



# Te Wai Māori

TE WAI MĀORI TRUST SUBMISSION ON THE TREATY  
PRINCIPLES BILL



Te Wai Māori



## Te Wai Māori Trust Submission on the Treaty Principles Bill

### Introduction

1. This document provides Te Wai Māori Trust's response to the Treaty Principles Bill.
2. Te Wai Māori Trust (Te Wai Māori) works on behalf of 58 mandated iwi organisations, who represent all iwi throughout Aotearoa. Notwithstanding that, this document is not intended to usurp or detract from any responses made independently by iwi or hapū or any other pathways iwi and hapū may pursue to affirm their rights.
3. The submission covers:
  - (a) an introduction to Te Wai Māori;
  - (b) our position [**strongly opposed**];
  - (c) some background to the Treaty Principles Bill;
  - (d) a statement of key matters of concern; and
  - (e) a recommendation to withdraw the Treaty Principles Bill.
4. In providing this feedback we are not expressing support for the Treaty Principles Bill or the policy intent behind it.
5. We do not wish to make an oral submission.

### Te Wai Māori Trust

6. Te Wai Māori is an independent Māori Trust established under the Māori Fisheries Act 2004 to advance Māori interests in freshwater fisheries.
7. Protecting Māori interests in freshwater fisheries ultimately means protecting habitat to ensure quality water and abundant species and empowering our people to uphold their responsibilities regarding freshwater fisheries.

8. Te Wai Māori engages with a range of sectors and government agencies seeking to ensure that Māori rights and interests are upheld and iwi and hapū are recognised in government processes and resource management decision-making.

## Background

9. Te Wai Māori is **strongly opposed** to the Treaty Principles Bill.
10. The coalition agreement between the National Party and ACT included a commitment to introduce a Treaty Principles Bill (the Bill) and support it to a select committee process as soon as practicable. The Bill was introduced to the House on 7 November 2024. Public submissions on the Bill close on 7 January 2025. This is a short turnaround that fell over the extended Christmas and New Year holiday period.
11. The stated intent of the Bill is to: 'create greater certainty and clarity to the meaning of the principles in legislation, to promote a national conversation about the place of the principles in the country's arrangements, to create a more robust and widely understood conception of New Zealand's constitutional arrangements, and each person's rights within them and to build consensus about te Tiriti/the Treaty and New Zealand's constitutional arrangements that will promote greater legitimacy and social cohesion.'
12. The Bill sets out to redefine te Tiriti principles long established by the courts and replace them with three new ones:
  - (a) Principle 1: The Executive Government of New Zealand has full power to govern, and the Parliament of New Zealand has full power to make laws - in the best interests of everyone, and in accordance with the rule of law and the maintenance of a free and democratic society.
  - (b) Principle 2: The Crown recognises, and will respect and protect, the rights that hapū and iwi Māori had under the Treaty of Waitangi/te Tiriti o Waitangi at the time they signed it. However, if those rights differ from the rights of everyone, subclause (1) applies only if those rights are agreed in the settlement of a historical treaty claim under the Treaty of Waitangi Act 1975.
  - (c) Principle 3: Everyone is equal before the law. Everyone is entitled, without

discrimination, to the equal protection and equal benefit of the law, and the equal enjoyment of the same fundamental human rights.

13. Te Wai Māori Trust's submission draws upon the findings and recommendations made by the Waitangi Tribunal in *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*.

