

**KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI**

BEFORE THE WAITANGI TRIBUNAL

WAI 3325

UNDER the Treaty of Waitangi Act 1975

IN THE MATTER OF the Climate Change Priority Inquiry

**MEMORANDUM OF COUNSEL FOR HE POU A RANGI CLIMATE CHANGE
COMMISSION**

Dated: 27 February 2026

 **LUKE
CUNNINGHAM
CLERE**

Presented for filing by:
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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. This memorandum is filed on behalf of He Pou a Rangi Climate Change Commission (the **Commission**) and addresses a request by coordinating counsel for the claimants that the Commission provide evidence to the Tribunal.
2. In response to the claimant counsel memorandum filed on 17 February 2026, Judge Milroy directed claimant counsel to provide details on when the potential new evidence will be filed, specifically whether it will be filed in time for Crown witnesses to respond during hearing weeks six or seven, the extent of this intended evidence and an explanation for the late indication that claimant counsel wishes to call new evidence by no later than **5 pm, Tuesday 24 February 2026**. We understand claimant counsel have received an extension to file this information by **Friday, 27 February 2026**.
3. This memorandum addresses:
 - 3.1 the claimants' request for the Commission to give evidence;
 - 3.2 the Commission's independent and expert status and role; and
 - 3.3 the Commission's involvement in this inquiry.

THE CLAIMANTS' REQUEST FOR THE COMMISSION TO GIVE EVIDENCE

4. In April 2025, the Commission became aware that claimant coordinating counsel had asked the Crown whether it was considering or would consider calling evidence from the Commission in this inquiry. The Commission indicated it was willing to have a conversation with claimant coordinating counsel to understand their interest in the Commission giving evidence. Claimant coordinating counsel did not take up that invitation at the time.
5. In December 2025, the Crown advised the Commission that claimant coordinating counsel wished to discuss with the Commission whether it would be providing evidence in this inquiry. Counsel for the Commission met with Crown and claimant coordinating counsel on 10 December 2025.

6. Following that meeting, claimant coordinating counsel emailed counsel for the Commission clarifying the evidence sought:¹

...

I confirm that the view of the claimants is that it would be useful for the tribunal to hear evidence from the climate change commission on aspects of its operations relating to Maori. In particular:

- How the commission in its operations discharges its obligations under s 5M of the [Climate Change Response Act 2002] to take into consideration the Crown-Māori relationship, te ao Māori and specific effects on iwi and Māori.
- How the commission discharges its consultation obligations under s 5N of the [Climate Change Response Act 2002] in regard to Maori.

Of particular relevance, would be details about the operation of the commission's Maori advisory body, Pou Herenga. Also, details of the role of the Ohu Maori team within the commission staff between its establishment in October 2022 and the disestablishment of the team in April 2024.

...

7. The Commission was not consulted in advance on the claimant coordinating counsel memorandum filed on 17 February, which refers to the Commission providing evidence in the inquiry, and has filed this memorandum addressing its position.

THE COMMISSION'S INDEPENDENT AND EXPERT STATUS AND ROLE

8. The Commission is established under Part 1A of the Climate Change Response Act 2002 (CCRA). It is an independent Crown entity under the Crown Entities Act 2004.² It is an expert independent advisory and monitoring body – its purposes are:³

8.1 to provide independent, expert advice to the Government on mitigating climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change; and

8.2 to monitor and review the Government's progress towards its emissions reduction and adaptation goals.

¹ Email from Michael Sharp dated 15 December 2026.

² CCRA, s 5C(1); and Crown Entities Act 2004, s 7 and sch 1.

³ CCRA, s 5B. Also see its functions set out in s 5J.

