

NGĀ TOKI WHAKARURURANGA

TE TIRITI O WAITANGI & INTER-NATIONAL TREATY MAKING

#3. WHAT THE WAITANGI TRIBUNAL HAS SAID TO DATE¹

As part of Ngā Toki Whakarururanga’s mandate to bring a te Tiriti o Waitangi lens to the international trade and investment space, we have commissioned a series of working papers on the constitutional power to make international treaties. The full paper ***Mana and Constitutional Transformation of Treaty Making*** can be accessed at www.ngatoki.nz/kaupapa/constitutional.

The Waitangi Tribunal has made definitive findings that claimants in the Ngāpuhi, Tuhoe and Te Rohe Potae inquiries never ceded sovereignty to the Crown. It has yet to inquire in depth into what this means for the authority to make international treaties, especially contemporary trade and investment agreements that reach deep into the domestic domain. Nevertheless, these findings put a stake in the ground. As Dr Moana Jackson explained in his evidence to the Wai 2522 Tribunal on the Trans-Pacific Partnership Agreement (TPPA), it was inconceivable for rangatira to cede their mana and confer a supreme “prerogative” power on the Crown to conduct international relations, including to treat with other polities:

Because mana could not be ceded in tikanga or Māori legal terms it is in fact axiomatic that the authority and responsibility of Iwi and Hapū to treat could also not be ceded. It is similarly axiomatic that the authority to treat could not be delegated or subordinated in a treaty to that of another polity. If it was impossible and indeed culturally incomprehensible for one Iwi to permit another to treat on its behalf it is at best illogical to assume that Iwi would allow the Crown to do so. At worst such an assumption is a breach of Te Tiriti.²

A small number of historical and contemporary Waitangi Tribunal reports have commented on this question, but it has never been the central matter of these inquiries. These reports have either been ignored or interpreted in a self-serving manner by the Crown. The current ***Tomokia Ngā Tatau o Matangireia/ Constitutional Kaupapa*** inquiry (Wai 3300) will examine the constitutional authority for international treaty making in depth for the first time.

¹ www.ngatoki.nz, August 2025

² Brief of Evidence of Moana Jackson to the Waitangi Tribunal Inquiry into the Trans-Pacific Partnership Agreement, Wai 2522, 26 February 2016 at [72] – [73]. Available at: <https://ngatoki.nz/wp-content/uploads/2024/04/Moana-J-Wai-2522.pdf>

This paper first provides an overview of the relevant reports – *Te Paparahi o te Raki* (Wai 1040), *Ko Aotearoa Tenei* (Wai 262) and the *Trans-Pacific Partnership Agreement* (Wai 2522), and then examines each of them in some more detail.

A snapshot of Tribunal observations on treaty-making

Both the Stage 1 and Stage 2 reports of the Waitangi Tribunal in the *Te Paparahi o te Raki* (Northern tribes) inquiry reflected on how He Whakaputanga o te Rangatiratanga o Nu Tirenī and Te Tiriti related to the exercise of kāwanatanga internationally. Their analysis was historical, situated in the 1830s at a time when international affairs, foreign policy and diplomacy were conducted through personal engagement between sovereign persons or their personal envoys, including at times of foreign threat and even war.

The Tribunal was clear in its Stage 1 report *He Whakaputanga me Te Tiriti* that the Crown’s actions in this international sphere were expected to operate to the benefit of rangatira by fostering and protecting their authority and the interests of their Hapū. The Tribunal observed in its Stage 2 report *Rangatiratanga me Kāwanatanga* that “the rangatira appear to have agreed that the Crown would protect them from foreign threats and represent them in international affairs, where that was necessary”.³ It quoted from the report *Te Mana Whatu Ahuru* that signatories to Te Tiriti in Te Rohe Pōtae wanted “a governing power that could be used to control settlers and protect them from foreign threats”, which at the time was posed by Baron de Thierry from France. Critically, the Tribunal said

*the rangatira may well have consented to the Crown protecting them from foreign threats and representing them in international affairs where necessary. If so, however, the intention of signatory rangatira was that Britain would protect their independence, not that they would relinquish their sovereignty.*⁴

International treaty-making has arisen directly in two contemporary inquiries. The Tribunal’s report on Wai 262, *Ko Aotearoa Tēnei*, pre-dated the finding in *Te Raki* that there was no cession of sovereignty under Te Tiriti o Waitangi. Although the claimants did not address the constitutional question directly, they asserted their rangatiratanga and sought recommendations that they exercise full, effective, independent, and properly resourced participation in international fora that deal with issues affecting their mātauranga.

