



## INTRODUCTION

1. The Crown provides this statement as an addendum to its statement of position on principles of constitutionalism filed on 25 November 2024,<sup>1</sup> in response to the Tribunal’s directions that the Crown address the question of whether the principle of equality forms part of the principles of constitutionalism in New Zealand,<sup>2</sup> and directing the Crown to file an updated statement of position in response to claimant statements of position filed for the second wānanga.<sup>3</sup>
2. The Crown acknowledges the claimants’ statements of position raise matters to be considered over the course of the inquiry.

## APPROACH TO CROWN’S STATEMENT OF POSITION

3. The Crown’s statement of position sketched broad principles that the Crown considers underpin New Zealand’s constitution.<sup>4</sup> It stated that constitutions are about the power of the state: a “constitution describes and establishes the major institutions of government, states their principal powers, and broadly regulates the exercise of those powers.”<sup>5</sup> In this sense, the Crown has not articulated equality as a discrete principle in its statement of position.
4. However, in addition to the structural elements outlined in our statement of position, our constitutional arrangements are also shaped by fundamental values, such as equality. Concepts of equality have been expressed through the principles the Crown has set out in its statement of position, in particular, democracy and the rule of law. Equality is also at the heart of the fundamental rights of non-discrimination, fairness and justice.

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<sup>1</sup> Wai 3300, #B14.

<sup>2</sup> Wai 3300, #2.6.40, at [19].

<sup>3</sup> Wai 3300, #2.6.46 at [9].

<sup>4</sup> Wai 3300, #B14, at [3].

<sup>5</sup> Wai 3300, #B14, at [4].

## EXPRESSIONS OF EQUALITY IN NEW ZEALAND'S CONSTITUTIONAL ARRANGEMENTS

### Human rights and non-discrimination

5. One of the constitutional principles articulated in the Crown's statement of position is 'fundamental human rights', which uphold the inherent dignity of people as human beings.<sup>6</sup> The idea that we are all of equal value is fundamental to the concept of human dignity and is reflected in international human rights instruments New Zealand has supported or ratified. For example article 1 of the Universal Declaration of Human Rights affirms that all human beings are born free and equal in dignity and rights, and article 26 of the International Covenant on Civil and Political Rights (ICCPR) recognises that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.
  
6. The New Zealand Bill of Rights Act 1990 (NZBORA), enacted to affirm New Zealand's commitment to the ICCPR, gives legal recognition to the right to freedom from discrimination in section 19(1). NZBORA recognises that this right – along with many other rights set out in the Act – is not absolute, but can be limited to the extent those limits can be justified in a free and democratic society (section 5). Section 19(2) permits measures to assist or advance persons or groups disadvantaged because of unlawful discrimination. This allows "affirmative action" to address existing inequities. Such measures are also recognised in numerous international human rights instruments New Zealand is party to, including article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 4 of the Convention on the Elimination of All forms of Discrimination against Women and article 5 of the Convention on the Rights of Persons with Disabilities.

### Representative government, democracy and equality

7. The principle of representative government and democracy can give expression to concepts of equality in a number of ways. As set out in the

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<sup>6</sup> Wai 3300, #B14, at [20].

Crown's statement of position, the government's power to make Executive decisions is underpinned by periodic free and fair elections.<sup>7</sup> Universal suffrage – the right of everyone over the age of 18 to vote and to stand to be a Member of Parliament<sup>8</sup> – is fundamental to our modern democratic system and facilitates equal participation in the democratic process. Through our system of representative government and taking into account other constitutional principles and sources (e.g. the rule of law and human rights), elected representatives are empowered to make policy decisions that may address inequities. Through participation in democratic processes people are able to express the importance of equality, fairness and justice to elected decision-makers.

#### **The rule of law and equality before the law**

8. The rule of law is another constitutional principle, articulated in the Crown's statement of position, which gives expression to the concept of equality through the principle that everyone is subject to the law and equal before the law.<sup>9</sup>

#### **Equality and Article 3 of the Treaty/te Tiriti**

9. The Crown's statement of position made reference to the Treaty of Waitangi/te Tiriti o Waitangi.<sup>10</sup> Concepts of equality, as discussed above, are consistent with Article 3 of the Treaty/te Tiriti, expressing Māori gained the same rights and duties as British subjects.

#### **FINAL REMARKS**

10. This addendum has set out some of the ways equality is expressed through New Zealand's constitutional arrangements. The Crown acknowledges equality is a concept that bears different meanings. As with the principles set out in the Crown's statement of position, the description of the way the

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<sup>7</sup> Wai 3300, #B14, at [11].

<sup>8</sup> New Zealand Bill of Rights Act 1990, s 12; and Electoral Act 1993, s 74.

<sup>9</sup> Wai 3300, #B14, at [17].

<sup>10</sup> Wai 3300, #B14, at [7]-[10].

concept of equality is expressed in our constitutional arrangements set out above is intended to assist the Tribunal in its consideration of these issues.

17 April 2025

A handwritten signature in blue ink, consisting of a large, stylized initial 'A' followed by a horizontal line and a small flourish.

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A K Irwin / A Turvey  
Counsel for the Crown

**TO:** The Registrar, Waitangi Tribunal

**AND TO:** Claimant Counsel