

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

the Climate Change Priority Inquiry
(WAI 3325)

AND

IN THE MATTER OF

a claim by **Pita Tipene, Moana Maniapoto, George Laking, India Logan-Riley, Donna Kerridge, Aroha Te Pareake Mead, and Maria Bargh** for and on behalf of **Ngā Toki Whakarururanga (WAI 3395)**

**MEMORANDUM OF COUNSEL FILING NOTICE OF PRESIDENT TRUMP'S
PROCLAMATION ON CRITICAL MINERALS**

Dated on this 27th day of January 2026


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TĒNĀ E TE TARAIPUNARA:

Introduction

1. This Memorandum of Counsel is filed on behalf of the claimants for Wai 3395, that is Donna Kerridge, Pita Tipene, Moana Maniapoto, Dr George Laking, India Logan-Riley, Dr Maria Bargh, and Aroha Te Pareake Mead, for and on behalf of Ngā Toki Whakarururanga (“**the Claimants**”).
2. The Claimants wish to bring to the urgent attention of the Waitangi Tribunal a very recent development involving the United States of America and critical minerals, and to urge the Tribunal to seek information from the Crown forthwith in this regard.

President Trump’s Proclamation on Critical Minerals

3. On 14 January 2026, United States President Donald Trump issued a Proclamation entitled “Adjusting Imports of Processed Critical Minerals and Their Derivative Products [PCMDPs] into the United States”.¹
4. The Proclamation (provided with this memorandum) said the United States Secretary of Commerce had reported in October 2025 on an investigation under Section 232 of the Trade Expansion Act into the effects of imports of PCMDPs on the national security of the United States. The investigation found the supply of critical minerals to the United States, which is essential for defence, infrastructure, e-vehicles, and data and AI, was vulnerable on a number of fronts that could be “exploited by foreign actors” (meaning China, which dominates global critical minerals supply chains) and posed a serious risk to national security.
5. The Secretary of Commerce recommended that President Trump negotiate agreements with foreign nations to ensure the United States has an adequate supply of critical minerals and to mitigate supply chain vulnerabilities as quickly as possible. He advised that it may be appropriate to impose import restrictions, such as tariffs, if satisfactory agreements are not reached in a timely manner.
6. President Trump accordingly directed the Secretary of Commerce and the United States Trade Representative “*to jointly pursue negotiation of agreements or continue any current negotiations of agreements [with foreign trading partners] ... to address the threatened impairment of the national security with respect to DCMDPs.*”

¹ White House, Adjusting Imports of Processed Critical Minerals and Their Derivative Products into the United States”, 14 January 2026. At <https://www.whitehouse.gov/presidential-actions/2026/01/adjusting-imports-of-processed-critical-minerals-and-their-derivative-products-into-the-united-states/>.

7. If any such agreement was not entered into within 180 days of the Proclamation or was not being carried out or was ineffective, the President might “*take other action he deems necessary to adjust imports and eliminate the threat to the national security*”.

Critical Minerals Framework Agreements

8. Professor Kelsey, who has been monitoring these developments, wrote an opinion piece for *The Conversation*² that explained the kind of agreements on critical minerals that the Trump Administration has been demanding other countries sign on to.
9. She anticipated that the stand-alone Critical Minerals Framework Agreement between the United States and Australia was likely to provide the template. That agreement had been negotiated by the two governments in secret over five months and was signed in October 2025. It involved a number of commitments to finance, mobilise many billions of dollars of investment in, and fast track, mining and processing; to geomap the country’s resources, and restrict foreign (Chinese) purchase of assets and price setting in supply chains. While that Critical Minerals Framework Agreement is formally non-binding, the Trump Administration has made it clear that it retains the right to impose significant trade penalties unilaterally at any time.
10. Noting the New Zealand Government’s recent promotion of critical minerals mining, she speculated that New Zealand might be one of the countries that had already been or would be approached. The Crown had already conducted a mapping of mineral reserves, resources and processing capacity in 2024 as part of the IPEF Critical Minerals Dialogue. In January 2025, the Ministry of Business, Innovation and Employment published a Minerals Strategy,³ featuring a list of 37 critical minerals,⁴ 21 of which could be exploited in New Zealand. The strategy aims to double the minerals exports to NZ \$3 billion by 2035, strengthen global minerals supply chains, and leverage relationships and international partnerships.

² Jane Kelsey, “Trump is threatening more tariffs over access to critical minerals – will NZ be targeted?”, *The Conversation*, 19 January 2026. At <https://theconversation.com/trump-is-threatening-more-tariffs-over-access-to-critical-minerals-will-nz-be-targeted-273780>

³ MBIE, “A Minerals Strategy for New Zealand to 2040”, January 2025. At <https://www.beehive.govt.nz/sites/default/files/2025-01/202501%20A%20Minerals%20Strategy%20for%20New%20Zealand%20to%202040.pdf>

⁴ Hon Shane Jones, “Major milestone reached with launch of Minerals Strategy and Critical Minerals List”, 31 January 2025. At <https://www.beehive.govt.nz/release/major-milestone-reached-launch-minerals-strategy-and-critical-minerals-list>

11. Professor Kelsey further noted the potential threat of tariff sanctions by early July 2026 if a country that was approached to negotiate an agreement declined to do so, or if the Trump Administration was not happy with the outcome.
12. Following the example of other negotiations with the United States on critical minerals, she highlighted the risk that there might not be any public announcement that these negotiations were occurring, nor any consultation or disclosure until an agreement was signed.
13. A subsequent commentary on President Trump's Proclamation in *Inside Critical Minerals*⁵ speculated that the Trump Administration may view its security-based alliances as starting points for which countries to negotiate with, including the "Five Eyes" countries of Australia, Canada, New Zealand, the United Kingdom, plus the United States.