## Statement of Concern

### *Policy Development*

14. The policy process used to develop the Bill is in breach of the principle of good government. Cabinet has decided to progress the Bill despite it being a policy that is not evidence-based, has not been adequately tested, has not been consulted upon, and fails regulatory standards.<sup>1</sup>
15. The Cabinet paper seeking policy approvals for the development of a Treaty Principles Bill<sup>2</sup> rejected the duty to consult with Māori as a 'novel reading of the Treaty' by the courts and the public service. This is contrary to almost 50 years of jurisprudence that has upheld the specific duty of the Crown to consult with Māori. The Cabinet paper also explicitly rejected the 'partnership interpretation' of te Tiriti/the Treaty.
16. As a result of this and unnecessarily truncated timeframes, the Government's process to develop the Bill has deliberately excluded any consultation with Māori as a partner to te Tiriti/the Treaty and as the demographic most impacted by the introduction and potential enactment of the Bill.
17. Te Wai Māori consider that the referral of the Bill to the Justice Committee is not appropriate in the case of the Treaty Principles Bill due to the subject matter and nature of what the Bill proposes to do. The Māori Affairs Committee would have fulfilled the role more appropriately comprising the necessary knowledge and expertise to ensure that the select committee process is upheld with integrity and understanding.

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<sup>1</sup> [20240910 - Cab paper Redacted.pdf](#)

<sup>2</sup> [20240910 - Cab paper Redacted.pdf](#)

### *Policy Rationale*

18. A key aspect of the policy intent behind the Bill is framed to provide ‘greater certainty and clarity to the meaning of the principles in legislation.’ We do not consider this to be valid. There is already a significant degree of certainty regarding the content and application of the principles of te Tiriti set out in legislation and long-established case law.
19. The Waitangi Tribunal Act 1975 established the Waitangi Tribunal and stipulated that Māori can bring a claim to the Tribunal about a Crown policy or practice which was or is “inconsistent with the principles of the Treaty.” The English and Māori versions of te Tiriti/the Treaty are not direct translations of each other, so the principles were an attempt to reconcile both.
20. Since the 1975 Act, there have been many other official references to the Treaty principles, all attempting to define their meaning in contemporary New Zealand society. They have been referred to in court cases, new legislation, Waitangi Tribunal findings and in 1989 the Labour government became the first to set out principles to guide its actions on matters relating to te Tiriti. There has been 50 years of application of the principles and considerable discourse on what they look like. If enacted, the Bill would effectively erase half a century of considered jurisprudence established by multiple players. The Bill is not only looking to rewrite te Tiriti, but to fundamentally change its legal meaning and effect.

### *Rights and freedoms*

21. The Treaty Principles Bill would diminish the fundamental rights and freedoms of Māori including by extinguishing tino rangatiratanga in a legal sense if the Bill is enacted. It would also significantly reduce the Crown’s te Tiriti obligations by removing recognised rights within the original document and curtailing its application.
22. The Treaty Principles Bill contravenes fundamental human and indigenous rights as expressed in the United Nations Declaration on the Rights of Indigenous Peoples and the International Convention on the Elimination of all forms of Racial Discrimination. The Bill is designed to end the distinct status of Māori as the indigenous people of this country.

23. In addition, the rights of all New Zealanders and equality before the law are already protected through the culmination of existing domestic legislation,<sup>3</sup> the common law, and international instruments.<sup>4</sup> It is false and misleading to suggest otherwise.

#### *Public Response*

24. The Treaty Principles Bill is deliberately divisive and poses a significant threat to social cohesion as noted by Government officials' advice.<sup>5</sup> Even if the Bill were not enacted, the decision to introduce the Bill and give it a platform means that Māori are now feeling the full brunt of targeted discrimination when considered within the context of the Government's full legislative programme, that includes the review of 28 different pieces of legislation which reference the principles of the Treaty of Waitangi.
25. The Treaty Principles Bill has been resoundingly rejected by many within the community. Hīkoi mō te Tiriti were hīkoi protests held across New Zealand against the Bill that occurred from 10 November to 19 November 2024. It culminated in tens of thousands of supporters gathering at Parliament grounds and presenting a petition against the Bill that was signed by 203,653 people.
26. Public outcry has also come in the form of letters written to senior Ministers and the Prime Minister openly opposing the Bill, including by 27 Māori translators,<sup>6</sup> 42 members of the King's Counsel,<sup>7</sup> 440 Christian Leaders,<sup>8</sup> and 150 community groups and civil society organisations.<sup>9</sup>

#### *Crown-Māori Relations*

27. The Treaty Principles Bill has already greatly damaged the Government's relationship with Māori. The exclusion of Māori iwi and hapū from the development of the Bill nullifies

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<sup>3</sup> The Human Rights Act 1993; the Bill of Rights Act 1990.

