IN THE WAITANGI TRIBUNAL

Wai 3565
Wai 3317

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
BY	Sailor Morgan and Frances Goulton, on behalf of themselves, the Ngati Ruamahue hapū, and Ngati Kahu ki Whangaroa

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APPLICATION FOR AN URGENT HEARING INTO THE CROWN'S DECISIONS TO REMOVE TREATY CLAUSES IN LEGISLATION

8 May 2026

Phoenix Law Limited
Barristers and Solicitors
200 Willis Street
PO Box 27400
Wellington 6141
Phone: (04) 384 1304
Email: mason@phoenixlaw.expert
and: johnson@phoenixlaw.expert
Counsel Acting: Janet Mason
Counsel Assisting: Nicholas Johnson

RECEIVED
Waitangi Tribunal
11 May 26
Ministry of Justice
WELLINGTON

THE CLAIMANTS BY THEIR COUNSEL SAY:

1. This Application for an Urgent Inquiry ("Application") is filed on behalf of Sailor Morgan and Frances Goulton ("the Claimants"), on behalf of themselves, the Ngati Ruamahue hapū, and Ngati Kahu ki Whangaroa that they represent under the Wai 3317 claim ("the Claim") in the Constitutional Kaupapa Inquiry.[1]

2. The Claimants are Māori for the purposes of section 6(1) of the Treaty of Waitangi Act 1975 ("the ToW Act").

3. The Claimants have been, and continue to be, and are likely to suffer significant and irreversible harm as a result of the actions of the Crown in breach of te Tiriti o Waitangi/the Treaty of Waitangi ("te Tiriti/the Treaty") and its principles ("the Principles") by deciding to repeal or amend Tiriti/Treaty provisions in legislation ("Treaty Clauses"), and to control future Treaty Clauses, without the involvement and agreement of the Claimants and Māori generally.

4. On 23 February 2026, Cabinet made the following decisions ("the TC Review Decisions"):

> 16 **agreed** that references within scope of this review should be amended so that in situations where a "Treaty standard" is needed, which indicates the strength or nature of the Treaty obligation, no higher standard than "take into account" is used;
>
> 17 **agreed** that, to standardise Treaty provisions, a reference to both the Treaty of Waitangi and te Tiriti o Waitangi should be used in all instances, and provisions should retain references to Treaty principles;[2]

5. Further, Cabinet agreed that this approach to standardising Treaty Clauses would apply to future legislation and that it would be assumed that a standard form descriptive Treaty provision ("Standard Treaty Clause") should be included as the presumed preference unless it was inappropriate to do so in the circumstances:

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[1] Wai 3317, #1.1.1 received by the Waitangi Tribunal on 18 January 2023.
[2] Wai 682, #A015(a), CAB-26-MIN-0048.01 at [16], [17], [26], and [30].

> 19 **agreed** that the approach to standardisation agreed by Cabinet will (unless it is inappropriate to do so) be applied to future legislation to ensure that the benefits of increased certainty across the statute book is maintained;
>
> 20 **agreed** that, where the Treaty is found to be relevant to future legislation, a standard form descriptive Treaty provision should be included as the presumed preference unless it is inappropriate in the circumstances;[3]

6. In the Cabinet paper the only engagement that was proposed to occur would be with the National Iwi Chairs Forum:

> 35. I propose to consult the National Iwi Chairs Forum (NICF) on Cabinet's decisions following Cabinet approval, while this Bill is being drafted and prior to final approval of the Bill. The scope and breadth of this work will be relevant to all NICF priorities.[4]

7. The Crown noted this in its decision on 23 February 2026:

> 21. **noted** that the Minister of Justice intends to consult the National Iwi Chairs Forum on Cabinet's decisions following Cabinet approval and prior to final approval of the Bill;[5]

8. Cabinet has invited the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the TC Review Decisions.[6]

9. The grounds in support of the Application are that the Claimants are suffering, and will continue to suffer, significant and irreversible prejudice because of the Crown's actions, namely:

a. a failure to actively protect the existing Tiriti/Treaty rights of Māori as provided for in existing Treaty Clauses;

b. unilaterally determining law and policy settings pertaining to an international law document, te Tiriti/the Treaty, entered into by two sovereign nations, namely Māori and the British Crown;

c. diminishing Māori tino rangatiratanga as a result of the unilateral action described in paragraph [9(b)] above;