Relevance to this Tribunal Inquiry

14. The process and the substance of such a negotiation would be directly relevant to the Tribunal's Wai 3325 Climate Change Priority Inquiry. While not formally a "trade" agreement, these proposals have many of the same elements, including potential enforcement through economic coercion. In particular, there is significant overlap with work on critical minerals under the Indo-Pacific Economic Framework (IPEF).
15. The Government has not said whether the United States has approached it to negotiate such an agreement. If there has been such an approach, it is not known whether the Crown has agreed to negotiate, what template the Crown might be required to use, and what deadline they might be working to. There is a risk that such a negotiation is already underway and could be finalised and signed without Māori, or anyone else in Aotearoa, being aware.
16. If the Crown was to follow that process, it would once more have failed to give effect to the principle of rangatiratanga and exceeded the principle of kāwanatanga, as per Cause of Action 1 of the Wai 3395 Statement of Claim dated 8 July 2024.⁶

⁵ Brett Fortnam, "Critical minerals proclamation raises questions about what's next", *Inside Critical Minerals*, 20 January 2026. At <https://insidetrade.com/critical-minerals-news/critical-minerals-proclamation-raises-questions-about-what-s-next> (paywalled)

⁶ Wai 3395, #1.1.1 at 7(i).

17. In doing so, the Crown would have contradicted its own commitments to meet its Tiriti obligations in relation to critical minerals. The Minister for Resources Shane Jones said in January 2025 when the Crown’s Minerals Strategy and the accompanying Critical Minerals List were released, that the three key outcomes of the strategy were “*guided by overarching principles to honour Te Tiriti o Waitangi obligations.*”⁷
18. The Crown’s Minerals Strategy itself identifies “Te Tiriti o Waitangi” (not The Treaty of Waitangi) as Guiding Principle 1 of the Strategy and says “*we are taking an active, deliberate and coordinated approach for New Zealand’s mineral development that honours Te Tiriti o Waitangi and upholds Treaty settlements and commitments*”.⁸
19. The substance of such an agreement would fall within Cause of Action 2 of the Wai 3395 Statement of Claim, as it promotes and adopts “*concepts, legal and economic instruments, technologies and techniques, and practices that reflect western worldviews and capitalist interests that have been rejected by Indigenous Peoples around the world*”.
20. There would be:
 - 20.1 no recognition that the state does not “own” these critical minerals, but that they belong to the whenua and moana to which Indigenous Peoples whakapapa and for which they have responsibilities as kaitiaki for time immemorial;
 - 20.2 no protections for the whenua and moana or for mana whenua to exercise responsibilities and duties to Papatūānuku and Tangaroa;
 - 20.3 no recognition of prior obligations of the Crown under He Whakaputanga o te Rangatiratanga o Nu Tireni and Te Tiriti o Waitangi;
 - 20.4 no requirement for prior informed consent, nor for profit sharing where such consent is given.
21. Were the Crown to pursue such an agreement it would therefore be making commitments on behalf of Aotearoa New Zealand that breach the principles of rangatiratanga and kāwanatanga, that are antithetical to tikanga, mātauranga

⁷ Hon Shane Jones, “Major milestone reached with launch of Minerals Strategy and Critical Minerals List”, 31 January 2025

⁸ MBIE, A Minerals Strategy for New Zealand to 2040’, January 2025.

[https://www.beehive.govt.nz/sites/default/files/2025-](https://www.beehive.govt.nz/sites/default/files/2025-01/202501%20A%20Minerals%20Strategy%20for%20New%20Zealand%20to%202040.pdf)

[01/202501%20A%20Minerals%20Strategy%20for%20New%20Zealand%20to%202040.pdf](https://www.beehive.govt.nz/sites/default/files/2025-01/202501%20A%20Minerals%20Strategy%20for%20New%20Zealand%20to%202040.pdf)

and kaitiakitanga, and which are in breach of the principles of “mutual recognition and respect” and “active protection”.

