



Principles of the Treaty of Waitangi Bill

Submission from VOYCE – Whakarongo Mai

January 2025

Submission on the Principles of the Treaty of Waitangi Bill

“Two hundred years of colonisation have resulted in significant harm to Māori. You should be supporting us to develop our cultural identity not stripping away legislations and taking that support away.” – Care Experienced Rangatahi

About VOYCE - Whakarongo Mai

We are VOYCE - Whakarongo Mai, which stands for Voice Of the Young and Care Experienced - Listen to me. We are an independent non-governmental organisation that was co-designed by tamariki and rangatahi with care experience. **We exist to amplify the voices of tamariki and rangatahi** through individual and systemic advocacy and ensure they are at the centre of all conversations and decisions being made about their lives.

We believe that it is only in working together (with young people, government, the philanthropic and nongovernment sectors) that the vision of **building a community of positive, confident and capable care experienced young people will be realised.**

We are guided by our five pou in all that we do:

1. WHAKAMANA (empowerment): We advocate alongside of and with care experienced tamariki and rangatahi, in relation to their goals and concerns
2. TŪHONO (connection): We connect care experienced tamariki and rangatahi with each other through activities and local networks
3. WHAKATAIRANGA (amplification): We promote the collective voice of care experienced tamariki and rangatahi so that they can influence the wider system
4. WHAIPŪKENGA (skills development): We equip and enable care experienced tamariki and rangatahi for their future
5. RANGATIRATANGA (leadership development): We build leadership among care experienced tamariki and rangatahi

For more information, please contact: ImpactandInsightsTeam@voyce.org.nz

Care Experienced Rangatahi Voices

VOYCE – Whakarongo Mai wishes to acknowledge the following Rangatahi for signing their names and lending their voices in support of this submission.

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January 2025

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Hei Mihi

Papa te whatitiri, hikohiko te uira ki runga i te rangi, he marangai ki te whenua
Thunder resounds and lightning flashes in the sky as a storm rages over the land.

Ko te tiriti o waitangi e haruru nei, Aue te mana e!
Te Tiriti o Waitangi stirs and rumbles. Let its mana remain.

Rere kau atu ngā mihi ki nunui mā, ki roroa mā. Okioki e.
We acknowledge the ancestors who have departed

Tihe Mauri Ora.
And to us behold the breath of life.

Haruru kau ana te tangi o te marea – me whakakorengia te “Principles of the Treaty of Waitangi bill”
Hear the reverberating cry of the masses – get rid of the “Principles of the Treaty of Waitangi bill”

He pira e takahi nei i: This bill tramples on the

- **Te tūāpapa o Aotearoa whānui**
Foundation document of Aotearoa
- **Te tino rangatiratanga, me te mana motuhake o Ngai Māori, otira o mokopuna Māori.** The sovereignty and self determination of Māori and of generations to come
- **Te kotahitanga o Aotearoa whānui**
Unity of all Aotearoa.

Koinei tō mātou e hora nei. Kua e huri kē atu, tahuri mai ki ēnei whakatau! – Here is our submission opposing the Principles of the Treaty of Waitangi bill”. Do not ignore our words but pay head to what it is we are saying!

Whakamanahia Te Tiriti o Waitangi
Honour te Tiriti o Waitangi.

6 promises

Our VOYCE – Whakarongo Mai 6 Promises reflect basic expectations from care experienced tamariki and rangatahi. Te Tiriti provides a foundation on which the 6 Promises can be realised. This Bill undermines the principles of the Treaty, and with it, the very foundations on which these promises are built. These 6 promises are for all Tamariki and Rangatahi in state care in Aotearoa.