The Tribunal’s report took a more limited approach. Adopting the “treaty principles” that had been developed in the courts and tribunal since the *Lands* case in 1987, it took the Crown’s treaty-making authority as given. That power was subject to obligations to consult with Māori on a sliding scale, according to what an informed Crown considered important to Māori. The Tribunal nevertheless suggested there would be some subjects on which decisions should be jointly made, and some on which the Crown should consider delegating decision making or representation to Māori.

³ Waitangi Tribunal, *He Whakaputanga me Te Tiriti. The Report on Stage 1 of the Te Paparahi o te Raki Inquiry*, Wai 1040, 2014 at p.529

⁴ Waitangi Tribunal, *He Whakaputanga me Te Tiriti* (Wai 1040) at p.iv.

The question of treaty-making authority was also argued in the Wai 2522 Inquiry on the *Trans-Pacific Partnership Agreement* (TPPA). The Tribunal that heard the urgency stage of the claim said it had neither the time, expertise nor range of interested parties to address such “broad constitutional questions”. In Stage 3 of that inquiry, dealing with the agreement’s digital trade chapter and impacts on data sovereignty, the Tribunal declined to apply the conclusion of *Te Raki* Stage 1 that Māori signatories in the North did not cede sovereignty. It said Wai 1040 was largely concerned with historical matters, not contemporary agreements like the TPPA, and that the reports on Stage 1 of *Te Raki* and *Wai 262* had both acknowledged the protective and representative capacity of kāwanatanga in international affairs.

Despite these comments, the Wai 2522 Tribunal accepted that the question of treaty-making authority under Te Tiriti o Waitangi properly lay with Stage 2 of *Te Raki* and the then-pending Constitutional Kaupapa inquiry.

The *Constitutional Kaupapa/Tomokia Ngā Tatau o Matangireia* Inquiry (Wai 3300) began in December 2022, but was diverted into urgency hearings on the Treaty Principles Bill and the review of references to the Principles of the Treaty in legislation.

The Crown filed a Statement of Position on Principles of Constitutionalism in November 2024. That acknowledged the arguments filed by the claimants, but did not “*address the challenges which will be canvassed in this inquiry, or comment on propositions for constitutional evolution and change outlined in claimant statements.*”⁵

Instead, it asserted that “*The Executive is responsible for negotiating international agreements/treaties*”. It sought to justify this by relying on policy statements, writings and judgements generated from within the Crown. As the main claimants with a mandate to ensure a Tiriti-based approach to international trade and investment agreements, Ngā Toki Whakarururanga filed a Statement in Reply that challenged “fundamental flaws” in the Crown’s position.

Hearings in the Constitutional Kaupapa inquiry will continue through at least 2025 and 2026.

Te Paparahi o te Raki

Stage One: He Whakaputanga me Te Tiriti

The first report of the Te Paparahi o te Raki Inquiry, *Te Tiriti me He Whakaputanga*, found that the Rangatira of the Northern tribes did not cede their mana or authority to the Queen of England; they agreed to share power and authority with the Crown as equals while performing different roles with different spheres of influence. The Tribunal’s interpretation of paragraph 4 of He Whakaputanga, in both te reo Rangatira and the translation of that by Dr Mānuka Henare, lays the foundations for that power-sharing arrangement in the international sphere:⁶

⁵ Crown Law, ‘Crown Statement of Position on Principles of Constitutionalism’, Wai 3300, 25 November 2024.

⁶ Waitangi Tribunal, *He Whakaputanga me Te Tiriti* (Wai 1040) at pp.168-169

4. *Ka mea matou kia tuhituhia he pukapuka ki te ritenga o tenei o to matou wakaputanga nei ki te Kingi o Ingarani hei kawae atu i to matou aroha. nana hoki i wakaae ki te Kara mo matou. a no te mea ka atawai matou, ka tiaki i nga pakeha e noho nei i uta e rere mai ana ki te hokohoko, koia ka mea ai matou ki te Kingi kia waiho hei matua ki a matou i to matou Tamarikitanga kei wakakahoretia to matou Rangatiratanga.*

4. *We agree that a copy of our declaration should be written and sent to the King of England to express our appreciation (aroha) for this approval of our flag. And because we are showing friendship and care for the Pākehā who live on our shores, who have come here to trade (hokohoko), we ask the King to remain as a protector (matua) for us in our inexperienced statehood (tamarikitanga), lest our authority and leadership be ended (kei whakakahoretia tō mātou Rangatiratanga).*