<sup>4</sup> Universal Declaration of Human Rights 1948; international Covenant on Economic, Social and Cultural Rights 1966 (ICESCR).

<sup>5</sup> [20240910 - Cab paper Redacted.pdf](#)

<sup>6</sup> [Treaty Principles Bill: Māori translators pen letter over 'deeply flawed translations' - NZ Herald](#)

<sup>7</sup> [Top lawyers tell PM to 'abandon' Treaty Principles Bill - Te Ao Māori News](#)

<sup>8</sup> [Open letter from 440 Christian leaders on the Treaty Principles Bill. - Common Grace Aotearoa](#)

<sup>9</sup> [Over 150 Organisations Unite Against Treaty Principles Bill | Scoop News](#)

fundamental Māori rights and interests.

#### *Potential Referendum*

28. We also note that contained in an explanatory note within the Bill is the following clause:

“The Bill will come into force if a majority of electors voting in a referendum support it. The Bill will come into force 6 months after the date on which the official result of that referendum is declared.”

29. While the Bill would still need to become law for a referendum to take place, introducing the option of putting it to a wider population – either as a condition of a future coalition agreement or orchestrated via a citizens-initiated referendum, would likely stoke racial tension and division within communities.

30. The proposed referendum would allow an 84% non-Māori majority to define the principles of this country’s central constitutional document. There is a risk that this process (which could be protracted) would exacerbate the volume of disinformation available on mainstream media and on social media platforms to incite further discrimination against Māori.

#### *Breaches of Te Tiriti o Waitangi*

31. The development of this Bill, its introduction and potential enactment, breaches the Government’s Treaty obligations, as expressed in the Waitangi Tribunal’s interim report. In mid-August the Tribunal found that the first iteration of the Bill would ‘reduce the constitutional status of te Tiriti, remove its effect in law as currently recognised in Treaty clauses, limit Māori rights and Crown obligations, hinder Māori access to justice, impact Treaty settlements, and undermine social cohesion.’<sup>10</sup>

32. The Tribunal’s second report on the Bill found that if the Bill is enacted, it would be the most severe and comprehensive contemporary breach of te Tiriti. If it remained as legislation for a considerable time or was never repealed, it could mean the end of te Tiriti. The Tribunal also

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<sup>10</sup> Waitangi Tribunal, (2024), *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*, Waitangi Tribunal, [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 – Pre-publication Version](#), pp 133-134.

stated that:

- (a) The Government's process to develop the Bill has purposefully excluded any consultation with Māori, breaching the principle of partnership, the Crown's good faith obligations, and the Crown's duty to actively protect Māori rights and interests.
  - (b) Principle 1 misinterpreted kāwanatanga granted to the Crown in 1840, which is not an exercise of unbridled power.
  - (c) The introduction of Principle 2 of the Bill is not only unfair and discriminatory, but it is also a direct breach of tino rangatiratanga, kāwanatanga, partnership and active protection.
  - (d) Principle 2 restricts the rights that Māori had when they signed te Tiriti in 1840. The Bill only recognises the rights explicitly set out in subsequent legislation, in existing Treaty settlements or other agreements. It effectively extinguishes all other rights of Māori that are guaranteed and protected in te Tiriti and revokes the promises and guarantees the Queen of England made to Māori in 1840. This includes customary rights that pre-date the Treaty.
  - (e) Principle 3 bears no resemblance to Article 3 and the decision to include it is a breach of the principles of partnership, equity and active protection. Māori face barriers to equality that other demographics do not. Equality without equitable treatment does not capture the promises made in Article 3 or the meaning of te Tiriti as a whole.
33. The Bill does not reflect the text or meaning of Te Tiriti. Its development and introduction have purposefully excluded Māori and would fundamentally change the legal effect and meaning of the existing principles and te Tiriti itself, therefore the Bill must be withdrawn.

### Recommendation

34. Te Wai Māori recommends that the Bill be withdrawn.