Ngāti Whakaue and Ngāti Hine. I appear before this Tribunal as a claimant in Wai 2494, a claim brought on behalf of myself and all Māori.

2. I have been an activist for Māori sovereignty and Te Tiriti rights for over fifty years. I was a founding member of Nga Tamatoa, the first Māori radical organisation to achieve significant influence on public opinion and Crown policy in Aotearoa. I participated in the 1975 Land March, the 1981 Springbok Tour protests, the Bastion Point and Raglan land occupations, and the direct challenges to Waitangi Day ceremonies that confronted the Crown's self-congratulatory narrative.

3. I coined the term and concept of Māori sovereignty and published the seminal text Māori Sovereignty in 1984.[1] That work articulated the cost of cultural imperialism to Māori and gave forceful expression to the case for tino ranagatiratanga. In it I defined Māori sovereignty as the Māori ability to determine our own destiny, and to do so from the basis of our land and fisheries.[2]

4. I give this evidence to assist the Tribunal to understand, from the perspective of someone who has lived and fought through every phase of the Crown's long and ambivalent relationship with Te Tiriti, what is at stake in the proposed Treaty Principles reforms. The question before this Tribunal is not a new one. It is the same question my generation confronted in the 1970s and 1980s, and the one our tipuna confronted at Waitangi itself: whether this country's institutions will honour Te Tiriti, or will once again use law and policy to entrench Pakeha supremacy while paying lip service to partnership.

BACKGROUND: THE LONG HISTORY OF CROWN BREACH

[1] Donna Awatere, *Māori Sovereignty* (Broadsheet Publications, Auckland, 1984). The book was originally published as a series of articles in *Broadsheet* magazine from 1982 onwards.
[2] Awatere, *Māori Sovereignty*, above n 1, at p 1 (The Death Machine): "Māori sovereignty is the Māori ability to determine our own destiny and to do so from the basis of our land and fisheries."

5. To understand why the proposed Treaty Principles reforms are so deeply alarming, the Tribunal must understand the full weight of history behind them. This is not simply a disagreement about legislative drafting. It is the latest episode in a colonial project that began before 1840 and has never fully abated.

6. When Te Tiriti o Waitangi was signed, the rangatira who put their names to it could not have imagined what would follow. They could not have foreseen that within a generation the Māori population would fall by sixty percent, or that within twenty years Pakeha would outnumber them. They could not have known that the land and fisheries would pass into settler hands, or that a new colonial order would systematically dismantle what remained of Māori culture, replace Māori pride with defeatism, and demean te reo Māori to the point of extinction as a living language.

7. What is clear is this: no Māori, at any stage, willingly surrendered their true sovereignty. That sovereignty, grounded in the control of land, fisheries, and the right of Māori to govern their own lives, was never ceded. It was taken by trickery, by numbers, by force, by the refusal to accept opposition, by cultural imperialism. And the Treaty was used, year after year, to allay Pakeha fears that the dispossession of Māori was not quite above board. The lie that Māori chiefs signed away their sovereignty at Waitangi has been perpetuated from that day to this.[3]

8. What war, disease, and trickery did not fully achieve, cultural imperialism completed. The political and economic power of the settlers was used to spread their own culture and values at the expense of Māori. Māori as a cultural minority were forced to adopt the British way of life. The settlers' belief in their own cultural superiority prevented them from allowing Māori culture to exist side by side with theirs, from learning our language, or from wanting to forge a new national identity that included Māori.[4]

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[3] Awatere, *Māori Sovereignty*, above n 1, at pp 1-2: "This true sovereignty was based on the control of land, fisheries and Māori control of their own lives. This sovereignty was never surrendered. It was taken by trickery, by numbers, by force..."

[4] Awatere, *Māori Sovereignty*, above n 1, at pp 2-4: "What war, disease, and trickery did not achieve, cultural imperialism did..."