In discussing paragraph 4, the Tribunal said

the description of the king as “matua” in our view did not imply British superiority except in international affairs, and there the request was not for Britain to usurp Maori authority but to foster it and protect it from foreign threat.⁷

As noted above, when considering Te Tiriti o Waitangi the Tribunal determined that the Crown’s exercise of an international role was meant to ensure the Hapū and Rangatira retained their authority as contact increased:

*[T]he rangatira may well have consented to the Crown protecting them from foreign threats and representing them in international affairs where necessary. If so, however, the intention of signatory rangatira was that **Britain would protect their independence, not that they would relinquish their sovereignty.**⁸*

The Tribunal acknowledged

*that Māori had little capacity to exert any power in the international sphere, and were aware not only of Europe’s material wealth but also of its martial strength. They appear to have feared France, and held Britain’s power in awe. ... **We do not think Māori were greatly cowed by this power; rather, they sought to engage with it preemptively and constructively.**⁹*

Those references in *Te Raki* to the Crown’s authority in international affairs were made in the historical context of the personal powers that rangatira and monarchs exercised in the 1830s to conduct foreign policy. This understanding was reinforced in relation to Te Tiriti:

Under that agreement, the rangatira welcomed Hobson and agreed to recognise the Queen’s kāwanatanga. They regarded the Governor’s presence as a further, significant step in their developing relationship with the Crown. In recognition of the changed circumstances since the Whakaputanga had been signed in 1835, they accepted an

⁷ Waitangi Tribunal, *He Whakaputanga me Te Tiriti* (Wai 1040) at p.502

⁸ Waitangi Tribunal, *He Whakaputanga me Te Tiriti* (Wai 1040) at p.xxii

⁹ Waitangi Tribunal, *He Whakaputanga me Te Tiriti* (Wai 1040) at p.284

*increased British authority in New Zealand. The authority that Britain explicitly asked for, and they accepted, allowed the Governor to control settlers and thereby keep the peace and protect Māori interests. **It also appears to have made Britain responsible for protecting New Zealand from foreign powers.** ...*

*They did not regard kāwanatanga as undermining their own status or authority. Rather, the treaty **was a means of protecting, or even enhancing, their rangatiratanga** as contact with Europeans increased.¹⁰*

That explanation cannot support a claim that rangatira ceded to the Queen of England all their authority to negotiate, sign and ratify treaties with other polities – let alone, that they would do so for trade and investment agreements in their contemporary form, where the rules and enforcement mechanisms impact directly and indirectly on the responsibilities and rights of Māori, and the obligations of the Crown, under Te Tiriti o Waitangi.

Stage Two: Rangatiratanga me Kāwanatanga

This interpretation, that the rangatira sought in He Whakaputanga the protection of their independence by the English King, not a relinquishment of their mana, was reinforced in the Stage 2 report ***Rangatiratanga me Kāwanatanga***:

During 1834 and 1835, Ngāpuhi leaders, following Busby's advice, adopted a national flag so that Aotearoa vessels could trade internationally, and asserted their mana and sovereignty by signing the Whakaputanga, the Declaration of Independence. In turn, Britain responded with acknowledgement of the independence and nationhood of the northern tribes.¹¹

*The Crown, in our view, had also promised to investigate pre-treaty land transactions and return any lands that had not been properly acquired from Māori; and the rangatira appeared to have agreed that **the Crown would protect them from foreign threats and represent them in international affairs.**¹²*

The Stage 2 report then spells out the context for such representation:

*As we explained, rangatira believed they were aligning with a powerful empire which had guaranteed to protect them and their chiefly authority. Rangatira were aware, however, that there were risks from an alliance with an imperial power – they knew, for example, of the experiences of indigenous people in New South Wales and Tahiti, and feared they could face the same threats if settlement was not controlled. In their prior relationship with Britain, they had sought and received assurances that the monarch would protect them. **The treaty negotiations provided the rangatira with further reassurance that** Britain's intentions were peaceful and protective; **the Governor would***

¹⁰ Waitangi Tribunal, *He Whakaputanga me Te Tiriti* (Wai 1040) at pp. 527-528

¹¹ Waitangi Tribunal, *Tino Rangatiratanga me Te Kāwanatanga. The Report on Stage 2 of the Te Paparahi o te Raki Inquiry* Wai 1040, 2023, at p.184

