

Principles of the Treaty of Waitangi Bill

January 2025



New Zealand Council Of
Christian Social Services

Tirohanga Whānui | Overview

The New Zealand Council of Christian Social Services (NZCCSS) welcomes the opportunity to provide feedback on the Principles of the Treaty of Waitangi Bill. NZCCSS recognises the role of faith organisations in the establishment of te Tiriti as a covenant between the Crown and Māori and, as a continuation of the mission of Jesus Christ is dedicated to taking meaningful action to honour the articles of Te Tiriti o Waitangi in our work. We oppose this kaupapa as it would significantly misinterpret and distort the established principles of te Tiriti and undermine the progress that has been made in seeing the articles of te Tiriti upheld in Aotearoa.

Recommendation: We strongly oppose this legislation and urge the Committee to recommend it go no further. We specifically recommend that no referendum takes place on this matter now or in the future.

Whakaaro | Points of Note

Our main points are:

Item One: We oppose the Bill as it breaches the foundational idea of Te Tiriti

The basic idea of any treaty is that it is a binding agreement between equal parties, and that one treaty partner cannot change what the agreement means by themselves. Treaties are created by mutual agreement and can only be changed by mutual agreement.

Te Tiriti is a founding document for Aotearoa New Zealand and is the basis of the partnership between tangata whenua and the Crown. This Bill seeks to deny the inclusion of tangata whenua in decision making regarding a treaty they are partner to and as such breaches the treaty itself.

The Waitangi Tribunal are the established experts on the interpretation of te Tiriti. For the last 50 years they have established what te Tiriti means for historical breaches and current day issues. The Waitangi Tribunal reviewed this Bill and found that:

This [Bill] would be the worst, most comprehensive breach of the Treaty/te Tiriti in modern times. (The Waitangi Tribunal, 2024).

We join the Tribunal in urging the Coalition to abandon this Bill.

Item Two: The Bill claims to promote equality while ignoring the Crown's duty to promote equitable outcomes.

The Bill claims to promote 'equality'. This is misleading, as it denies the important distinctions between equality (the same thing for everyone) and equity (fair treatment that takes into account imbalances and differences between parties). Our society must aim for equitable outcomes for all people, rather than simply treating people the same regardless of the outcome.

The extensive harms experienced by Māori as a result of colonisation have been well documented and the impacts continue into the present day (Cram, 2019; Waitangi Tribunal, 2019). Inequities faced by Māori in

areas such as healthcare and the justice system have been shown to be a direct result of the influence of colonisation and the subsequent poor treatment of Māori over several decades (Waitangi Tribunal, 2019). Child poverty and care and protection statistics demonstrate the ongoing impacts of these inequities on tamariki and rangatahi Māori today. Article 3 of te Tiriti confirms that Māori have all the rights and privileges of British subjects and the Crown has a duty to act with fairness and justice to all citizens. The Waitangi Tribunal has found that this article not only guarantees Māori freedom from discrimination but also obliges the Crown to positively promote equity (Waitangi Tribunal, 2019, p. 33). Treaty principles of equity and active protection require the Crown to make every reasonable effort to eliminate inequitable outcomes. Equality, as this Bill defines it, ignores these impacts and reduces the Crown's capacity and responsibility to act on them.

Point Three: The Bill has caused significant harm to Māori Crown Relations; a future referendum risks irreparable damage

The public conversation about the Bill has included politicians and others publicly misrepresenting and miscommunicating the role of Te Tiriti and its meaning. This has and continues to cause harm to race relations in Aotearoa New Zealand. At present, with work from the Crown in partnership with Māori it appears possible to repair this harm and work to build a thriving partnership in future.

Coalition parties have indicated that the Bill is unlikely to pass its second reading, however there is a concern regarding the possibility of a future referendum on this matter and the damage that this would do to Māori Crown Relations. We oppose a referendum on this topic.

Point Four: The Bill establishes a precedent for legislative change that fails to uphold sound process and wider government commitments

The Bill in both its content and the process of its development, conflicts with New Zealand's international human rights commitments which uphold the right to self-determination for indigenous people, the requirement for indigenous people to participate in decision-making and the requirement to address inequities experienced by indigenous people. It undermines Aotearoa's support for the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and our commitment to the United Nations Convention on the Rights of the Child (UNCROC) (Committee on the Rights of the Child, 2023; Te Kāhui Tika Tangata Human Rights Commission, n.d.).

Furthermore, the proposed principles have been developed without adequate consultation or the necessary relevant expertise and would create a precedent for significant legislative changes to be made in such circumstances. A referendum would ask the public to vote on the application of predefined principles in a manner that we would not typically see in our legislative processes. For example, would we ask the public to vote on one political party's definition of "the best interests of the child" being enshrined in legislation? This type of legislative interpretation and definition would require extensive analysis, expertise and consultation. We refer to concerns held by 42 King's Counsels about the implications of the Bill on constitutional arrangements and agree that it is "not for the government of the day to 'retrospectively and unilaterally reinterpret constitutional treaties'" (Hanly, 2024).

Tohutoro kua tohua | Selected references

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Ko wai tātou | Who we are

NZCCSS has six foundation members; the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support and the Methodist and Salvation Army Churches. Through this membership, NZCCSS represents over 230 organisations providing a range of social support services across Aotearoa. We believe in working to achieve a just and compassionate society for all, through our commitment to our faith and Te Tiriti o Waitangi. Further details on NZCCSS can be found on our website - www.nzccss.org.nz.

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