



Principles of the Treaty of Waitangi Bill

SUBMISSION

To: Justice Select Committee
From: Te Tāwharau o Te Whakatōhea
Dated: 7 January 2025

Introduction

Te Tāwharau o Te Whakatōhea (Te Tāwharau), as the representative body of the Whakatōhea iwi, respectfully submits our opposition to the Principles of the Treaty Principles Bill. This Bill, in its current form, does not align with the intent of the Treaty of Waitangi, nor does it uphold the fundamental principles of partnership, protection, and participation that are central to the relationship between the Crown and tangata Māori. We believe this Bill undermines the spirit and letter of the Treaty, and fails to sufficiently engage with iwi and tangata Māori communities, and risks perpetuating historical injustices rather than advancing the rights and interests of tangata Māori.

This submission has been presented on behalf of Te Tāwharau Te Tāwharau and supports the submission presented by Te Kāhui Tika Tangata – Human Rights Commission.¹ Te Tāwharau opposes the proposed Treaty Principles Bill on the grounds that it is attempting to change the intent and spirit of the principles which will have a direct impact on the Articles of the Treaty and sever the enduring relationship between the Crown (government) and tangata Māori.

Article 1 of Te Tiriti extended kāwanatanga rights to the Crown, granting the Crown the authority to reside in Aotearoa and govern its peoples under its own laws, subject to the pre-existing Tino rangatiratanga of Tangata Māori (absolute authority, including self-determination). Tino rangatiratanga stems from inherent rights and whakapapa connections to land and the natural environment, and thus calls for Tangata Māori to manaaki (care for) and tiaki (protect) whānau, hapū, iwi and communities.

Article 2 of Te Tiriti reaffirmed that Tangata Māori continue to have the right to undisrupted tino rangatiratanga, including autonomy and authority in relation to their territorial rights; their homes, lands, seas, systems, and all things they valued as taonga.

Article 3 of Te Tiriti ensured Tangata Māori were able to participate as equals in society without discrimination and required active protection of Tangata Māori interests. The oral statement known as article 4 affirmed ongoing rights to tangata Māori custom and religious freedom.

¹ Te Kāhui Tikanga Tangata – *Human Rights Commission Submission*.

Te Tiriti is not a treaty of cession. The Waitangi Tribunal,² in its *Te Paparahi o te Raki 2014* report, affirmed the long-standing position of many tangata Māori and the Rangatira that signed Te Tiriti in 1840 who did not cede their sovereignty to Britain. That is, Rangatira and their hapū (and iwi) did not cede their authority to make and enforce law over their people or their territories³.

It is clear from the text of Te Tiriti that it was envisioned that the two systems of authority would operate in unison simultaneously. Both partners to Te Tiriti understood that Tangata Māori remained the sovereign authority and maintained their tino rangatiratanga to govern and enforce their own tikanga (including laws) within Aotearoa.

Te Tāwharau Position

- 1. Contradicts the Founding Principles of the Treaty of Waitangi:** The Principles of the Treaty of Waitangi have been interpreted and refined over time through the Courts and Treaty settlements. These principles are grounded in the concepts of partnership, protection of taonga, and active tangata Māori participation in decision-making. The Bill, as it stands, does not adequately reflect these core values. It risks diminishing the Crown's obligations under the Treaty and reduces the Treaty to a set of abstract principles rather than living commitments that must be actively honoured.
- 2. Lack of Meaningful Consultation with Iwi:** The process through which this Bill has been drafted fails to meaningfully involve iwi and tangata Māori communities. We believe that the Crown must engage in true partnership with iwi, ensuring that tangata Māori voices are heard in any legislative process that affects us. The Whakatōhea iwi has not been consulted in any meaningful way regarding this Bill, nor has there been a proper platform for iwi to contribute to the shaping of such important legislation.
- 3. Failure to Uphold Māori Sovereignty:** Tangata Māori sovereignty is a crucial issue in the context of the Treaty. The Bill, by reducing the Treaty's principles to a statutory framework, risks marginalising tangata Māori self-determination and the aspirations of iwi to have greater control over their whenua, resources, and future. The right to exercise tino rangatiratanga (sovereignty) is a fundamental aspect of the Treaty relationship, and this Bill does not sufficiently protect or promote that right.
- 4. Risk of Fragmentation of Māori Rights:** The Bill, by focusing solely on abstract principles, does not provide a comprehensive framework for addressing the specific and varied needs of iwi and hapū across Aotearoa. It lacks the flexibility to adapt to the diverse needs and aspirations of tangata Māori communities and risks the fragmentation of tangata Māori rights and entitlements as they vary from region to region and iwi to iwi, and varied needs of iwi and hapū across Aotearoa.
- 5. Weakens the Accountability of the Crown:** By codifying the Treaty principles in a narrow and vague way, the Bill undermines the Crown's responsibility to meet its Treaty obligations in a comprehensive and substantive manner. The Treaty is a living document, and its principles should not be reduced to a checklist or a set of abstract guidelines. The Bill, in its current form,

² Waitangi Tribunal – *Te Te Paparahi o te Raki 2014*

³ Waitangi Tribunal - *He Whakaputanga me te Tiriti: the Declaration and the Treaty*

weakens the Crown's accountability to tangata Māori and diminishes the Treaty's capacity to be a transformative instrument for justice.