9. In The Death Machine I argued that New Zealand has always had two of the cornerstones of fascist ideology embedded in its history: a policy of separate development for Māori people, and an institutional hostility toward Māori that its proponents would not name for what it was. Separate development was to be achieved through assimilation, by which Māoridom would sink into the Pakeha mainstream. Until that occurred, Māori would be forced to live by rules not of our own making, rules that condemned us to a defeated life. The destiny of the Māori people was altered. From a people secure in their own sovereignty, our people were forced to accept the Pakeha will over their own.[5]

10. I wrote in that work that this country as it now exists was founded on a racial division from the beginning, not in 1981 over the Springbok Tour, not in 1971 when Nga Tamatoa protested at Waitangi, but from before New Zealand was established as a colony in 1840. The name of that game is cultural imperialism, and it means the total exclusion of Māoritanga from the physical, economic, political, and philosophical development of this country.[6]

11. I also argued in that work that racism in this country will not vanish simply by acknowledging it exists and telling those who practise it to stop. Injustice and institutional prejudice against Māori are not aberrations of the colonial system. They are part of it. You cannot eliminate the effects until the root causes are changed. The root cause is the denial of Māori sovereignty and the perpetuation of a system in which Pakeha interests take precedence as a matter of structural design. Treaty provisions that require Crown agencies to give effect to Treaty obligations are, imperfect as they are, a structural response to a structural problem. Removing them while leaving the underlying structural imbalance in place will not reduce injustice. It will deepen it.[7]

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[5] Awatere, *Māori Sovereignty*, above n 1, at pp 4-6 (section headed "Assimilation Means Separate Development"): "New Zealand has always had two of the cornerstones of Fascist ideology. These are two underlying philosophical and political threads appearing in white New Zealand history: separate development for Māori people, and national white hatred for the Māori."

[6] Awatere, *Māori Sovereignty*, above n 1, at p 6: "This country as it is now was founded on a division on racial lines... The Waitangi 'agreement' cannot be celebrated by Māori people because it represents the end of Māori sovereignty."

[7] Awatere, *Māori Sovereignty*, above n 1, at p 29: "racism in this country can [not] be eliminated without achieving Māori sovereignty. It can't. Racism is an integral part of the white separatist state... You can't get rid of the effects (ie racism) until the root causes are changed."

WHAT MONOCULTURALISM REALLY MEANS

12. In Māori Sovereignty I wrote that Māori courtesy had allowed white supremacy and cultural imperialism to pass under the name of monoculturalism. I say the same today. In this country, monoculturalism has always been a euphemism for separate development and a cover for institutional hostility toward things and people Māori.[8]

13. For over 140 years Māori people were excluded from all power and all economic decision-making, even when that decision-making concerned us directly. The proposed Treaty Principles legislation continues in that tradition. It purports to define what the Treaty means for all New Zealanders, but it does so by stripping out the protections that were specifically designed to address the Crown's historical and ongoing breach of its obligations to Māori as tangata whenua.

14. The proposed reforms do not represent a step toward genuine partnership. They represent the same cultural imperialism my generation fought against in the streets: the state once again determining the terms of the relationship between Māori and the Crown on Pakeha terms, without meaningful Māori consent.

FROM "GIVE EFFECT TO" TO "TAKE INTO ACCOUNT": THE SIGNIFICANCE OF THE DOWNGRADE

15. The Tribunal has identified as an issue the legal difference in meaning and effect between Treaty provisions that require decision-makers to give effect to Treaty principles, and the proposed amendment that would cap the Treaty standard at no higher than take into account. I wish to speak to that issue from the perspective of lived experience, because the legal language describes a real and concrete change in how Māori are treated.

16. Give effect to means that a decision-maker must act in a way that actually implements Treaty obligations. It cannot simply weigh the Treaty against other factors and set it aside. For Māori people, this has mattered. It has meant that

[8] Awatere, *Māori Sovereignty*, above n 1, at pp 14-15 (section headed "Education"): "In 1977 the NZEI report showed that Otara had among the lowest levels of reading in New Zealand." The 28.1%/4.6% UE figure is cited at p 16.

health authorities, education bodies, and environmental decision-makers have been required to structure their decisions around Treaty obligations, not merely note them. Provisions using that standard in the Pae Ora (Healthy Futures) Act 2022, the Education and Training Act 2020, and the Climate Change Response Act 2002 (now the Climate Change Response (Zero Carbon) Amendment Act 2019) were won through decades of advocacy, negotiation, and litigation. They represent real protections.

17. Take into account means only that the Treaty must be considered. It can be considered and then outweighed. It can be considered and set aside for reasons of cost, convenience, or competing policy objectives. The Government's own Regulatory Impact Statement acknowledges that the impact of this change on the Crown's ability to uphold its Treaty obligations is uncertain and will be context specific. That uncertainty is not a neutral outcome for Māori. When the Treaty standard is weakened, Māori lose. That is the lesson of the past 185 years.