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[3] Wai 682, #A015(a), CAB-26-MIN-0048.01 at [19]-[20].
[4] Wau 682, #A015(a), Cabinet Paper "Review of References to the Principles of the Treaty of Waitangi in Legislation: Next Steps" SOU-25-SUB-0184 at [35].
[5] Wai 682, #A015(a), CAB-26-MIN-0048.01 at [21].
[6] Wai 682, #A015(a), CAB-26-MIN-0048.01 at [26].

d. an abject failure to engage with the Claimants and Māori in a Tiriti/Treaty consistent manner, in relation to the TC Review Decisions, and the subsequent drafts of the legislation;

e. the removal of progressive measures implemented by previous governments to give effect to the Crown's continuous and ongoing legal and moral duty to recognise and give effect to the obligations it owes Māori under te Triti/the Treaty;

f. unilaterally, and contrary to the conclusions and recommendations of the Waitangi Tribunal, and the general courts of Aotearoa, interpreting its duties under te Tiriti/the Treaty in a narrow, mean-spirited, bigoted, and fundamentally legally deficient manner; and

g. conducting itself contrary to its own laws, by ignoring and treating with contempt, prior and recent Waitangi Tribunal recommendations that the Crown was breaching its duties towards its Tiriti/Treaty partner, in not engaging with Māori in relation to its Treaty Clauses review and its TC Review Decisions.

10. The breaches of te Tiriti/the Treaty and its Principles have caused, are causing, and will continue to cause significant and irreversible prejudice to the Claimants, as follows:

a. the suffering that will result for Māori when their wellbeing markers, namely, educational achievement, mental and physical health, housing security, food security, sense of pride and belonging, wairua, economic status, and economic, social, and cultural development as a peoples ("Well-being Markers") are further diminished as a result of the reduction in Crown duties towards Māori, across the whole spectrum of services;

b. the damage to the mana, wairua and mauri of Māori as a peoples, caused by the undermining and belittling of their rangatiratanga;

c. the damage to the Tiriti/Treaty Partnership which will have to be repaired in the future, at an enormous financial and personal cost to Māori.

11. There is no alternative remedy that in the circumstances would be reasonable for the Claimants to pursue:

a. as of 23 February 2026, Cabinet has made the TC Review Decisions, and there is no scope for the Claimants to be involved in these decisions;

b. the Cabinet Minute noted that the Minister of Justice proposes introducing amending legislation within this Parliamentary term.[7] Therefore there is now only a narrow window in which the Tribunal can urgently conduct an Inquiry and make targeted findings and recommendations; and

c. it is essential to address the issues between Māori and the Crown before the proposed amendments are introduced to Parliament.

12. The Claimants are ready to proceed urgently to a hearing and can make themselves available at the earliest convenience.

I: RELIEF

13. The Claimants seek the following relief:

a. a finding that it is a breach of te Tiriti/the Treaty and its Principles for the Crown to pursue policies which have the effect of abolishing or diluting redress measures taken by previous governments to remedy Crown breaches of te Tiriti/the Treaty, in particular, in circumstances where the

[7] Wai 682, #A015(a), CAB-26-MIN-0048.01 at [26].

Waitangi Tribunal has already inquired into, and made findings and recommendations which relate to, and/or, have led to the establishment of those measures;

b. a finding that the Crown's TC Review Decisions breach te Tiriti/the Treaty;

c. a recommendation that the Crown cease all work on the TC Review Decisions;

d. a recommendation that the Crown engage with the Claimants and relevant Māori organisations, in the TC Review, and should it wish to enact amendments to any of the existing Treaty Clauses, then the widespread approval of Māori and the Claimants is required;

e. all costs incurred as a result of bringing this Claim; and

f. such other remedies as are warranted.

II: LEAVE TO AMEND CLAIM

14. The Claimants reserve the right to further particularise this Application, and to amend or add further to the Application should further relevant information be discovered.

Dated: 8 May 2026

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Janet Mason
Counsel Acting

To: The Registrar, Waitangi Tribunal

And to: Counsel for the Crown on behalf of the Crown Law Office

This document is filed by Janet Mason of Phoenix Law Ltd, Counsel for the Claimants.

The address for service of the Claimants is at the offices of Phoenix Law Ltd,
200 Willis Street, Wellington.

Documents for Service on the Claimant may be left at the above address or may be:

- posted to PO Box 27400, Wellington; or
- sent by electronic mail to mason@phoenixlaw.expert and johnson@phoenixlaw.expert