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Submission to Justice Select Committee

Principles of the Treaty of Waitangi Bill

From:

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Introduction

1. Te Tira Whakamātaki is a Māori environmental not for profit and home to the Māori Biosecurity Network and hono: Māori Emergency Management Network.
2. We are committed to upholding the rights of Māori under Te Tiriti o Waitangi, protecting Aotearoa New Zealand's biodiversity, and advocating for Indigenous knowledge and practices in all environmental and social policy domains.
3. We strongly oppose the Principles of the Treaty of Waitangi Bill (the Bill) as it represents a direct threat to the rights, sovereignty, and partnership obligations guaranteed under Te Tiriti o Waitangi.
4. This Bill proposes a dangerous dilution of Te Tiriti o Waitangi by codifying in law "principles" that undermine the document's intent, marginalize tāngata whenua, and place limits on Māori self-determination.
5. This submission outlines our general and specific concerns with the Bill and provides recommendations for its withdrawal.
6. It should not be considered a full and comprehensive account of all of our concerns.
7. We wish to make an oral submission.

General Concerns

8. Te Tira Whakamatāki does not support the Treaty Principles Bill for the following reasons.
9. It is poorly conceived.
10. It is fundamentally flawed in its mischaracterisations of key elements such as human rights and, its failure to grasp basic 101 'what is a Treaty?' or comprehension of the existing laws that set out New Zealand's constitutional arrangements.
11. It is misleading. For those New Zealanders who are not aware that all NZ citizens are already entitled to equal enjoyment of the same fundamental human rights without discrimination, this Bill promotes the misconception that this is not currently the case, and that this is somehow due to Māori.
12. It fails to grasp the consequences of the Treaty of Waitangi's constitutional status and that rights assured to both the Crown and Māori as partners to the Treaty are commitments jointly agreed to, including the Crown's right to govern and the Crown's duty to "*ka wakarite ka wakaae ki nga Rangatira, ki nga Hapu, ki nga tangata katoa o Nu Tirani, te tino Rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa.*", that is, "to protect the chiefs and sub-tribes unqualified exercise of their chieftainship over their lands, villages and all their treasures."
13. It seeks to reduce Treaty rights to issues of race and fails to understand that the Treaty establishes a relationship between two sovereign peoples meaning one party does not get to redefine the relationship by itself.
14. It is a breach of The Treaty of Waitangi itself as articulated in the Waitangi Tribunal's report *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia*

– The Constitutional Kaupapa Inquiry Panel on The Crown’s Treaty Principles Bill and Treaty Clause Review Policies, 16 August 2024.

15. It purports to fix a hypothetical problem NZ is facing but directs the operative parts of the Bill to only one segment of the NZ population, namely Māori, and is therefore a racist approach to a complex constitutional and societal issue, lacking balance or transparency.
16. Is a distraction from the very real issues facing the country and New Zealanders and is a total waste of public funds.
17. This Bill is not a stand-alone action by this Coalition government in relation to Te Tiriti o Waitangi matters. It is part of a political agenda that is based on ideological dogma and sits alongside a number of other initiatives such as those listed in the Coalition government’s agreement 2023, including:
 - Removal of co-governance from the delivery of public services,
 - As a matter of urgency, issue a Cabinet Office circular to all central government organisations that it is the Government’s expectation that public services should be prioritised on the basis of need, not race, despite what evidence says,
 - Restore the right to local referendum on the establishment or ongoing use of Māori wards, including requiring a referendum on any wards established without referendum at the next Local Body elections,
 - Stop all work on He Puapua,
 - Confirm that the Coalition Government does not recognise the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as having any binding legal effect on New Zealand,
 - Amend section 58 of the Marine and Coastal Area Act to make clear Parliament’s original intent, in light of the judgment of the Court of Appeal in *Whakatohea Kotahitanga Waka (Edwards) & Ors v Te Kahui and Whakatohea Māori Trust Board & Ors* [2023] NZCA 504,
 - Amend the Waitangi Tribunal legislation to refocus the scope, purpose, and nature of its inquiries back to the original intent of that legislation,
 - Ensure all public service departments have their primary name in English, except for those specifically related to Māori,
 - Require the public service departments and Crown Entities to communicate primarily in English except those entities specifically related to Māori,
 - Abolish the Māori Health Authority, and
 - Conduct a comprehensive review of all legislation (except when it is related to, or substantive to, existing full and final Treaty settlements) that includes "The Principles of the Treaty of Waitangi" and replace all such references with specific words relating to the relevance and application of the Treaty, or repeal the references, including but not limited to the Environment Act 1986, Conservation Act 1987, Oranga Tamariki Act

1989, Smokefree Environments and Regulated Products Act 1990, Crown Minerals Act 1991, Resource Management Act 1991, Climate Change Response Act 2002, Local Government Act 2002, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, Education and Training Act 2020, Mental Health and Wellbeing Commission Act 2020, and the Data and Statistics Act 2022.