9. The CCRA expressly provides for the Commission to act independently, with two exceptions (none of which are relevant to the inquiry) where Parliament recognises that the interests of the government of the day should be taken into account:⁴

50 Commission must act independently

- (1) The Commission must act independently in performing its functions and duties and exercising its powers under this Act.
- (2) However, the Minister may direct the Commission to have regard to Government policy for the purposes of the Commission—
- (a) recommending unit supply settings of the New Zealand emissions trading scheme; and
- (b) providing advice about New Zealand’s nationally determined contributions under the Paris Agreement (in a report requested under section 5K).
10. The Commission is made up of experts in their fields. The CCRA recognises the unique complexity of the challenges the Commission is required to advise on demands Commissioners with collective experience across a wide field, including the scientific and technical aspects of climate change mitigation and adaptation, local and central government management and policymaking, the wider economic and social effects of climate change, te Tiriti o Waitangi/the Treaty of Waitangi and te ao Māori.⁵
11. Members of the Commission are not appointed directly by the Minister of Climate Change. They are appointed on the recommendation of an expert committee, and the Minister is obliged to assess their expertise against statutory criteria.⁶
12. The courts have recognised the Commission’s independence from the Crown and expertise in recent litigation.⁷

⁴ CCRA, s 50; and *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2022] NZHC 3064 at [44].

⁵ CCRA, s 5H.

⁶ The Minister is required to establish a nominating committee comprising five people (including the Chair of the Commission, if already appointed), who then undertake the process of publicly calling for expressions of interest and consultation. The nominating committee then puts forward its nominations, and the Minister (in practical terms cabinet) then assesses those against the statutory criteria in s 5H and makes a recommendation to the Governor-General. The Act requires the Minister to both review the expertise of the nominated candidate, and also consult representatives of all political parties in Parliament before recommending an appointment. This final requirement is rare, and features in the appointment process of only a handful of positions where public confidence in independence and the need for a long-term viewpoint are also seen as critical: the Board of the Guardian of New Zealand Superannuation, the Board of the Reserve Bank, and the Public Service Commissioner and Deputy Commissioners. See CCRA, ss 5E-5H.

⁷ *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2025] NZRMA 258 [2025] NZCA 80 at [52]-[53]. *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2022] NZHC 3064 at [12] also [44] and [64] and [243] and [260]]

THE COMMISSION'S INVOLVEMENT IN THIS INQUIRY

13. The Commission does not understand its actions to be within the scope of the inquiry and has not sought to be involved or add to the information before the Tribunal. The Tribunal's jurisdiction and the scope of this inquiry focus on the Crown, from which the Commission is independent.⁸
14. While the Commission believes, to the best of its knowledge, that it does not hold information in scope of this inquiry, if the Tribunal thinks otherwise, the Commission is willing to assist. The Commission would participate in its own right, given its independence from the Crown (and, of course, the claimants). It respectfully requests that the Tribunal take the following matters into account when considering the Commission's involvement in this inquiry:
 - 14.1 Providing evidence will require an investment of staff time, and external cost. The Commission's resources are limited, and at present are heavily committed to several statutory reports it is obliged to deliver, being advice on updates to the Emissions Trading Scheme settings regulations and a National Climate Change Risk Assessment (both in April), the Emissions Reduction Monitoring report (due in July), and a progress assessment of the National Adaptation Plan (due early August).
 - 14.2 It has not been in a position to monitor or review all of the information and evidence filed in the inquiry, nor identify any topics where it could usefully add to the information already before the Tribunal.
 - 14.3 The Commission is required to discharge its statutory functions independently of the Crown and Minister, and it makes operational decisions without their input. The Commission accordingly has some reservations about the relevance of the topics the claimants seek to have the Commission address (which relate to its own discharge of its statutory functions and internal operations), and whether it is appropriate for the Commission to be required to address them in this forum.

⁸ Wai 3325, #1.4.3 (Tribunal Statement of Issues); and Treaty of Waitangi Act 1975, s 6.

15. The Commission respectfully suggests any input it provides could appropriately be by way of written memorandum, addressing any questions the Tribunal identifies, that are not already dealt with in the evidence before the Tribunal.
16. Counsel are also available to attend a telephone conference if that would assist.

DATED at Wellington this 27th day of February 2026

A handwritten signature in blue ink, appearing to read 'S Leslie | J Judge', written over a horizontal line.

S Leslie | J Judge

Counsel for He Pou a Rangi Climate Change Commission