

06 January 2025

Justice Select Committee
Parliament Buildings
Wellington
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Tēnā koe

PREAMBLE:

He Whakaputanga o te Rangatiratanga o Niu Tirenī and Te Tiriti o Waitangi were some of the enabling frameworks, outside of Te Ao Māori, that our tupuna envisioned would support the development of our nationhood as Aotearoa New Zealand.

This submission is an ongoing part of that continuum to realise and reassert the aspirations of our tupuna to facilitate intergenerational equity whilst recognising and upholding the mana and mauri of He Whakaputanga and Te Tiriti o Waitangi.

Submission to the Justice Select Committee on the Principles of the Treaty of Waitangi Bill

1. This response is made on behalf of Te Kahu o Taonui (Te Tai Tokerau Iwi Chairs Forum).
2. Te Kahu o Taonui was established in 2006/07 and is now a collective of Authorities in Te Tai Tokerau namely Ngāti Kuri Trust Board, Te Rūnanga Nui o Te Aupōuri, Te Rūnanga o Te Rarawa, Te Rūnanga o Ngāi Takoto, Te Iwi o Ngāti Kahurangi Trust, Kahukuraariki Trust / Ngātikahurangi Whangaroa, Te Rūnanga o Whangaroa, Te Rūnanga-Ā-Iwi-Ō Ngāpuhi, Te Rūnanga o Ngāti Hine, Ngātiwai Trust Board, Te Iwi o Te Roroa and Te Rūnanga o Ngāti Whātua.
3. The aim of Te Kahu o Taonui is to advance the collective aspirations of Te Tai Tokerau iwi and hapū. *“Me mahi tahi tātou mā te iwi te take”*.

Principles of the Treaty of Waitangi Bill

POSITION:

4. Te Kahu o Taonui is **fundamentally and strongly opposed** to the Principles of the Treaty of Waitangi Bill (the Bill), specifically as it:
 - Reduces the constitutional status of Te Tiriti o Waitangi.
 - Removes its effect in law as currently recognised in Treaty clauses.
 - Limits our rights and the Crown obligations.
 - Hinders our access to justice.



TE KAHU O TAONUI

Me mahi tahi tātou mā te iwi te take

- Impacts on our existing and future Treaty settlements.
 - Undermines social cohesion and will be prejudicial to us bearing in mind that our tupuna sought to maintain a high degree of autonomy for our hapū and iwi by not ceding our sovereignty whilst granting a more limited form of authority to the Crown.
5. Considered as a whole, the new principles are not consistent with the texts, meaning, or principles of te Tiriti / the Treaty. They discriminate against us as Māori, and they nullify our rights that were guaranteed in 1840.
6. We trust the Select Committee will carefully reflect on our submission and recommend that the Principles of the Treaty of Waitangi Bill not be referred to a second reading.

STATEMENT OF KEY MATTERS OF CONCERN:

Te Tiriti o Waitangi / Treaty of Waitangi

7. The Crown has an obligation to make decisions in a way that is consistent with Aotearoa New Zealand's founding document, Te Tiriti o Waitangi / the Treaty of Waitangi.
8. The existing "Treaty Principles" have been developed and applied by the Courts over the past 50 years. They now shape the way in which the Crown delivers on its obligations to us as Māori. The main principles include partnership, active protection, equity and redress. The Treaty principles are designed to reflect the spirit and intent of the Treaty as a whole and the mutual obligations and responsibilities of the parties and are represented in various pieces of statute.
9. The National led coalition government's Treaty Principles Bill seeks to redefine in law the meaning of te Tiriti / the Treaty, by replacing the existing "Treaty Principles" with new Treaty Principles which are said to reflect the three articles of te Tiriti. However, there is no relativity to the three articles and this Bill seeks to rewrite the Treaty itself and redefine the principles that will seek to extinguish our rights.
10. The Bill will unilaterally subvert the meaning of te Tiriti / the Treaty and its effect in law. In brief:

Principle 1:

- Misinterprets the kāwanatanga / governance granted to the Crown in 1840. Principle 1 is a new principle that bears no relation to article 1, overstates the kāwanatanga of the Crown, and ignores the two spheres of Crown and Māori authority that te Tiriti / the Treaty established, where overlaps must be resolved by good faith co-operation between the partners.

