



James Meager

Chairperson

### **Justice Select Committee**

Parliament Buildings

Wellington

16 December 2024

## **Submission on the Treaty Principles Bill**

### **1. Summary**

The Waikato Wellbeing Project (WWP) opposes the Treaty Principles Bill (*Government Bill 94-1*) as it undermines the foundational elements of Te Tiriti o Waitangi |Treaty of Waitangi and the established interpretative principles that have guided its application in modern governance. The Bill conflates universal human rights guaranteed under the Constitution Act 1986 and/or the Bill of Rights Act 1990 with specific rights afforded to Māori under the Te Tiriti o Waitangi |Treaty of Waitangi, creating unnecessary division and confusion.

The Bill creates an interpretation of Te Tiriti o Waitangi |Treaty of Waitangi which sews the seeds of division- exactly the opposite of what the Bill's architect says is intended. The Bill cannot be remedied through further amendment. Furthermore, its ongoing existence creates unnecessary social unrest and division.

#### **We request that:**

The Justice Select Committee withdraws the Treaty Principles Bill from the legislative schedule.

### **2. About Us**

The WWP ([www.waikatowellbeingproject.co.nz](http://www.waikatowellbeingproject.co.nz)) is a regional initiative to achieve a more environmentally sustainable, prosperous and inclusive Waikato region by 2030 and beyond. Consistent with our mission we listen deeply to better understand the wellbeing of our people, communities and environment, so that we can build greater insight and facilitate breakthroughs. We integrate multiple sources of wisdom- developing, accessing, sense making and sharing knowledge.

Our vision is that *“our mokopuna are thriving”* and our mission is *“To hear our people and transcend their future through positive impact.”*

### **3. General Reasons for Opposition**

The Bill attempts to define (or redefine) the principles of Te Tiriti o Waitangi | Treaty of Waitangi. The key issues for the Bill's architects appear to be (a) which Treaty? (b) which principles? and (c) who decides?

The justification for the bill is given as the need for a national conversation about the constitutional role of Te Tiriti o Waitangi |Treaty of Waitangi and its principles in modern day New

Zealand. That discussion has been happening for at least the last 50 years. The general arc of those discussions has been towards greater unity, reconciliation and wellbeing. The Bill appears to want to change direction and hasten the conclusion of that discussion through statute.

Further reasonable civic discussion is unlikely when a preferred outcome is offered up as drafted law. Statute should also not be used as a trojan horse for concerns about judicial overreach and the machinery of government.

If there was a genuine intent to discuss the Treaty principles and their role, several non-legislative steps could have been taken:

- i. Starting the discussion with an open mind
- ii. Beginning any Treaty discussion with the Treaty partner first
- iii. Referencing the known principles of the Treaty, instead of *argumentum ad ignorantiam* – an appeal to ignorance (“nobody knows what the principles are”).
- iv. Supporting New Zealanders to have a foundational understanding of the background and basis for the Treaty and its principles (both matters agreed and contested), so the conversation was informed.
- v. Given the absence of any steps towards (i)-(iv), not proposing a referendum.

#### 4. Specifically:

##### a) **Which Treaty? - The Māori Version of the Treaty Holds Greater Weight and Guaranteed Sovereignty**

The doctrine of *contra proferentem*, whereby ambiguities in contracts are resolved against the drafter, places primacy on the Māori text of Te Tiriti o Waitangi |Treaty of Waitangi. This text assured Māori *tino rangatiratanga* (chieftainship or sovereignty) over their lands, assets, and taonga (treasures). As Sir Hugh Kawharu emphasized, the Māori version did not cede sovereignty but instead were promised protection and partnership under British governance. The rights affirmed in Te Tiriti o Waitangi |Treaty of Waitangi predate its signing and continue to exist.

The Bill attempts to redefine *tino rangatiratanga* as a universal human right of self-determination, which is a disingenuous attempt to both reduce the mana of Māori sovereignty as it was guaranteed under Te Tiriti o Waitangi |Treaty of Waitangi and to also fugitate a libertarian perspective into New Zealand’s constitutional arrangements.

Sir Hugh Kawharu’s authoritative analysis of Te Tiriti o Waitangi |Treaty of Waitangi underscores that *tino rangatiratanga* was a reaffirmation of Māori sovereignty, not its relinquishment. The Crown’s role was framed as a partner providing governance (*kāwanatanga*) to maintain peace and order. The current bill disregards this nuanced understanding, risking an erosion of trust and constitutional integrity.

##### b) **Which Principles? - Partnership as a Treaty Principle is Essential**

The principles provide a framework for addressing legitimate historical grievances in a contemporary setting, while fostering collaboration between Māori and the Crown. Redefining these principles risks destabilizing this progress and undermining New Zealand’s constitutional foundation.