¹² Waitangi Tribunal, *Tino Rangatiratanga me Te Kāwanatanga*. (Wai 1040), at p.181

*be ‘a powerful rangatira to control Pākehā and protect them from foreign powers’, but would not undermine their authority or exert power over them.*¹³

The Letter of Transmission from the Tribunal to Crown Ministers on December 2022 reiterated the point made in Stage 1 that, in the international space the intention of the signatory Rangatira “*was that Britain would protect their independence, not that they would relinquish their sovereignty*”.¹⁴

Ko Aotearoa Tenei (Wai 262)

The Wai 262 claim was the Waitangi Tribunal’s first consideration of international treaties and the treaty-making process as it impacts Māori, specifically on mātauranga and te Taiao. Its report *Ko Aotearoa Tenei* recognised that international instruments have significant impacts on Māori:

*Maori interests in trade and economic development, natural resources, the protection and transmission of Maori culture and traditional knowledge, indigenous rights, and environmental protection, are all profoundly affected by international instruments.*¹⁵

Given the growing significance of international law for Māori

*... we expect international engagement over those same matters – human rights, the environment, biodiversity, global warming, trade, conflict and diplomacy, and indigenous rights – to increase in the future rather than tail off. Whatever has occurred in the past, it will be important that future engagement occurs on a proper Treaty footing.*¹⁶

The Wai 262 hearings took place from 1997 to 2007 in the heyday of “Treaty principles” that had their origins in the Crown’s courts following *New Zealand Māori Council v Attorney General*¹⁷ (the “*Lands case*”) in 1987, and the bureaucracy’s subsequent massaging of those principles. Both ensured the Crown’s sovereignty was not questioned. Most of the subsequent Waitangi tribunals had fallen into line with that approach.

The Wai 262 claimants did not directly challenge the Crown’s treaty-making authority in a constitutional sense, but their statement of claim spelt out clearly what rangatiratanga meant and required in the context of mātauranga, including authority over resources and decisions. Recommendations they sought included:

Ensuring the full and effective participation of Māori in all international fora dealing with issues relating to traditional knowledge and/or biological and genetic resources including, but not limited to, the CBD, dDRIP, WIPO, UNESCO and WTO. Such measures for participation to involve:

¹³ Waitangi Tribunal, *Tino Rangatiratanga me Te Kāwanatanga*. (Wai 1040), at p.192

¹⁴ Waitangi Tribunal, *Tino Rangatiratanga me Te Kāwanatanga*. (Wai 1040), at p.iv

¹⁵ Waitangi Tribunal, *Ko Aotearoa Tenei. A Report into Claims Concerning New Zealand Law and Policy Affecting Maori Culture and Identity*, Wai 262, 2011 at p.680

¹⁶ Waitangi Tribunal, *Ko Aotearoa Tenei* (Wai 262), 2011 at p.670

¹⁷ *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641

Independent representation of Māori in these fora;

Provision of adequate funding and resources to enable independent Māori representation;

Ensuring appropriate skilled Māori are included in New Zealand Government Delegations to these fora.

That the Crown undertake full and effective consultation with Māori prior to attending international meetings in order to arrive at agreed statements relating to New Zealand's interventions in these fora; ...

The Wai 262 report was released in 2011. The Tribunal therefore did not have the benefit of the Stage 1 findings in *Te Raki*, released in 2014, that there was no cession of sovereignty under Te Tiriti. Given that context and the claimants' approach, it was predictable that the Tribunal assumed the power to make international treaties rested exclusively with the Crown:

*In the Treaty of Waitangi, the Crown acquired kawanatanga, the right to govern, which included the right to make foreign policy and to represent the new bicultural nation on the international stage. In return, the Crown promised actively to protect Maori interests and tino rangatiratanga, or full Maori authority over their own affairs. In the modern international arena, this is no small obligation. International instruments affect the rights and lives of all New Zealanders in sometimes profound ways. Specifically, Maori interests in trade and economic development, culture, traditional knowledge, natural resources, and the environment are often at stake. When that is the case, the treaty obliged the Crown and Maori to engage with one another on the basis of good faith, reasonableness, and cooperation. **The Crown must work out a level of protection for Maori interests, as identified and defined by Maori, that is reasonable when balanced where necessary against other valid interests, and in the sometimes constrained international circumstances in which it must act.**¹⁸*

That set the bar very low constitutionally. Yet the Crown was still not reaching it:

*The Crown accepts that it must protect Māori interests in the international arena, and that it must engage with Māori about how to do so. To that extent, it complies with the Treaty. **Its current policies and practices have the potential to become fully Treaty compliant but they are not yet so.**¹⁹*

The report endorsed an approach based on a 'sliding scale' of Māori interests, rather than one-size-fits-all. The priority accorded to Māori interests would depend on the scale and importance of the matters, ascertained by a properly informed Crown and balanced against any valid interest of other New Zealanders and the nation as a whole, if those interests are in tension. The Tribunal recognised the Crown's application of this approach was deficient, but in its implementation rather than its design:

¹⁸ Waitangi Tribunal, *Ko Aotearoa Tenei* (Wai 262), 2011 at p.684

¹⁹ Waitangi Tribunal, *Ko Aotearoa Tenei* (Wai 262), 2011 at p.684

[W]e did not receive any clear evidence of such a strategy nor of a consistent Crown approach in practice. The evidence of the various Government departments, including Te Puni Kōkiri, left us uncertain as to how the Crown decides what level of engagement is justified by the nature or strength of the Māori interest.²⁰

From the perspective of mana and rangatiratanga, that approach rests on deeply problematic foundations which are incompatible with Te Tiriti and far exceed any powers conferred on kāwanatanga: all power remains with the Crown to recognise and prioritise Māori interests, decide what level of protection is required, what is “reasonable”, and how these weigh up against other interests.

There were several glimmers of potential for the exercise of rangatiratanga, but they quickly evaporated, at least in the trade context. On one hand, **‘it is for Maori to say what their interests are, and to articulate how they might best be protected – in this case, in the making, amendment, or execution of international agreements’**; but this would occur after the Crown has alerted them to pending developments and their implications.²¹ With trade negotiations, which are usually conducted in secret, there would be no visibility of the Crown’s decisions until the agreement was signed, unless the Crown chose to raise it with Māori.

A second comment was more promising. The Tribunal said that

... limiting engagement to consultation cannot always do justice to the full nature, extent, or relative strength of the Māori interest. Such a policy does not give effect to the Treaty partnership and tino rangatiratanga guarantee.²²

Referring to the UNDRIP and the Convention on Biological Diversity,

there are times when the Crown’s position on matters of core importance to Māori must be developed by consensus, and - preferably - by a negotiated agreement with Māori.²³ ... Such instances will not be the norm, but they will occur. A decision-making framework that cannot accommodate such situations is not Treaty compliant.²⁴

There may even be times when the Māori interest is so overwhelming, and other interests by comparison so narrow or limited, that the Crown should contemplate delegation of its decision-making powers, or delegation of its role as New Zealand’s ‘one voice’ in international affairs²⁵

More than a decade later, the Crown has still not adopted the Wai 262 Tribunal’s limited recommendations. The commitment to examine international treaty issues in kete 3 of Te Pae Tawhiti, a project to implement the Wai 262 report, did not produce anything substantive, and was subordinated to a secret review of international treaty making by MFAT in 2021 to 2023.²⁶

²⁰ Waitangi Tribunal, *Ko Aotearoa Tenei* (Wai 262), 2011 at p.684

²¹ Waitangi Tribunal, *Ko Aotearoa Tenei* (Wai 262), 2011 at p.11

²² Waitangi Tribunal, *Ko Aotearoa Tenei* (Wai 262), 2011 at p.683

²³ Waitangi Tribunal, *Ko Aotearoa Tenei* (Wai 262), 2011 at p.683

²⁴ Waitangi Tribunal, *Ko Aotearoa Tenei* (Wai 262), 2011 at p.683

²⁵ Waitangi Tribunal, *Ko Aotearoa Tenei* (Wai 262), 2011 at p.682

²⁶ See #5 The Secret Review of International Treaty Making

The TPPA (Wai 2522)

The Wai 2522 claim on the *Trans-Pacific Partnership Agreement (TPPA)* was heard in three stages from 2015 to 2020. The initial hearing was held under urgency. It was limited to the effectiveness of the Treaty of Waitangi Exception in the agreement and the process for engagement with Māori following the signing of the TPPA.

