

**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

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**MEMORANDUM OF COUNSEL FOR HE POU A RANGI CLIMATE CHANGE  
COMMISSION IN RESPONSE TO WAI 3382 MEMORANDUM**

**Dated:** 9 March 2026

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Counsel Acting:

A K Irwin  
Clifton Chambers

Presented for filing by:

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Wellington  
(S J Leslie / J E Judge)

## MAY IT PLEASE THE TRIBUNAL

### Introduction and summary of the Commission's position

1. This memorandum is filed on behalf of He Pou a Rangi Climate Change Commission. The Commission wishes to advise the Tribunal its stance on:
  - 1.1 a new claim recently made by the Wai 3382 claimants against the Commission's decision to disestablish its Ohu Māori;<sup>1</sup>
  - 1.2 a memorandum of claimant counsel dated 2 March 2026;<sup>2</sup> and
  - 1.3 the Commission's intentions towards this inquiry more generally.
2. To assist the Tribunal, and in sum, the Commission's position is as follows:
  - 2.1 The Commission does not seek to become a party to this inquiry or an opportunity to present evidence. Nevertheless, the Commission recognises the significance of the issues raised for Māori, including whenua Māori authorities, iwi authorities and hapori Māori.
  - 2.2 Claimant counsel had raised the question of whether a witness from the Commission might give evidence in this inquiry. It now appears the intention was to engineer a circumstance whereby that witness would be cross-examined by claimant counsel about the disestablishment of the Ohu Māori, a claim for which has only now been filed. The Commission expresses its concern about how this situation has arisen.
  - 2.3 The Commission is not, as is alleged,<sup>3</sup> a Crown agency. The Commission is an independent Crown entity under the Crown Entities Act 2004. Its statute expressly requires it to act independently of the Crown. Its actions are not those of the Crown for the purposes of the Treaty of Waitangi Act 1975 or otherwise. Its decision to disestablish the Ohu

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<sup>1</sup> See the amended statement of claim for Wai 3382 of 2 March 2026, fifth cause of action, at [10]-[10.10].

<sup>2</sup> See the memorandum of counsel for Wai 3382 of 2 March 2026.

<sup>3</sup> See the amended statement of claim for Wai 3382 of 2 March 2026 at [10.1].

Māori was not an act done by or on behalf of the Crown and is not capable of being made the subject of a claim under section 6(1) of the Treaty of Waitangi Act 1975.

- 2.4 The Commission has limited resources. The Commission does not wish to put those resources towards a claim for which the Tribunal lacks jurisdiction.
- 2.5 It appears that the Wai 3382 claimants have not yet sought urgency or priority for the new claim to be heard by the Wai 3325 inquiry panel. There is a process to be followed in that regard.
- 2.6 If the Tribunal were to entertain inquiry into the newly filed claim, the Commission seeks the fair opportunity to make full submissions on whether the Tribunal has jurisdiction to inquire into the claim.
- 2.7 Otherwise, if the Tribunal wishes the Commission to assist it in its inquiry, the Commission invites the Tribunal through its staff to contact counsel for the Commission.
- 2.8 Counsel for the Commission would be available to appear at any judicial conference convened to discuss this matter.

3. The remainder of this memorandum provides the detail to the above position.

#### **Overall Commission approach**

4. The Commission notes that it has moved away from a dedicated Ohu Māori to having those roles and functions – and the associated skills and expertise – integrated across the organisation. This includes the establishment of the Manahautū, Māori / Chief Advisor ao Māori, a role that sits on the executive leadership team. Other specialist roles are integrated across the organisation. The Commission draws on extensive networks, including the Pou Herenga (being the Commission's independent advisory body on Treaty/ao Māori matters) and its members' networks, to provide insights into the particular interests of Māori landowners, whenua Māori authorities and hāpori Māori exposed to climate policy and regulation. The Commission considers that having the skills and

capability to consider te Ao Māori in doing its work is a key part of meeting its statutory obligations. The Commission does not consider that the 2024 internal restructuring has decreased its ao Māori skillset and capability.

5. The Commission's key concern here, however, is that decisions concerning its internal structure are not the proper subject of claims to the Waitangi Tribunal because the Commission is not a part of the Crown. Furthermore, like any organisation, the Commission has limited resources and it does not wish to put those resources towards defending a claim to the Waitangi Tribunal for which the Tribunal lacks jurisdiction.