18. Cabinet's rationale for this change, as I understand it from publicly available materials, is that requirements to give effect to Treaty principles do not promote the balanced consideration of all relevant factors in decision-making. That rationale reveals the problem. The Treaty is not simply one factor to be balanced against others. It is a constitutional obligation, a founding document of this country's relationship between Māori and the Crown. To treat it as a factor to be weighed is to demote it from what it is.

19. I have spent fifty years watching the Crown treat Te Tiriti as a factor to be weighed, and then outweighed. The give effect to standard was hard-won precisely because take into account had proved insufficient. Returning to the lesser standard is not a clarification or a simplification. It is a retreat.

THE FAILURE OF MEANINGFUL ENGAGEMENT

20. The Tribunal has also identified as an issue the Treaty adequacy of opportunities for Māori to influence the proposed reforms. I can speak to this plainly. There was no genuine engagement with Māori before these decisions were made.

21. I have participated in, and been subjected to, many iterations of Crown consultation over fifty years. I know the difference between consultation designed to surface Māori views and genuinely consider them, and consultation designed to provide political cover for decisions already made. The review process that produced the February 2026 Cabinet decisions was the latter.

22. The Advisory Group that recommended the changes was not constituted through a process of genuine partnership with Māori. Cabinet agreed to its initial decisions, including the decision to cap all Treaty standards at take into account, before any meaningful engagement with hapu and iwi as Treaty partners had occurred. The Government's own officials acknowledged in the Regulatory Impact Statement that the timing of the review limited the extent to which they had been able to consult with hapu and iwi, and that understanding the views of Māori was particularly pertinent given the constitutional relevance of Treaty provisions.

23. That is an extraordinary admission. The Crown made decisions of profound constitutional significance affecting all Māori, and its own officials acknowledged they had not had time to consult properly. This is not partnership. It is not even adequate process. It is the same pattern of unilateral Crown action that my generation took to the streets to oppose in the 1970s and 1980s.

THE LIVED REALITY OF CROWN BREACH: WHAT THE STATISTICS HAVE ALWAYS TOLD US

24. I can speak to the lived reality of what Crown breach of Te Tiriti has meant across my lifetime. I was part of the generation that forced the Treaty onto the national conscience, that stood at Bastion Point, that marched the length of the country in 1975, that challenged the self-congratulatory narrative of Waitangi Day year after year. We did those things because of what we knew.

25. In The Death Machine, the first chapter of Māori Sovereignty, published in 1984, I set out the evidence of what the colonial system was doing to our people.

Those statistics were not figures. They were whanau. They were a picture of a system designed to exclude us and then blame us for our own exclusion.[9]

26. On education: by 1974, seven times more Pakeha children than Māori children achieved University Entrance, 28.1 percent compared to 4.6 percent. Research showed that in areas like Otara, children were given instructional programmes designed to produce failure and were then blamed for failing. Teachers held systematically low expectations of Māori children. The consequence was not simply educational underperformance. It was a cascading destruction of self-worth. I wrote then that our children were being taught not just to fail but how to fail, and that the consequences showed in depression, high self-harm rates, a suicide rate six times that of Pakeha, trebling of admissions to mental institutions, and rocketing rates of solvent and multi-drug abuse. That was not an accident. It was the system working as designed.[10]

27. On justice: in the decade to 1975, every second male Māori child had appeared before a Children's Court, 46,000 out of 112,000 Māori children. Any Māori child was four times more likely than a Pakeha child to appear before a Children's Court. Between 1961 and 1975, convictions of Māori children in those courts increased fivefold while Pakeha children's convictions did not even double. If found guilty, a Pakeha child was twice as likely to be fined; a Māori child twice as likely to be sent to borstal. Any Māori adult was six times more likely than any Pakeha adult to be charged by police. Once before a judge, any Māori person was seven times more likely to be found guilty. Any Māori woman was nine times more likely to be found guilty than any Pakeha woman. Once convicted, sentences for Māori people were twice as harsh.[11]

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[9] Awatere, *Māori Sovereignty*, above n 1, at p 15: "our kids are being taught how to fail. Not just taught to fail but taught how to fail... Lowered self-esteem shows itself in a life destined for failure. For us Māori this shows itself up in depression, high self-mutilation rates, high risk-taking... a suicide rate up six-fold, trebling of the numbers admitted to mental institutions..."

[10] Awatere, *Māori Sovereignty*, above n 1, at pp 17-19 (section headed "Justice"): "in the past ten years every second male Māori child has appeared in a Children's Court: of 112,000, 46,000 were Māori." Statistics on prosecution rates, sentencing, and adult conviction rates are set out at pp 17-19.