1. E kī taurangi ana au kia whakahōnore a Aotearoa i tōna haepapa, ā mātua nei, kia whakarato ki a koe
I promise to take care of you and make sure you have the things you need
2. E kī taurangi ana au kia noho mātāmua te pūmautanga i roto i tō oranga.
I promise to make sure you have safety and stability in your life
3. E kī taurangi ana au kia whakarato i te tautoko ki a koe e whai ai koe, e whai wāhi ai hoki koe ki ō whāinga me ō wawata mātauranga.
I promise to help you with your education goals and dreams
4. E kī taurangi ana au kia whai wāhi koe ki ngā ratonga hauora e tika ana mōu i te wā e tika ana.
I promise to support you with healthcare when you need it
5. E kī taurangi ana au kia mātua whai wāhi atu koe ki ngā whakatau e pā ana ki a koe kei noho ana koe ki ngā pūnaha tiaki.
I promise to listen and include you when decisions are made about you
6. E kī taurangi ana au kia whanake i tō tuakiri, kia mōhio ki tō whakapapa, kia whakatipu hoki i tō mana Motuhake
I promise to help you feel confident in who you are, and learn about your whakapapa, culture and language

These promises arise from our children’s basic human rights. Human rights that every tamaiti and rangatahi in Aotearoa should be able to enjoy, and which the State as a parent has an obligation to uphold for children in their care.

These promises are enshrined in legislation via the Oranga Tamariki Act 1989 and Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018. And yet, monitoring of Oranga Tamariki continues to highlight that they are still falling woefully short of their own basic standards and are failing to keep the promises that have been made to our tamariki.

Our general position

“Using Te Tiriti as law for Tamariki is a good thing. It protects indigenous Māori. If you take it out, there’s just more European law. Having indigenous law protecting us is important.” – Care Experienced Rangatahi

This Bill, if successful, would reduce the constitutional status of Te Tiriti o Waitangi (Te Tiriti).¹ The Bill would remove the effect of Te Tiriti 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. Te Tiriti o Waitangi is foundational for the enduring relationship between tangata whenua and tangata Tiriti.

VOYCE – Whakarongo Mai supports the findings of the Waitangi Tribunal on the Bill as outlined in its 2024 Report Ngā Mātāpono – The Principles.²

VOYCE – Whakarongo Mai strongly opposes this Bill.

VOYCE – Whakarongo Mai does not support the suggested referendums.

VOYCE – Whakarongo Mai wants to see this Bill abandoned in its entirety.

Our submission

Te Tiriti o Waitangi (Te Tiriti) and the commitments that are made by it inform and support the work of VOYCE – Whakarongo Mai every day. Te Tiriti ensures that the 6 fundamental promises as outlined above, the core expectations from the care experienced tamariki and rangatahi we work with, are able to be delivered and achieved. Te Tiriti is a foundational document for this country and all who live here. It provides us all with a place to belong, a basis for respect, trust and partnership.

Te Tiriti and the established principles are the foundation from which VOYCE – Whakarongo Mai works with and supports children and young people in care. It ensures the disproportionate number of Māori rangatahi and tamariki who end up in care are able to connect with their whakapapa, whanaungatanga and culture, and are supported as part of whānau. This Bill and what it is seeking to achieve will significantly and negatively impact the tamariki and rangatahi VOYCE – Whakarongo Mai works with.

¹ This submission uses Te Tiriti in recognition that the Māori version of The Treaty of Waitangi – Te Tiriti o Waitangi was the version signed by over 500 Māori rangatiratanga.

² https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_217933408/Nga%20Matapono%20W.pdf

The Bill distorts the intent of Te Tiriti

The principles outlined by this Bill seek to fundamentally re-write the text of the articles of Te Tiriti and significantly shift away from how Te Tiriti is implemented. As noted by the Waitangi Tribunal the proposed principles are deeply flawed interpretations of the corresponding articles of Te Tiriti. This Bill distorts the intent of Te Tiriti.

***“the Crown seeking to unilaterally change the terms of te Tiriti, or at least how it is understood, because it is unhappy with the jurisprudence that has developed surrounding those principles both within the Tribunal and the civil courts, is not an act of reasonableness’ and breaches its duties under the Treaty/te Tiriti” The Council for claimants and interested parties.*³**

Parliament first introduced the concept of Treaty principles in the Treaty of Waitangi Act 1975, and there are now approximately 40 statutes that refer to them⁴. This Bill contradicts the established jurisprudence of the existing principles of Te Tiriti. As noted (with our emphasis) by the Waitangi Tribunal’s report “Reducing the impact of, or repealing, Treaty clauses affects the rights of Māori to access justice to have their rights under the Treaty/te Tiriti realised, which is in breach of the **principles of equity and redress**. The Crown also has an obligation to actively protect the rights and interests of Māori. To remove or limit the effect of the Treaty/te Tiriti protections contained in Treaty clauses is a self-evident breach of the **principle of active protection**.”⁵

As noted by the Waitangi Tribunal the Bill is unfair, discriminatory and inconsistent with the principles of Te Tiriti and it is significantly prejudicial for Māori.