Principle 2:

- Does not reflect the text or meaning of article 2 and seeks to retrospectively limit our rights to those that existed in 1840.
- It also seeks to erase the Crown's article 2 promises and guarantees to us of our tino rangatiratanga (chieftainship/self-determination/political authority in relation to our

communities, lands, and other taonga) that was provided for in exchange for our agreement to the establishment of a limited Crown kāwanatanga/governance.

- Principle 2 states that if those rights “differ from the rights of everyone”, then they are only recognised to the extent that they are agreed to via historical Treaty settlements with the Crown.
- Treaty settlements recognise, confirm and acknowledge that the Crown has breached te Tiriti / the Treaty and its principles which caused significant prejudice to our hapū and iwi, whereby *“the cumulative impact of Crown actions and omissions left many [hapū] without sufficient and suitable land for their needs. The iwi have lacked opportunities for economic, social, and cultural development, and those who remained in their rohe now live in one of the most deprived areas in New Zealand.”*¹
- Treaty settlements do not codify the rights that te Tiriti / the Treaty was supposed to protect, and just seeking to recognise our rights only when incorporated into Treaty settlements also attempts to exclude our access to the Courts limiting the ability for us to protect our indigenous rights.
- We agree with the Waitangi Tribunals findings that the justification given for Principle 2 was unfounded as people in a liberal democracy can and do have different rights. Recognising the distinct status and rights of indigenous peoples is not anti- democratic, as the examples of Canada and the United States have shown.
- We also agree that Principle 2 is unfair, discriminatory, and breaches the principles of tino rangatiratanga, kāwanatanga, partnership, and active protection.

Principle 3:

- Bears no resemblance at all to the texts and meaning of article 3 for the following reasons:
- The Crown’s solemn promises in article 3 were made to us as Māori, not ‘everyone’, in recognition of our agreement to the Crown’s kāwanatanga / governance to manage their subjects (and pre-emptive rights).
- The right to equality, while important, was only one of the rights that the Crown promised to us as the rights and privileges of British subjects.
- The Queen’s protection, from which the principle of active protection is partly derived, has been left out of Principle 3. Also, we face barriers to equality that others do not, and many of those barriers were of the Crown’s making. This means that equitable treatment is required to ensure outcomes that are more equal. Equality without equitable treatment does not capture the promises made in article 3 or the meaning of te Tiriti / the Treaty as a whole.
- We agree with the Waitangi Tribunal that it is not necessary to rewrite article 1 to protect the values of a liberal democracy or the rights of non-Māori citizens in Aotearoa New Zealand. The power balance is already weighted far more heavily in favour of the Crown than for us in Aotearoa New Zealand’s political system.

¹ See s.8(11) Te Rarawa Claims Settlement Act 2015.

Te Tiriti o Waitangi Settlements²

11. Within Te Tai Tokerau seven of our iwi members have negotiated Treaty Settlements with the Crown whereby a range of formal and informal arrangements have been negotiated in response to the Crown's Treaty breaches.
12. In response to the proposed Bill, and even though Crown officials were advocating for consultation and engagement with their Treaty partners, no consideration was given with no consultation and/or engagement occurring with our Treaty Settlement Entities.
13. The Bill is proposing that existing Treaty settlements would be exempt from the new principles. Nevertheless, there would be uncertainty about how the new principles apply to settlement redress mechanisms, and our settled iwi would also be prejudiced by the many statutory regimes outside the ambit of their settlements.
14. Current or future settlement negotiations would also be impacted if breaches of the new principles formed the basis of settlement. That would severely impact the ability to settle and obtain fair redress.
15. The emphasis on Treaty settlements as the main vehicle for rights recognition under these principles could prejudice the particular rights or interests of our hapū, given the Crown's tendency to settle with iwi. It would also prejudice settled groups as settlements do not codify all the rights that we had at 1840.