18. Together with recent policy decisions to remove references to, and requirements for, the inclusion of mātauranga Māori in science research, and disinvestment in the Social Sciences and Humanities, these accumulatively cause irreparable and disproportionate harm to the full expression of Māori cultural values and tikanga.

Summary of Concerns

19. **Breach of Partnership and Sovereignty:** The Bill diminishes the tino rangatiratanga of tāngata whenua by reducing Te Tiriti o Waitangi to abstract principles that are open to interpretation by the Crown. The Treaty is a living agreement between Māori and the Crown, not a set of negotiable principles that can be defined unilaterally.
20. **Ignores the Original Māori Text:** The Bill prioritises Crown-centric interpretations of Te Tiriti, ignoring the Māori text that emphasises sovereignty (tino rangatiratanga) and partnership. By doing so, it perpetuates historical injustices and deepens existing disparities.
21. **Erosion of Accountability:** Codifying vague ‘principles’ rather than upholding the clear guarantees of Te Tiriti reduces the Crown’s accountability. It allows government agencies to cherry-pick interpretations that suit their objectives, bypassing genuine obligations to tāngata whenua.
22. **Contrary to Māori Voices** Leading Māori thinkers and scholars have highlighted that this Bill further entrenches colonialism by reframing Te Tiriti in ways that serve the Crown while erasing Māori authority. Such a Bill cannot claim to advance fairness or partnership when it denies the foundational truths of Te Tiriti.

Principles of the Bill

23. For the reasons stated above it is difficult to comment on any of the components of the Bill, but we will make the following brief observations about each of the three principles outlined in Part 2, Section 6.

Principle 1 - *The Government of New Zealand has full power to govern, and Parliament has full power to make laws.*

24. It is the Treaty of Waitangi itself that provides the Crown with the right to govern. Subsequent international conventions and national law have reinforced the right to govern. The Treaty of Waitangi Tribunal has established however that the Crown’s right to govern is not an unfettered authority. *“It was – and remains – qualified by the promises solemnly made to Māori in the Treaty, the nation’s pre-eminent constitutional document. Like any constitutional promise, those made in the Treaty cannot be set aside without agreement, except after careful consideration and as a last resort. (Ko Aotearoa Tēnei, Wai 262 2007) The guarantee of rangatiratanga requires the Crown to acknowledge Māori control over their*

tikanga, and to manage their own affairs in a way that aligns with their customs and values.”
(Tu Mai Te Rangi Wai 2540 2017)

Principle 2: *The Crown recognises the rights that hapū and iwi had when they signed the Treaty/Te Tiriti. The Crown will respect and protect those rights. Those rights differ from the rights everyone has a reasonable expectation to enjoy only when they are specified in Treaty settlements.*

25. Simply put, it is not up to the Crown as one of two Treaty partners to unilaterally place a caveat on the realization of a Treaty right. As with any of the Treaties NZ is a party to, the government cannot unilaterally change the meaning or interpretation of the Treaty without the consent of the Treaty partner. Māori as a collective were not involved in the drafting of this Bill, have consistently rejected it and mounted the largest peaceful protest in New Zealand’s history of more than 100,000 people against it (Nov. 2024).

Principle 3: *Everyone is equal before the law and is entitled to the equal protection and equal benefit of the law without discrimination. Everyone is entitled to the equal enjoyment of the same fundamental human rights without discrimination.*

26. The Preamble of the International Covenants on Economic and Social Rights and Civil Political Rights (1966) states that in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom can only be achieved if conditions are created whereby everyone may enjoy their economic, social and cultural rights, as well as their civil and political rights. As such nine additional human rights treaties were developed to ensure the conditions required for all sectors of society to realise these same universal rights could be achieved. NZ played an important role in creating many of these treaties including chairing negotiations for the Convention on the Rights of Persons with Disabilities (2006) and is a party to seven of the nine treaties. That NZ is a party to these human rights treaties speaks to the understanding that to realise universal human rights of all citizens, requires special measures for those who are not yet experiencing equality of opportunities to fully participate in the political, economic, social and cultural life of NZ, particularly because of experiencing discrimination. This has been, and continues to be, the experience of Māori.