[11] Awatere, *Māori Sovereignty*, above n 1, at pp 8-12 (section headed "Socio-Economic Status" and "Physical and Psychological Distance"): "In 1981 there were three-and-a-half times more whites in the professional/technical class than Māoris... there were three-and-a-half times more Māoris unemployed than whites." The Andrew Trim research is cited at pp 11-12.

28. On economic life: in 1981 there were three and a half times more Pakeha than Māori in professional and technical roles. Three and a half times more Māori were unemployed than Pakeha. Six times more Pakeha earned ten thousand dollars or more, yet every Māori wage had to support on average 2.2 people, compared to 1.5 for Pakeha. In housing, 43 percent of Māori dwellings were rented in 1974, compared to 25 percent of Pakeha dwellings. Massey University sociologist Andrew Trim reviewed the data and concluded that ethnic and low socio-economic status for Māori coincided and were likely to do so permanently because the strength and persistence of prejudice among the core Pakeha structure would obstruct Māori mobility regardless of compensatory measures.[12]

29. I wrote all of this in 1982 and published it in 1984. The research was there. The court records confirmed it. What the data showed was not a series of unfortunate accidents. It was a system operating exactly as it was designed to operate: to keep Māori out of economic life, out of education, and to funnel our young people through the courts and into prisons.

30. The legislative and policy frameworks built up since the 1970s, Treaty provisions in health, education, and environmental law, provisions that require Crown agencies to give effect to Treaty principles rather than merely note them, were built in direct response to that documented history. They were the Crown acknowledging, however belatedly and inadequately, that the system had been structured against Māori and that structural obligations were required to address structural failure.

31. The proposed reforms would strip those structural obligations back. They would replace requirements to act with requirements to consider. They would allow health authorities to acknowledge Māori health disparities and then set them aside in favour of other priorities. They would allow education decision-makers to note the underperformance of Māori children and then proceed as before. I documented what happens to Māori when there are no binding Treaty

[12] Awatere, Māori Sovereignty, above n 1, at p 29: "racism in this country can [not] be eliminated without achieving Māori sovereignty. It can't. Racism is an integral part of the white separatist state... You can't get rid of the effects (ie racism) until the root causes are changed."

obligations on Crown agencies. It is all there in The Death Machine. The Tribunal should be in no doubt that weakening the Treaty standard returns us toward that world.[13]

SOVEREIGNTY: THEN AND NOW

32. I defined Māori sovereignty in 1982 as, at its most conservative, the desire for a bicultural society, one in which taha Māori receives equal consideration with, and equally determines the course of this country as, taha Pakeha. It certainly demands an end to monoculturalism.

33. That definition remains as apt today as it was then. The current proposals represent an attempt to roll back even this most conservative expression of Māori sovereignty. The replacement of substantive Treaty standards with a weakened formula that makes the Treaty merely a consideration to be weighed is precisely the kind of constitutional manoeuvre that I described in Māori Sovereignty as the latest phase in the long effort to extinguish Māori self-determination.

34. The aim of Māori sovereignty was never to achieve equality in Pakeha terms. It was, and is, to ensure that this country's institutions are designed and operate in a way that honours Māori culture, recognises Māori land rights, and gives effect to the partnership Te Tiriti intended. The proposed reforms move us sharply in the opposite direction.

CONCLUSION

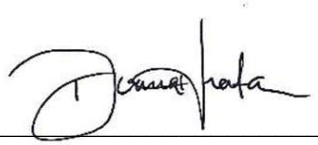
35. I have lived long enough to have seen the Crown's relationship with Te Tiriti at its worst and at its most promising. I know what it looks like when the Crown retreats from its obligations. I know what it costs Māori people when it does.

36. The proposed Treaty Principles reforms are, in my view, a retreat of the most serious kind. They are not a clarification of the Treaty. They are an attempt to rewrite the foundational terms of the Māori-Crown relationship in a way that

erases the specific obligations Te Tiriti places on the Crown toward Māori as tangata whenua. They were developed without adequate engagement with Māori. They will cause concrete and lasting prejudice to Māori across health, education, and environmental domains. And they signal to our tamariki that the Crown can, at any time and for reasons of political convenience, simply legislate away the protections that decades of struggle have secured.

37. The Tribunal has both the authority and the responsibility to find that these reforms are inconsistent with the principles of Te Tiriti o Waitangi and will cause serious prejudice to Māori. I urge the Tribunal to do so.

Dated at **Rotorua** this **18th** day of **May 2026**



DONNA AWATERE-HUATA