VOYCE – Whakarongo Mai is strongly opposed to this Bill on the basis that it is a significant breach of the already established Te Tiriti o Waitangi principles of: partnership and reciprocity, active protection, good government, redress, and equity.

Te Tiriti is an agreement between Māori and the Crown - Māori have had no part in this process

VOYCE – Whakarongo Mai are concerned that at no point in the development of this Bill has there been engagement with or participation of Māori, and in particular tamariki and rangatahi Māori, to understand the implications and impact of these proposed changes. This is a breach of Te Tiriti o Waitangi and undermines Māori rights as tangata whenua and a treaty partner. This Bill undermines the rights of tamariki and rangatahi Māori as they are

³ Ngā Mātāpono – The Principles. Waitangi Tribunal Report 2024

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_217933408/Nga%20Matapono%20W.pdf

⁴ [https://www.beehive.govt.nz/sites/default/files/2024-](https://www.beehive.govt.nz/sites/default/files/2024-09/Regulatory%20Impact%20Assessment%20Treaty%20Principles%20Bill.pdf)

[09/Regulatory%20Impact%20Assessment%20Treaty%20Principles%20Bill.pdf](https://www.beehive.govt.nz/sites/default/files/2024-09/Regulatory%20Impact%20Assessment%20Treaty%20Principles%20Bill.pdf)

⁵ Ngā Mātāpono – The Principles. Waitangi Tribunal Report 2024

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_217933408/Nga%20Matapono%20W.pdf

established in Te Tiriti, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁶ and the United Nations Convention on the Rights of the Child (UNCRC)⁷.

Te Tiriti is an agreement between the Crown and Māori – yet Māori have had no part in this Bill. The Government is proposing to fundamentally change the interpretation of Te Tiriti without any engagement with its treaty partner.

The Cabinet paper for policy approval of the Bill⁸ acknowledges that one of the existing principles that has been developed in over 40 years of jurisprudence and is articulated by the Courts and the Tribunal is **partnership**. The Waitangi Tribunal notes that “With respect to the Treaty Principles Bill policy, we have found that the Crown’s agreement to pursue it unilaterally belies the existence of this partnership.”⁹ Under the existing principles the Crown and Māori have a duty to act fairly, honourably and in good faith. The development of this Bill has not occurred fairly, honourably or in good faith.

“This complete disempowerment of Māori in a process to rewrite the principles is unprecedented. It goes against the tenets of good government that Māori are entitled to expect as citizens, let alone as the Crown’s Treaty/te Tiriti partner. This exclusion from any say in a process to abrogate fundamental rights is extremely prejudicial, and the impacts will not fade for a long time even if the Bill does not proceed beyond the select committee.” Waitangi Tribunal¹⁰

This Bill is based on ACT Party Policy, a party that received only 8.64% of the vote. This is not representative of a majority public view. The Associate Minister of Justice who has responsibility for this Bill has stated in the Cabinet Paper for policy approval for progressing the Bill¹¹ that he did not agree with the Ministry of Justice’s concern of a non-collaborative process in the development of the Bill. The Associate Minister stated that he considered the select committee process a substantive opportunity for feedback. Going on to state “The notion that the Crown has a duty to consult Māori differently to other New Zealanders is based on a novel reading of the Treaty by the Courts and the public service...”¹²

This is not partnership and reciprocity, this is not good government. Public submissions to a select committee, during the longest public holiday of the year, on a proposal written in isolation by a minority representative party is not consultation or an equitable process.

VOYCE – Whakarongo Mai wants to see this Bill abandoned in its entirety.