Relevant previous evidence for the Claimants

22. The basis for claiming breaches of Tiriti principles and potential prejudice through negotiations and agreements on critical minerals and their extraction has previously been presented in evidence on behalf of the Claimants by Professor Maria Bargh and Professor Jane Kelsey.
23. In paragraph 8 of her affidavit dated 21 October 2024, Professor Bargh challenged ‘green extractivist solutions’ to the climate crisis that “*continue an extractivist mindset, tend to privilege a capitalist logic, and assume decision-making power over, and access to, minerals which many Māori argue they have rangatiratanga over.*”
24. As part of that mindset, the critical minerals narrative seeks to rationalise ‘green extractivism’ as essential for solutions to climate change, and which justifies pressures for “*Indigenous Peoples to move ‘out of the way’ of mineral exploration, exploitation and supply chains which state governments argue are required for a ‘green transition’.*”
25. As a result, “[t]he ongoing, and indeed projected increase in, exploitation of such minerals fails to carefully consider, first, the options other than increased consumption or to ensure recycling and reuse of existing extracted minerals. Instead, Crown proposals maintain a mentality and cycle of extraction, consumption and waste which cuts across Māori aspirations for forms of wellbeing that maintain a balance with te taiao and cuts across Indigenous rights, for example to develop strategies and priorities for the use of their lands and territories.”
26. International trade agreements “*perpetuate this narrative and approach to climate change by normalising green extractivist thinking and using the climate crisis to justify extractive and profit-focused objectives. These agreements need to be seen as part of a continuum of Crown action and inaction on the climate. ... The ways these agreements conceptualise and promote solutions to the climate crisis are antithetical to Te Ao Māori, tikanga, Māori values and mātauranga...*”
27. Professor Kelsey’s Third Affidavit dated 7th March 2025⁹ challenged the process by which the Crown entered into international agreements and multi-state work programmes relating to critical minerals. She detailed, in particular, the

⁹ Wai 3325, #A38 Affidavit of Elizabeth Jane Kelsey dated 7 March 2025.

implementation of the Critical Minerals Dialogue under the IPEF Supply Chain Agreement and Clean Economy Agreement in blatant disregard of commitments to Indigenous Peoples' role, participation and knowledge. While the IPEF process, established under the Biden administration, appears to be inactive under the current Trump Administration, it has taken another form.

28. In November 2025, the Government announced it had joined the international Minerals Security Partnership as a means to advance the goals of its Mineral Strategy.¹⁰ Other members include Australia, Canada, Estonia, Finland, France, Germany, India, Italy, Japan, Norway, the Republic of Korea, Sweden, the United Kingdom, the United States, and the European Union.
29. It is reasonable to anticipate that these are countries with which the Trump Administration intends to negotiate critical minerals agreements. Indeed, it has already done so with several of them but not, so far as the Crown has announced, with New Zealand.

Capitulation to US a breach of tino rangatiratanga and tikanga

30. The result would be an agreement that commits Aotearoa to 'green extractivism' of critical minerals on terms that are dictated by the United States of America in a yet another phase of colonisation of Aotearoa by imperial powers, which abdicates the Crown's duties and responsibility to Māori.
31. It would also close off the avenues Ngā Toki Whakarururanga and others have been seeking to develop alternative strategies for climate action, especially with our whanaunga in Te Moana-nui-a-Kiwa/the Pacific.
32. Finally, this notice would not be complete without expressing the Claimants' profound objection that the Crown might even consider entering into any agreement with the United States Government at a time when that government is escalating global instability and conflict, including a threat to "take Greenland by any means".
33. Around 90 percent of the population of Greenland are Inuit who have established a decolonisation process with the colonial government of Denmark to advance self-rule under the Self-Government Act of 2009.
34. The commitment of the Greenland Home Rule government to assist other Indigenous Peoples realise their self-determination is long-standing and

¹⁰ Rt Hon Winston Peters and Hon Shane Jones, "New international partnership to attract investment in critical minerals", 26 November 2025. <https://www.beehive.govt.nz/release/new-international-partnership-attract-investment-critical-minerals>

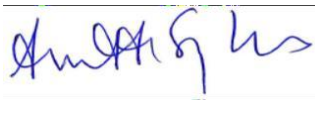
proactive. When their own self-determination is being threatened by the United States Government, we as Māori need to show our support. The Claimants expect the Crown to do so as part of its obligations under Te Tiriti and the United Nations Declaration on the Rights of Indigenous Peoples.

35. In conclusion, were the Crown to negotiate and conclude a deal with the United States Government on critical minerals, it would demonstrate willful disregard for its obligations under Te Tiriti o Waitangi.

Action requested of the Tribunal

36. This Tribunal will not report on the climate change inquiry for some time. There is a serious risk that the Crown will, by then, have undertaken significant measures in relation to critical minerals that breach its obligations under Te Tiriti o Waitangi, and will have caused significant and irreparable or irreversible further harm to the relationship between Hapū and Iwi Māori and the Crown through ignoring the rights of Hapū and Iwi to participate in decision making on matters that directly impact on them and their traditional territories, as well as on the wellbeing of taonga, flora and fauna species, and their habitats.
37. The Claimants urge the Tribunal to seek information urgently from the Crown to establish whether the United States Government has sought such an agreement and if so, the process for its development, the likely content, the role of Māori in that process, and the protections for Māori responsibilities, duties and interests and the Crown’s obligations under Te Tiriti o Waitangi.
38. Following the Crown’s response, the Claimants would seek to make further submissions, and do so as a matter of urgency if appropriate.

Dated at Rotorua this 27th day of January 2026



Annette Sykes



Sam Vincent

Counsel for the Claimants