Given the assurances of Te Tiriti o Waitangi |Treaty of Waitangi, the principle of

partnership aligns with both legal precedent and the spirit of the Treaty. Redefining Treaty principles undermines Māori rights which are integral to a functioning bicultural nation-state. A partnership is not a concession but a constitutional obligation to honour agreements that are central to New Zealand's identity.

c) **Protection of Māori Rights as Distinct and Comparable**

The argument that the Treaty principles confer rights to only one group is incorrect and sets up a false straw man argument. The rights Māori hold under Te Tiriti o Waitangi |Treaty of Waitangi are not universal, but that is not in any way unique. Rights held by specific groups in other contexts are also not universal, such as exclusive property rights, which the Bill's architects strongly cherish.

This principle is consistent with liberal democracy, which protects group-specific rights where justified and guaranteed by contract and/or law. Acknowledging these rights does not diminish the universality of any of the individual rights in the Bill of Rights Act but ensures that Māori, as a Treaty partner, are treated equitably.

d) **Conflation of Universal and Treaty-Specific Rights**

The Treaty Principles Bill confuses universal rights, which are safeguarded for all New Zealanders under the Bill of Rights Act, with the specific obligations the Crown has toward Māori under Te Tiriti o Waitangi |Treaty of Waitangi. This misunderstanding risks diluting legitimate Māori rights while misrepresenting the intent of Te Tiriti o Waitangi |Treaty of Waitangi to the broader public.

Furthermore, the principles proposed, while aligning superficially with the Articles of the Treaty, are in effect a libertarian re-interpretation of Te Tiriti o Waitangi |Treaty of Waitangi (and the NZ Bill of Rights Act) which takes the meaning of the original documents and reframes them to suit an obvious political and ideological narrative.

Furthermore, Clause 7(2) of the Bill says that the existing clearly defined and well-established common-law principles of the Treaty of Waitangi "*must not be used to interpret an enactment*". This has the effect of extinguishing long-held property and other legal rights of a specific group of New Zealanders.

The narrative around the Bill attempts to set up a zero-sum argument where the existence of one set of rights for one group will always be at the expense of those of another. There is no evidence that this is the case when it comes to Māori: Crown relationships. There is also no evidence of such a result where Treaty settlements have returned taonga to Māori, or where Māori have had a greater say in decisions.

e) **The Bill is Unnecessarily Divisive**

The bill's approach risks reigniting historical grievances and undermining decades of reconciliation and partnership-building. These principles have served as a framework for addressing disparities without undermining broader societal cohesion. The proposed changes threaten this balance and appear politically motivated rather than constitutionally necessary.

f) **Who Decides? - Having Parliament Determine Treaty Principles is Risky**

Even if this Parliament were to codify a generally agreeable set of Treaty Principles, there would then be nothing to stop a future Parliament replacing them with others which adversely affected the legitimate interests of Māori, or any New Zealander.

If genuine uncertainty and confusion remains about the principles, Parliament or the executive should invite the Waitangi Tribunal to regularly advise on the principles, providing a reasonable and finite description of them for Parliament, and all New Zealanders.

## 5. A final word- the NZ Coat of Arms

The heart of this Bill is an attempt to reinterpret New Zealand's constitutional and societal contract as being between a sovereign government and individual citizens who are all equally enfranchised. The role of Māori becomes one of simply another group of citizens, with no more (or less) rights than anybody else. And certainly not partners in the New Zealand mission.

The counter to this is hiding in plain sight and is one of the most used symbols of our government- its Coat of Arms (Te Tohu Pakanga o Aotearoa). The Coat of Arms, originally developed in 1911 and refined in 1956, specifically depicts two characters – a pākeha wahine dressed in white (peace) holding the New Zealand flag and a Māori Tane/chief holding a huata, pointed away, also implying peace. Both are standing equally, with the Crown and the shield (representing New Zealand's resources) between. Their respective identities are clear, but they are joined by their common commitment to New Zealand.

It would be the height of irony were this Bill to ever become legislation with this image on its front page.



## Conclusion

The Treaty Principles Bill is unnecessary, divisive, and fundamentally misrepresents the obligations and intent of Te Tiriti o Waitangi |Treaty of Waitangi. Instead of fostering unity, it risks reigniting historical tensions and undermining decades of reconciliation efforts.

For these reasons, we strongly urge the Justice Select Committee to withdraw the Bill from the legislative process.

We do not wish to be herd in support of this submission.

A handwritten signature in black ink, consisting of a large, stylized 'H' followed by a long horizontal line.

**Harvey Brookes**

Executive Director

Waikato Wellbeing Project