6. **Legislation:** The Government has unilaterally developed legislation that directly and significantly affects tangata Māori, undermining the obligations that were jointly agreed, without meaningfully engaging with them, and in the face of strong opposition being voiced by tangata Māori communities.
7. **The interpretation of Te Tiriti:** being advanced is flawed and ignores critical issues of historical context, language, and treaty interpretation, and the substantial body of jurisprudence that has been developed over decades by the courts and the Waitangi Tribunal. It also ignores the Tribunal's direct findings and clear advice, that it will breach multiple Tiriti obligations, amount to "the worst, most comprehensive breach of the Te Tiriti in modern times, and if not repealed could mean the end of the TeTiriti".
8. Furthermore, the Bill's selective focus on some rights, while actively overriding others, most particularly the rights of Indigenous peoples that are fundamental to Te Tiriti, is an unhelpful and erroneous approach to human rights. This approach will undermine human rights, rather than advance them.
9. Even if the Bill does not proceed beyond Select Committee to become law, progressing a Bill that is based on and promotes flawed interpretations and information, will not help to advance a constructive national conversation on these important issues, but rather is likely to foster misinformation, anti-Māori rhetoric and risks undermining the rights of tangata Māori and Te Tiriti itself. A referendum would be similarly, if not more, divisive.
10. Proceeding in this manner contravenes international human rights standards, as set out most comprehensively in the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) and elaborated on in other international human rights instruments.
11. In proceeding with the Bill, the Government is unduly prioritising agreements between political parties over respecting, protecting, and upholding its obligations contained in Te Tiriti and New Zealand's human rights commitments.

RECOMMENDATIONS

Te Tāwharau urges the Select Committee to recommend the following:

1. **Incorporate tangata Māori Consultation and Partnership in the Process:** Halt the Bill immediately, and show respect to the mana, dignity, and rights of Te Tiriti and the rights of indigenous people by continuing a constructive, respectful, and informed national discussion which should include robust, iwi-driven consultation processes that ensure tangata Māori communities have a meaningful role in this conversation. This will allow the Bill to reflect the actual needs, aspirations, and values of tangata Māori, rather than imposing a top-down framework.

2. **Take action:** That the government take active steps to correct false and misleading interpretations that the Bill presents, and disseminate information that supports initiatives to raise awareness and understanding of the *Waitangi Tribunal Ngā Mātāpono findings*⁴.
3. **Implementation:** That the government take active steps to implement the Waitangi Tribunal's Ngā Mātāpono recommendations and halt any review of the Tribunal that is not aimed at strengthening and better resourcing the Tribunal, as per recommendations made to New Zealand by the United Nations Committee on the Elimination of Racial Discrimination (CERD) and Committee on Economic, Social and Cultural Rights (CESCR) Committees and the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).
4. **Collaboration with:** Implementation of the repeated recommendations made to New Zealand by the CERD, CESCR, and the UN Expert EMRIP, and the UN Human Rights Council's Universal Periodic Review (UPR) recommendations, to progress constitutional conversations in partnership with tangata Māori, hapū and iwi, through an inclusive process which is:
 - a. informed by the reports of the Constitutional Advisory Panel and Matike Mai Aotearoa.
 - b. underpinned by a robust public education programme; and
 - c. aimed at strengthening constitutional protections for Te Tiriti and human rights.
5. **National action plan:** Implementation of recommendations made to New Zealand through the UPR, to resume work on a national action plan for the Declaration in partnership with tangata Māori, iwi and hapū.

Conclusion:

Te Tāwharau o Te Whakatōhea submits that the Principles of the Treaty Principles Bill, in its current form, does not adequately uphold the aspirations and rights of tangata Māori. It risks undermining the Treaty relationship, weakening the Crown's accountability, and failing to recognise the diverse needs of tangata Māori, iwi and hapū as the indigenous people of Aotearoa. We respectfully urge the Committee to reconsider the Bill, halt, amend and include greater tangata Māori, hapū and iwi consultation, stronger protections for tangata Māori sovereignty, and more effective mechanisms for Crown accountabilities.

We wish to speak to our submission.

Nāku iti noa, nā

Te Tāwharau o Te Whakatōhea
Arihia Tuoro
Chair

Dickie Farrar
Chief Executive

⁴ Waitangi Tribunal: *Ngā Mātāpono – The Principles: Part II of the Interim Report of the Tomokia Ngā Tatau o Matangireia*.