KEI MUA I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

IN THE WAITANGI TRIBUNAL

WAI 3300

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER Tomokia ngā tatau o Matangireia - Constitutional Kaupapa Inquiry

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MEMORANDUM OF COUNSEL FOR TE KĀHUI TIKA TANGATA HUMAN RIGHTS COMMISSION SEEKING LEAVE TO APPEAR AND BE HEARD

12 JUNE 2026

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Te Kāhui Te Tangata Human Rights Commission
Solicitors: Frances Everard / Aphiphany Taua-Allison
Address: P O Box 10424, Wellington 6143
Phone: 022 0149203 / 022 0204571
Email: FrancesE@tikatangata.org.nz / AphiphanyTA@tikatangata.org.nz

MAY IT PLEASE THE TRIBUNAL:

1. The purpose of this memorandum is to seek leave for Te Kahui Tika Tangata Human Rights Commission (Commission) to appear and be heard in Tomokia ngā tatau o Matangireia: Constitutional Kaupapa Inquiry (Inquiry).

2. In doing so the Commission would seek to assist the Tribunal by providing submissions on the human rights dimensions of Te Tiriti o Waitangi that are relevant to the issues in the Inquiry.

Jurisdiction

3. The Commission is empowered by the Human Rights Act 1993 (HRA) to apply to a court or tribunal, under rules of court or regulations specifying the tribunal's procedure, to be appointed as intervener or to take part in the proceedings in another permitted way, if in the Commission's opinion, taking part in the proceedings in that way will facilitate the performance of its function to advocate for human rights and to promote and protect respect for and observance of human rights.[1]

4. Section 4A of the Commission of Inquiry Act 1908 provides that parties with an interest in the inquiry (apart from any interest in common with the public) are entitled to appear and be heard in the inquiry.[2]

5. The Commission respectfully submits for the reasons set out below, the Commission has an interest in the Inquiry, which is apart from any interest in common with the public, and which it considers would facilitate the performance of its function to promote and protect human rights in Aotearoa New Zealand.

The Commission's statutory functions

6. The Commission is established pursuant to the Crown Entities Act 2004 and the HRA as New Zealand's National Human Rights Institution (NHRI). The Commission is

[1] Human Rights Act 1993, s 5(2)(j).
[2] Applicable via Treaty of Waitangi Act 1975, sch 2, cl 8(1). The Waitangi Tribunal Practice Note *Guide to the Practice and Procedure of the Waitangi Tribunal*, August 2023 refers - see p 21.

accredited as an 'A status' NHRI under the Paris Principles and functions independent of government policy.[3]

7. As Aotearoa New Zealand's NHRI, the Commission has a broad mandate to promote and protect all human rights, including those of indigenous people. The Commission engages in human rights mechanisms for protecting indigenous peoples' rights – including the Expert Mechanism on the Rights of Indigenous Peoples; the Special Rapporteur on the rights of Indigenous Peoples; and Aotearoa New Zealand's Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples...

8. The statutory functions of the Commission include:

   (a) to be an advocate for human rights and to promote and protect, by education and publicity, respect for, and observance of, human rights;[4] and

   (b) to promote by research, education, and discussion a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights law.[5]

9. Therefore, the mandate of the Commission and its connection to the international human rights system, gives it in an interest in an inquiry which is likely to address the human rights of tangata whenua and the significance of those rights in a constitutional context.

Indigenous human rights issues of wide importance

10. Tomokia ngā tatau o Matangireia will likely address significant Te Tiriti o Waitangi and human rights issues.

11. Te Tiriti o Waitangi re-affirmed the rights of Māori to maintain their tino rangatiratanga, to participate fully in governance decision-making, and to equality and equity. It also placed obligations on the Crown to protect these rights.

12. International human rights instruments reinforce these rights and responsibilities. The International Covenant on

[3] UN General Assembly *National Institutions for the Promotion and Protection of Human Rights*, 20 December 1993, A/RES/48/134 (the Paris Principles).
[4] Human Rights Act 1993, s 5(2)(a).
[5] Human Rights Act 1993, s 5(2)(d).

Civil and Political Rights (ICCPR) [6] and the United Nations Declaration on the Rights of Indigenous Peoples[7] along with other international instruments collectively affirm the rights of indigenous peoples to self-determination, participation, and non-discrimination, and place obligations on States to protect these rights. The constitution of Aotearoa New Zealand is foundational to the recognition of Te Tiriti o Waitangi and tangata whenua rights; and is integral to the responsibility incumbent on the State to uphold these rights.

13. The Commission is of the view that the complementary dimensions of Te Tiriti o Waitangi and international human rights instruments demonstrate potential for these instruments to provide interpretive guidance to the Tribunal as to the full content of the Tiriti rights outlined above.

14. Therefore, while the Commission understands that the statement of issues for this Inquiry is still to be determined by the Tribunal, the Commission nevertheless considers it likely that the Tribunal will benefit from the assistance of the Commission given the overarching subject matter.

15. In particular, the Tribunal may benefit from the Commission's experience regarding:

    (a) the human rights dimensions of Te Tiriti o Waitangi;

    (b) analysis of the relevant domestic and international human rights instruments and the interrelationship between those instruments and Te Tiriti o Waitangi; and

    (c) assistance in applying these frameworks to the matters to be addressed in Tomokia ngā tatau o Matangireia.

16. The Commission would also welcome directions to address specific questions that the Tribunal has, that may fall within its particular expertise.

17. The Commission's ability to provide assistance on matters involving human rights has been recognised on numerous occasions by the courts. The Commission has previously appeared before the Tribunal in WAI 2870: The Māori Prisoners' Voting Rights Inquiry; and WAI 3051: The Māori

[6] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
[7] United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2007).

Wards Claim. The Commission has also appeared as intervener in proceedings involving Te Tiriti o Waitangi issues, including most recently in the Court of Appeal matter of *Wairarapa Moana ki Pouākani Incorporation v Attorney-General* (decision reserved).

Practicalities

18. The Commission has not informed parties of its intention to intervene and understands that the Registry will circulate this memo to the parties.

Conclusion

19. In the Commission's respectful view, having regard to its statutory functions and its experience as Aotearoa New Zealand's NHRI, the Commission has an interest in being heard over and above that of the general public; and is well placed to assist the Tribunal with the aspects of human rights and indigenous rights jurisprudence relevant to Tomokia ngā tatau o Matangireia.

Dated: 12 June 2026

F Everard / A Taua-Allison
Counsel for Te Kāhui Tika Tangata Human Rights Commission