Other Concerns

27. **Impact on Current Legislation:** The Bill jeopardises existing statutory frameworks which embed Te Tiriti obligations. By introducing a narrower interpretation of Treaty principles, it risks rolling back progress made towards honouring Te Tiriti.

28. **Electoral Question:** The proposed referendum question, “Do you support the Principles of the Treaty of Waitangi Act 2024 coming into force?”, is misleading and invalid. The phrasing simplifies a complex and contentious issue, preventing voters from understanding the implications of the legislation. It falsely frames the principles as universally agreed upon when they are, in fact, highly contested. Such a question cannot adequately capture the nuanced perspectives required to make an informed decision. Te Tiriti o Waitangi is not a matter to be reduced to a referendum question but must be upheld as a constitutional cornerstone through proper partnership and consultation.

29. **The Regulatory Impact Statement (RIS) Challenges the Bill:** The RIS titled "Providing certainty on the Treaty principles," dated 28 August 2024, offers critical insights into the limitations of the Bill, specifically:
- a. *Inconsistency with Article 2 of Te Tiriti:* The RIS notes that the Bill's proposed principles do not accurately reflect Article 2, which affirms the continuing exercise of tino rangatiratanga. By restricting the rights of hapū and iwi to those specified in legislation or agreements with the Crown, the Bill implies that tino rangatiratanga is derived from kāwanatanga, thereby reducing Indigenous rights to a set of ordinary rights applicable to any group of citizens (page 2).
 - b. *Potential Undermining of Indigenous Rights:* The RIS expresses concern that the Bill's interpretation of Article 2 fails to recognise the collective rights held by iwi and hapū, as well as the distinct status of Māori as the indigenous people of Aotearoa New Zealand. This interpretation challenges the very purpose of the Treaty and its role within New Zealand's constitutional framework (page 2).
 - c. *Quality Assurance Assessment:* The RIS underwent a quality assurance review by a panel from the Ministry for Regulation and the Ministry of Justice, which concluded that the RIS "does not meet" the Quality Assurance criteria. The panel highlighted that ministerial direction and time constraints limited the range of options considered and the depth of analysis, particularly in testing assumptions, understanding consequences, and conducting thorough consultation (page 4).
 - d. *Lack of Comprehensive Consultation:* The RIS acknowledges that full consultation on a broader range of options is necessary for a complete analysis. Given the constitutional significance of the proposal and its impact on the Crown-Māori relationship, the panel expected comprehensive consultation with iwi and hapū (as the Crown's Treaty partner), constitutional experts, and the broader public to understand their perspectives (page 5).

Recommendations

30. Te Tira Whakamātaki therefore recommends that this Committee withdraw the Bill immediately noting that any legislation concerning Te Tiriti o Waitangi must be co-designed with Māori, grounded in the Māori text, and reflect the original guarantees of Te Tiriti.
- (1) **Return this Bill to the House**, without amendment and with the recommendation that it does not proceed any further, or form the basis of any future Crown work, laws, policies or practices.
 - (2) Seek agreement that Parliament **adopt the principle of non-regression** with regard to Treaty of Waitangi laws, policies and practices. Hard fought for gains in Treaty of Waitangi provisions, particularly those that have already gone through a full Select Committee process, should be respected and left to be fully implemented. We need to move forward as a country and stop the practice of using the Treaty and Māori as political fodder. Our country deserves better than this, and as evidenced in the 100,000 citizens who marched in the Toitū Te Tiriti Hikoī, many New Zealanders agree.

- (3) **Adopt mechanisms for monitoring and enforcing Te Tiriti obligations**, ensuring that the Crown's actions align with the spirit and intent of Te Tiriti and empowering Māori-led oversight of those obligations.

Conclusion

31. The Principles of the Treaty of Waitangi Bill represents a fundamental misunderstanding of Te Tiriti o Waitangi and its role in Aotearoa's legal and social framework. It threatens to undermine the rights, responsibilities, and relationships enshrined in Te Tiriti and risks perpetuating the systemic inequities faced by tangata whenua.
32. Te Tira Whakamātaki strongly opposes this Bill and urges the Justice Committee to recommend its withdrawal. In doing so, we call for a renewed commitment to genuine partnership, accountability, and the restoration of Māori sovereignty.
33. Please contact Melanie Mark-Shadbolt, mel@ttw.nz, if you wish to discuss this submission.

Ngā mihi,

Melanie Mark-Shadbolt

Tumu Whakarae, Chief Executive Officer

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