⁶ UNDRIP highlights the importance of indigenous people’s rights to self-determination (tino rangatiratanga), cultural identity, and protection from discrimination.

⁷ Please refer to the submission from the Children’s Rights Alliance Aotearoa New Zealand (CRAANZ) for the full details of the extent of this breach.

⁸ <https://www.beehive.govt.nz/sites/default/files/2024-09/20240910%20-%20Cab%20paper%20Redacted.pdf>

⁹ https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_217933408/Nga%20Matapono%20W.pdf

¹⁰ Ibid

¹¹ <https://www.beehive.govt.nz/sites/default/files/2024-09/20240910%20-%20Cab%20paper%20Redacted.pdf>

¹² Ibid

Proposed Principle 1

Article 1 of Te Tiriti gives the Crown kāwanatanga, and in signing Māori did not cede sovereignty.

“Kāwanatanga is the right to govern and to make laws for the ‘good order and security’ of the country. Kāwanatanga must be exercised in accordance with the principle of good government and in a way that actively protects and does not diminish rangatiratanga.”
[Waitangi Tribunal report]

VOYCE – Whakarongo Mai supports the analysis and concerns of the Waitangi Tribunal of the proposed principle 1 in that it “asserts the unilateral right of the New Zealand Government (the Crown) to govern. It does not refer to Māori, with whom the Treaty/te Tiriti was signed, or the Crown’s guarantee of tino rangatiratanga which exists equal to, and limits the Crown’s exercise of, kāwanatanga. This bald assertion of unilateral power belies the relationship intended by the Treaty/te Tiriti and the findings of many Tribunal reports and court decisions.”

VOYCE – Whakarongo Mai is strongly opposed to the proposed principle 1. This proposed principle is not in the best interests of tamariki and rangatahi.

Proposed Principle 2

As acknowledged by the Regulatory Impact Statement on this Bill, Article 2 of Te Tiriti is understood to be about guaranteeing the rights of Māori as the indigenous people of Aotearoa New Zealand. “It affirms their tino rangatiratanga over their lands, property, and taonga (tangible and intangible).”¹³ Te Tiriti gives Māori autonomy over themselves.

The proposed principle 2 is inconsistent with this. As noted in the Waitangi Tribunal report, rangatiratanga is ‘inextricably tied’ to whakapapa Māori. The rights of Māori do, by the very nature that Māori are the indigenous people of Aotearoa, differ. And this difference should not be limited to rights that have been historical agreed in past Treaty Settlements, as specified by the Bill.

VOYCE – Whakarongo Mai agrees with the statements in the Regulatory Impact Statement that proposed principle 2 “...reduces indigenous rights to a set of ordinary rights that could be exercised by any group of citizens.” This interpretation of Article 2 “does not recognise the collective rights held by iwi and hapū, or the distinct status of Māori as the indigenous people of Aotearoa New Zealand, calls into question the very purpose of the Treaty and its status in our constitutional arrangements.”

VOYCE – Whakarongo Mai is strongly opposed to the proposed principle 2. This proposed principle does not protect the indigenous rights of tamariki and rangatahi.

¹³ <https://www.beehive.govt.nz/sites/default/files/2024-09/Regulatory%20Impact%20Assessment%20Treaty%20Principles%20Bill.pdf>

Proposed principle 3

The New Zealand Bill of Rights Act already provides for in law, the equal treatment of all New Zealanders. In addition, there are, plenty of domestic statutes, common law and international instruments within the New Zealand legal system that protect all citizens from discrimination and ensuring equality before the law. These are identified in length in the Waitangi Tribunal report.¹⁴

Article 3 of Te Tiriti assures equality between Māori and other New Zealand citizens. Everyday our work at VOYCE – Whakarongo Mai highlights the persistent and substantial inequities that have existed for tamariki and rangatahi Māori for decades. Tamariki and rangatahi Māori are over represented in the youth justice and care and protection systems.