Breaches to Te Tiriti o Waitangi / the Treaty of Waitangi

16. In progressing the Bills policy and contents, this National led coalition government has not consulted nor engaged with its Treaty partner at all. It has also failed to implement Government guidelines and practice to engage with us and, as such, has knowingly and intentionally breached the principle of partnership.
17. This process to disempower us and to unilaterally rewrite the Treaty Principles breaches the principle of tino rangatiratanga which fundamentally impacts on the Crown's good faith obligations and its duty to actively protect our rights and interests.
18. The Crown would have no duty to actively protect taonga if those taonga are not already recognised and protected in legislation or an agreement. The new Treaty principles would not justify any protection of taonga, especially taonga outside of our ownership, and we would be significantly prejudiced.

Aotearoa New Zealand's Constitutional Arrangements

19. In 2011 a Constitutional Advisory Panel was tasked with engaging with New Zealanders in developing a conversation about our constitution which reflected our unique history, people and circumstances with many people expressing a desire for a range of constitutional changes to reflect this uniqueness.

Common themes woven through the topics of conversation included:

- A sense of belonging

² See [Quarterly-report-to-31-Mar-2024.pdf \(tearawhiti.govt.nz\)](https://www.tearawhiti.govt.nz/quarterly-report-to-31-Mar-2024.pdf)

- Fairness and justice
- Representation and participation; and
- Checks and balances on power.

The Panels key recommendations to the National led Government were to:

- Continue the conversation about our constitutional arrangements
 - Develop a national strategy for civics and citizenship education in schools and in the community, including the unique role of the Treaty of Waitangi, te Tiriti o Waitangi, and assign responsibility for the implementation of the strategy which could include:
 - The co-ordination of education activities
 - Resource development, including resources for Māori medium schools; and
 - Professional development for teachers and the media.³
20. Similarly, Matike Mai Aotearoa, an Independent Māori Working Group, was also considering how might He Whakaputanga o te Rangatiratanga o Niu Tirenī and Te Tiriti o Waitangi (and other indigenous human rights instruments) support a constitutional transformation here in Aotearoa New Zealand.
21. In relation to the Constitutional Advisory Panels recommendations this National led coalition government has increasingly and systematically scaled back resources that would facilitate a positive debate. Bearing in mind that education is pivotal especially as a recent survey conducted for Te Kahui Tika Tāngata Human Rights Commission identified that only 58% of adult New Zealanders believe that they are informed about te Tiriti / the Treaty and 32% say that they are uninformed and have not read any version or summary of te Tiriti / the Treaty.
22. A national conversation will be more successful and enduring if this conversation is conducted with honesty and integrity and in a Treaty compliant way.

Select Committee Hearings Process

23. Utilising the Select Committee hearings process to consider the Bills objectives of:
- Promoting a national conversation about the place of the principles in our constitutional arrangements; and
 - Creating a more robust and widely understood conception of New Zealand's constitutional arrangements, and each person's rights within them; and
 - Building consensus about the Treaty/te Tiriti and our constitutional arrangements that will promote greater legitimacy and social cohesion.⁴

Is fundamentally flawed on a number of levels and impacts Māori more so when one considers that:

³ See New Zealand's Constitution – A Report on a Conversation, He Kōtuinga Kōrero mā Te Kaupapa Ture o Aotearoa.

⁴ See Ministry of Justice Departmental Disclosure Statement on the Principles of Treaty of Waitangi Bill.pp3

- It should not be a substitute for engagement between Treaty partners especially as the Crown has unilaterally determined what the revised Treaty principles are and as such the Crown is perpetuating false narratives that Māori enjoy undue advantages despite all the evidence of structural disadvantages.
- It will not provide for a healthy constitutional, balanced, educational debate and worryingly could provide further opportunities for the ill-informed venting of racism, ignorance and anti-Māori sentiments, which is supported by well-funded misinformation campaigns.

But more so because the Ministry of Justices' Regulatory Impact Statement clearly identified that the proposed Bill will not address broader questions about how te Tiriti / the Treaty shapes our constitutional arrangements.

And that maintaining *"the status quo preserves space for future engagement with iwi and hapū as the Crown's Treaty partner about our constitutional arrangements in a process that prioritises public engagement, social cohesion, transparency, and the legitimacy of the outcome."*⁵

24. Cabinet was made fully aware of the Crowns te Tiriti / Treaty obligations and potential impacts but has chosen to ignore these obligations as well as the independent, non-partisan advice provided by their officials.