### **The request that the Commission provide evidence**

6. In good faith the Commission has engaged with coordinating claimant counsel about a request that it provide evidence in this inquiry. By the end of 2025, the scope of the suggested evidence seemed broad and to concern generally how the Commission discharges its statutory functions towards Māori. On 27 February 2026 the Commission filed a memorandum setting out its understanding of the request made by claimant counsel. That understanding has now changed.
7. It is now clear the Wai 3382 claimants have no intention to file any further evidence, but simply seek an opportunity to cross-examine someone from the Commission about its decision to disestablish the Ohu Māori Business Group. Counsel for Wai 3822 say:<sup>4</sup>

To be clear, the Claimants do not seek to present further evidence. They simply seek the opportunity to cross-examine a representative of the Climate Change Commission.

8. It is also now apparent that counsel for the Wai 3382 claimants:
  - 8.1 Sought information from the Commission under the Official Information Act 1982 that they say is relevant to the request that the Commission give evidence.<sup>5</sup> The Commission understands this to have occurred in August

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<sup>4</sup> See the memorandum of counsel for Wai 3382 of 2 March 2026 at [4].

<sup>5</sup> See the memorandum of counsel for Wai 3382 of 2 March 2026 at [9].

2024, when it received an OIA request from Mr Vincent and responded accordingly.

8.2 Sought that claimant coordinating counsel approach the Commission seeking evidence in this inquiry.<sup>6</sup> In November 2025, the Commission received a request for a meeting with Mr Sharp, Mr Lyall and Ms Te Whenua, with the only other invited counsel being counsel for the Crown. At that meeting the Commission was variously asked for evidence in relation to climate science, the work of Pou Herenga (being the Commission’s independent advisory body on Treaty/ao Māori matters), how the Commission consults Māori, and the Commission’s work on the 2026 National Climate Change Risk Assessment (due to report in April 2026), before the written request for evidence set out in paragraph 6 of the 27 February 2026 memorandum was made.<sup>7</sup>

8.3 Filed an amended statement of claim one working day after the Commission responded to the request for evidence, to “clarify” the Wai 3382 claimants’ position making:

(a) a legal claim about the relationship between the Crown and Commission, including that “acts done by the Commission are acts done by the Crown”<sup>8</sup> and that the Commission has breached te Tiriti of Waitangi and the principle of partnership through the Commission’s disestablishment of its Ohu Māori business group actions;<sup>9</sup> and

(b) specific factual claims against the Commission, including allegations regarding the drafting process for the Commission’s 2024 emissions monitoring report and disestablishment of positions at the Commission.<sup>10</sup>

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<sup>6</sup> See the memorandum of counsel for Wai 3382 of 2 March 2026 at [11].

<sup>7</sup> Counsel for the Wai 3382 claimants were copied into emails in late February about the request.

<sup>8</sup> See the memorandum of counsel for Wai 3382 of 2 March 2026 at [13].

<sup>9</sup> Wai 3382 amended statement of claim dated 2 March 2026 at [10.1].

<sup>10</sup> See the memorandum of counsel for Wai 3382 of 2 March 2026 at [19].

- 8.4 Seek to cross-examine an unspecified Commission witness, without the Commission (or Crown) having had the opportunity to consider or respond to the legal arguments and factual allegations made.
9. While the Commission hopes this was not the case, it is difficult to escape the conclusion that the filing of the claim and factual allegations about the Commission were planned some time in advance. The Commission should not have been approached and asked to provide evidence (and a witness who would be cross-examined), without the allegations and amended claim having been disclosed. The natural justice implications of that course and for the Tribunal's processes are obvious.<sup>11</sup> Parties must know any case against them and have adequate opportunity to prepare a response.<sup>12</sup>

### **No jurisdiction to hear the new claim**

10. The Commission does not accept that the Tribunal has jurisdiction to inquire into the newly made Wai 3382 claim made against the Commission.
11. If the Tribunal were to entertain the claim, the Commission seeks the fair opportunity to make full submissions on the extent to which the Tribunal has jurisdiction.
12. Bearing in mind that the position was first advanced in documents file on 2 March 2026, the Commission has not yet had time to consider its position fully. Counsel make the following initial submissions in response:
- 12.1 The Commission is established under Part 1A of the Climate Change Response Act 2002. It is an independent Crown entity under the Crown Entities Act 2004.<sup>13</sup> It is an expert independent advisory and monitoring body – its purposes are:<sup>14</sup>

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<sup>11</sup> See Commissions of Inquiry Act 1908, s 4A; Waitangi Tribunal *Guide to Practice and Procedure of the Waitangi Tribunal* (August 2023) at [3.67]; New Zealand Bill of Rights Act 1990, s 27; and *Joseph on Constitutional and Administrative Law*, Chapter 25 at [25.4] Audi alteram partem.