Māori experience inequity across major social determinants, including education, health, income, employment, and housing. The existing Treaty principle of equity provides a commitment to addressing those determinants, the Bill removes this.¹⁵ The focus of the proposed principle 3 ignores the reality of the unequal balance of lost opportunity Māori experience. To propose a principle where everyone is equal assumes the starting point is a level playing field. It is not.

As noted by Dr Jones in his analysis of the Bill¹⁶ “Māori face barriers to equality that others do not, and many of those barriers were of the Crown’s making, which means that Māori do not always have a level playing field with other New Zealanders, and 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 as a whole.”

VOYCE – Whakarongo Mai is strongly opposed to the proposed principle 3. This proposed principle does not address the persistent inequities faced by many tamariki and rangatahi Māori.

¹⁴ “...the Universal Declaration of Human Rights 1948 records in its preamble that the ‘inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world’. Article 1 states that all persons are born free and equal in dignity and rights, while article 2 declares all people are entitled to all the rights and freedoms set out in the declaration. Other protections are provided for in the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), the International Covenant on Civil and Political Rights 1966 (ICCPR), the United Nations Convention on the Rights of the Child 1989, the United Nations Convention on the Elimination of Discrimination Against Women 1979 and many others – and provide mechanisms in some cases for hearing complaints where States act inconsistently with their terms.³¹⁰ The New Zealand Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990 further protect the rights of citizens, giving domestic effect to these civil and political rights. Section 19 of the New Zealand Bill of Rights Act 1990, for example, recognises that everyone has the right to freedom from discrimination on the grounds set out in the Human Rights Act 1993. We note that the right to equality is reflected in the protections of the common law, including through the principles and doctrines of equity, property, and trust law. We note that the property rights of other New Zealanders are already protected by statutes such as the Land Act 1948, the Land Transfer Act 2017, the Property Law Act 2007, and the Trusts Act 2019. pg 152

¹⁵ https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_217933408/Nga%20Matapono%20W.pdf

¹⁵ <https://www.phcc.org.nz/briefing/treaty-principles-bill-threatens-public-health-and-equity-it-needs-your-submission>

¹⁶ https://www.metuauru.co.nz/wp-content/uploads/2024/11/CJones_Primer-on-the-Treaty-Principles-Bill.pdf

Concluding

Te Tiriti o Waitangi is a foundational document that is about all of us and is for the benefit of all of us. It offers everyone a chance to belong, to work together and to share decision making so that we can look after our people and planet together. This Bill significantly works to change the legal interpretation of Te Tiriti and how it is given effect. The Bill is divisive, ill-informed and distracting.

The Bill ignores the distinct status of Māori as the indigenous people of Aotearoa New Zealand. New Zealand has a unique culture which Te Tiriti o Waitangi protects. The Treaty Principles Bill actively works to undermine those protections.

This Bill undermines the existing principles and application of Te Tiriti. Undermining these will impact significantly on our ability to be an advocate for tamariki and rangatahi Māori in care.

This Bill is part of a disturbing trend by this current Government to dilute or eradicate the rights and interests of Māori as referred to in Te Tiriti. This has included, but is not limited to, the referenda on Māori wards, the disestablishment of Te Aka Whai Ora, the repeal of section 7AA from the Oranga Tamariki Act, and the review of Treaty clauses in 28 pieces of legislation as approved by Cabinet.

VOYCE – Whakarongo Mai agrees with the findings of the Waitangi Tribunal report¹⁷:

We find in this report that the policy of a Treaty Principles Bill ‘based on existing ACT policy’, as the coalition agreement requires, is a solution to a problem that does not exist; there is no policy imperative that justifies it; it is ‘novel’ in its Treaty interpretations; it is fashioned upon a disingenuous historical narrative; its policy rationales are unsustainable; and its current text distorts the language of the Treaty/Te Tiriti.

To progress with this Bill or any referendum on the basis of what is being proposed by this Bill undermines Māori rights, damages decades of redress efforts and precedent already set, and is not in the best interests of any New Zealander.

VOYCE – Whakarongo Mai want to see the Government up-hold its legal obligations to Te Tiriti and abandon this Bill and its proposed referendum.

¹⁷ https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_217933408/Nga%20Matapono%20W.pdf