CONCLUSION:

25. The Bill proposes new principles which are very different from what our tupuna agreed to in te Tiriti / the Treaty, therefore we fundamentally oppose the Treaty Principles Bill.
26. Crown officials have specifically identified that:
*"The Treaty/te Tiriti was an exchange of promises between sovereign peoples, with rights and obligations for each party. The Crown gained the authority to govern in Aotearoa New Zealand and guaranteed the tino rangatiratanga of Māori in return. The Crown promised to protect Māori rights to their lands and other possessions and matters of particular significance to them. Māori were also extended the same rights and privileges as British citizens."*⁶

And the Bills *"... policy proposal is inconsistent with the Treaty/te Tiriti. It does not accurately reflect Article 2, which affirms the continuing exercise of tino rangatiratanga. Restricting the rights of hapū and iwi to those specified in legislation, or agreement with the Crown, implies that tino rangatiratanga is derived from kāwanatanga. It reduces indigenous rights to a set of ordinary rights that could be exercised by any group of citizens."*⁷

⁵ See Ministry of Justice Regulatory Impact Statement: Providing certainty on the Treaty Principles.pp3

⁶ See Ministry of Justice Regulatory Impact Statement: Providing certainty on the Treaty Principles.pp6

⁷ See Ministry of Justice Regulatory Impact Statement: Providing certainty on the Treaty Principles.pp2

And that “the rights of hapū and iwi Māori reflect the distinct status of Māori as the indigenous people of Aotearoa New Zealand and are not individual rights based on race. That self-determination applies beyond the protection of property rights.”

27. Given the above the Treaty Principles Bill is a solution to a problem that does not exist, and its political motivations are a ‘novel’ interpretation that perpetuates false narratives on our perceived ‘Māori privilege’ without any consideration of the Crown’s constitutional and te Tiriti / Treaty obligations to Māori.
28. Additionally, the equality of all New Zealanders is already protected in the applicable common law, statutes, and international law, and it is not necessary to restate that equality in the Treaty principles.
29. The National led coalition government has ignored officials advice on the potential negative implications of this Bill and have chosen instead to service its coalition agreement rather than supporting their Treaty partner to eliminate racist overtures impacting on our social cohesion. In short, our National led coalition government is responsible for the Bills progression and the resulting prejudice being caused to Māori.

On a separate, yet interrelated issue, Te Kahu o Taonui is also deeply concerned on the National led coalition government’s stance and direction especially in lieu of the wider wellbeing landscape for Māori where government has:

- Disestablished Te Aka Whai Ora / Māori Health Authority
- Minimised the use of Te Reo Māori in the public service
- Changed Smokefree legislation
- Treaty Principles were not considered within the Fast-track Approvals Bill
- The repealing of s.7AA of the Oranga Tamariki Act, Te Mana o Te Wai obligations and Māori Wards; and
- The Treaty Clause Review.

From Te Kahu o Taonui’s perspective the above amounts to fundamental and prejudicial breaches in the te Tiriti / the Treaty partnership which is distressing, debilitating, untenable and lacks integrity. This is an ongoing and a deliberate strategy to abrogate Māori rights via a political rhetoric seeking to ‘strengthen democracy’⁸ and provide for ‘equal citizenship’.⁹

Also, utilising the Select Committee as a default mechanism to engage and consult directly with the Treaty partner, and Treaty Settlement partners, further exacerbates our aggrieved position and reinforces our claim of prejudice.

Please note that Te Kahu o Taonui seeks to make an oral submission and wishes to be heard on the Principles of the Treaty of Waitangi Bill.

⁸ See New Zealand National Party & ACT New Zealand Coalition Agreement.pp9

⁹ See New Zealand National Party & New Zealand First Coalition Agreement.pp10



TE KAHU O TAONU

Me mahi tahi tātou mā te iwi te take

Please also note that this request does not usurp the mana of our respective Authorities to engage directly with the Select Committee should they so wish.

Signed:

Dated: 06 January 2025

Harry Burkhardt
Co-Chairperson
Te Kahu o Taonui

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Te Kahu o Taonui

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