The Tribunal rejected claimants' arguments about constitutional authority, including the evidence from Moana Jackson. It considered

*... that an urgent inquiry is not the appropriate forum to address broad constitutional questions, particularly those concerning the Crown-Māori relationship in respect of international instruments. We do not have the time, evidence, or range of interested parties to properly conduct such an inquiry.*²⁷

The final Stage 3 of the inquiry was focused on the electronic commerce chapter in the successor agreement to the TPPA, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). As the Tribunal noted, the claimants had invoked *Te Raki* to challenge the

*... orthodox Crown position ... that the prerogative power is part of the unitary and indivisible sovereignty held by the Crown and ceded under Article 1. Throughout this inquiry, the Claimants have argued that the Crown's assertion of exclusive authority to make international treaties is incompatible with te Tiriti/the Treaty.*²⁸

The claimants urged the Tribunal to take up the invitation implied in *Te Raki* to apply that report's findings to the present day:

*Today, the Crown has the power and capacity to recognise, respect and give effect to the treaty guarantee of rangatiratanga. It has had this power since it signed te Tiriti. Its duty to give effect to the guarantee of tino rangatiratanga is as important today as it was in 1840. That is the basis for te houruatanga, a partnership in which each party to the treaty recognises the authority of the other, and together they decide how each will exercise that authority on matters in which both have important interests.*²⁹

The Wai 2522 Tribunal declined to apply the finding that there was not a cession of sovereignty, noting the scope of *Te Raki* was largely limited to historical claims and it had made no conclusions about the Crown's exercise of sovereignty today.³⁰ The CPTPP report also claimed that the reports on Stage 1 of *Te Raki* and *Wai 262* both

*... acknowledge that kāwanatanga includes a protective and representative capacity in the conduct of international affairs*³¹

²⁷ Waitangi Tribunal, *Report on the Trans-Pacific Partnership Agreement. Urgency Inquiry*, Wai 2522, 2016 at pp.7-8

²⁸ Waitangi Tribunal, *The Report on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, Wai 2522, 2023, pp. 17-18

²⁹ Waitangi Tribunal, *Report on the CPTPP (Wai 2522)* at p.71

³⁰ Waitangi Tribunal, *Report on the CPTPP (Wai 2522)* at pp.19 and 23

³¹ Waitangi Tribunal, *Report on the CPTPP (Wai 2522)* at pp.20-21

without noting the limited parameters on that in *Te Raki* or the conditions in Wai 262.

The Tribunal did, nevertheless, recognise that the question of treaty-making authority was live and said it more properly lay with Stage 2 of *Te Raki* and the then-pending Constitutional Kaupapa inquiry:

*Our concern remains that in this, our final report, we do not intrude into matters still under consideration in the Te Raki inquiry. We maintain the view that it is not appropriate in this final stage of inquiry to address broad constitutional questions concerning the Crown–Māori relationship in respect of international instruments, given the relatively limited evidence and range of parties before us. We also note that a kaupapa inquiry into the Constitution is pending.*³²

Constitutional Kaupapa/Tomokia Ngā Tatau o Matangireia Inquiry (Wai 3300)

The Inquiry into constitutional issues affecting Māori began in December 2022. Its broad mandate is to hear claims concerning grievances relating to the constitution, self-government, and the electoral system, including identified themes of: Tino Rangatiratanga, Mana Motuhake, Autonomy, and Self-governance; Kāwanatanga; and Constitutional Legitimacy and Sovereignty.

Ngā Toki Whakarururanga is a party to the inquiry, focusing on the relationship of rangatiratanga and kāwanatanga, and constitutional legitimacy and sovereignty, in the international treaty space. The Crown has tabled its own Statement of Position on Principles of Constitutionalism.³³

The hearing is using a different methodology that was informed by a report from four pou tikanga and four pou ture Pākehā to develop a tikanga and Tiriti-compliant process.

In October 2024 the Tribunal began the first of six wānanga ā-rohe to hear from parties on their constitutional principles and the themes for the inquiry. However, the Tribunal was diverted into urgency hearings on the Treaty Principles Bill and the review of references to the Principles of the Treaty in legislation.

By mid-2025 the process was back underway, but hearings are expected to continue throughout 2026. Claimants will hope the report does not take as many years to be released as occurred with Wai 1040, especially as the fate of the Tribunal itself remains uncertain.³⁴

The Crown’s position on constitutionalism, tabled in Wai 3300, is discussed in Paper #4: *The Crown’s “Principles of Constitutionalism”*.

³² Waitangi Tribunal, Report on the CPTPP (Wai 2522) at p.22

³³ Crown Law, ‘Crown Statement of Position on Principles of Constitutionalism’, Wai 3300, 25 November 2024.

³⁴ Hon Tama Potaka, “Review seeks to improve Waitangi Tribunal”, 9 May 2025, available at <https://www.beehive.govt.nz/release/review-seeks-improve-waitangi-tribunal>