<sup>12</sup> *Joseph on Constitutional and Administrative Law*, Chapter 25 at [25.4] Audi alteram partem.

<sup>13</sup> CCRA, s 5C(1); and Crown Entities Act 2004, s 7 and sch 1.

<sup>14</sup> CCRA, s 5B. Also see its functions set out in s 5J.

- (a) 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
- (b) to monitor and review the Government's progress towards its emissions reduction and adaptation goals.

12.2 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:<sup>15</sup>

**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).

12.3 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.<sup>16</sup>

12.4 Members of the Commission are not appointed directly by the Minister of Climate Change. They are appointed on the recommendation of an

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<sup>15</sup> CCRA, s 5O; and *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2022] NZHC 3064 at [44].

<sup>16</sup> CCRA, s 5H.

expert committee, and the Minister is obliged to assess their expertise against statutory criteria.<sup>17</sup>

12.5 The courts have recognised the Commission’s independence from the Crown and expertise in recent litigation.<sup>18</sup>

12.6 In establishing the Commission as an independent and expert body and Crown entity, Parliament intended that certain functions should be carried out at “arm’s length” from ministers.<sup>19</sup>

13. Counsel for Wai 3382 mischaracterise paragraph [53] of the Court of Appeal’s statement in the *Lawyers for Climate Action* case as authority for the argument

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<sup>17</sup> 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.

<sup>18</sup> *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]]

<sup>19</sup> See Climate Change Response (Zero Carbon) Amendment Bill 2019 (136-1), Explanatory Note:

An independent Crown entity is considered to be the most appropriate body to achieve the political accountability required for mitigating and adapting to climate change. An Officer of Parliament and an autonomous Crown entity were considered but would be limited in providing for this.

Further consideration was not given to options where—

the membership of the Commission consisted of stakeholder representatives, as this was considered to jeopardise the ability of the Commission to provide independent advice:

...

the functions proposed for the Commission are performed as a statutory independent function in a government department, as this would not provide for an independent body.

...

In terms of who prepares the national climate change risk assessment, several potential responsible bodies were considered, including other central and local government agencies. However, the Commission is best placed to carry out this function, as it is important that the national climate change risk assessment is understood to be based on the best available evidence and independent of the politics of the day.

that “acts done by the Commission are acts done by the Crown”.<sup>20</sup> The full passage in fact emphasises the Commission’s independence from the Crown:<sup>21</sup>

[53] The Act provides for the Commission to be equipped with the necessary specialist expertise to be able to carry out its various obligations, which are onerous, highly challenging, and critically important.<sup>77</sup> *The Act ensures the Commission’s independence*, another feature of singular importance in furthering the Act’s objectives by holding successive governments to account. *Section 50(1) expressly requires the Commission to act independently* in performing its functions and duties, and in exercising its powers under the Act. The central role of the Commission in the statutory scheme established for managing New Zealand’s response to the existential risk to humanity of climate change cannot be overemphasised.

[Emphasis added].

14. While the Commission’s advice “affects the powers and duties of the Minister”, the converse is not true.<sup>22</sup> The Minister lacks any relevant control over the Commission.

#### **Other matters**

15. It appears that the Wai 3382 claimants have not yet sought urgency or priority for the new claim to be heard by the Wai 3325 inquiry panel. There is a process for that to occur and criteria to meet.<sup>23</sup>
16. The Commission is not a party to this inquiry, does not seek to become a party, and does not seek the opportunity to file evidence.
17. The Commission nevertheless remains open to assisting the Tribunal in this inquiry. If the Tribunal does seek assistance from the Commission, counsel requests that Tribunal staff liaise with counsel for the Commission.

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<sup>20</sup> Wai 3382 Memorandum at [13].

<sup>21</sup> *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2025] NZCA 80 at [53].

<sup>22</sup> *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2025] NZCA 80 at [54].

<sup>23</sup> See the *Guide to the Practice and Procedure of the Waitangi Tribunal* at [3.15]-[3.17] and [3.27]-[3.30] and *Te Tukunga Taihoro* (An Expedited Urgent Inquiry Process, August 2025) at [6] and [10].

18. Counsel for the Commission would be available to appear at any judicial conference convened to discuss this matter.

**DATED** at Wellington this 9<sup>th</sup> day of March 2026

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

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**A K Irwin | S J Leslie | J E Judge**

Counsel for He Pou a Rangi Climate Change Commission