

Network Waitangi Ōtautahi
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Principles of the Treaty of Waitangi Bill Submission to the Justice Select Committee

Introduction

Network Waitangi Ōtautahi (NWŌ) is an incorporated society based in Ōtautahi Christchurch. Its members are committed to Te Tiriti o Waitangi as a framework for a multicultural and strongly sustainable future for all of us, with a particular focus on the responsibility for building honourable Kāwanatanga.

Network Waitangi Ōtautahi's predecessor, Project Waitangi Ōtautahi, was formed in 1985 during the preparation for the then upcoming 150 years' anniversary of the original signing of Te Tiriti o Waitangi in early 1840. Sir Paul Reeves was the Patron of the national body and several other local organisations formalised under local Project Waitangi names.

After the 1990 commemoration of the signing of Te Tiriti the national Project ceased to be funded and some Project Waitangi local groups continued as Network Waitangi groups, one of which is Network Waitangi Ōtautahi (NWŌ).

We focus on understanding the Treaty¹ and the role it plays in this country. This includes looking at the historical context in which the Treaty was signed as well as the contemporary context of what it means to live in Aotearoa New Zealand today in light of the Treaty. We offer learning opportunities² through support and mentoring, as well as through more formal learning opportunities for institutions, organisations and groups, along with open access Resources that are available online and as hardcopies³.

This work has given us many years experience in understanding what is the Treaty and we trust our comments will be respected.

Network Waitangi Ōtautahi strongly opposes the bill.

We wish to speak to our submission.

¹ NWŌ recognises the text in te reo as the Treaty. Any NWŌ references to the Treaty or Te Tiriti are to the text in te reo.

² <https://nwo.org.nz/about-us/>

³ <https://nwo.org.nz/resources/>

Our criticisms of the bill

Focus on individual rights alone

A values based, relational approach is needed for the Crown to honour Te Tiriti, yet the Bill refers just to equality of individual rights. Such rights are often only able to be taken into account if they are priced. NWŌ work over 40 years has shown that just relationships need to be rooted in an understanding of values held in common. Value and price are different. The Bill's focus on individual rights alone is inappropriate, and lacks elements needed for healthy Treaty relationships such as acting in good faith and with mutual respect.

We agree with the late Moana Jackson when he said "The Treaty to me has never been about Treaty rights, it's always been about the rightness that comes from people accepting their obligations to each other."⁴

The Bill shows no acknowledgement by the Crown of the history of dispossession and discrimination experienced by Māori since 1840. No reference is made to well established explicit measures under international human rights laws that are needed to address ongoing outcomes from this dispossession and discrimination. This form of historical amnesia benefits the Crown and maintains the special privileges enjoyed, especially by Pākehā, as a result of these injustices.

Misrepresentation of legitimacy and social cohesion

The stated objective of the Bill includes a desire to "promote greater legitimacy and social cohesion." It is very clear that if this Bill is enacted it will not achieve either of these. The legitimacy of the Crown is dependent on the honouring of Te Tiriti as the agreement that grants the Crown Kāwanatanga (governorship). The rights of Māori affirmed in the Treaty exist independently of this agreement through tikanga and are recognised internationally. This Bill degrades the legitimacy of the Crown and undermines the pre-existing rights of Māori as tangata whenua.

Social cohesion requires a shared understanding of ourselves and our history. This bill offers a novel interpretation of the Treaty that is ahistorical and radically different from the agreement made with ngā hapū in 1840. By attempting to introduce this fringe interpretation unilaterally, without engagement with hapū and iwi, the Bill has already created division within our society. It is also a very expensive distraction from much needed work already underway in building social cohesion⁵.

As Network Waitangi Ōtautahi, we refer here to recent advice from our local iwi when Justin Tipa, Ngāi Tahu Kaiwhakahaere, noted that rangatira committed to a constitutional monarchy whose right to govern rests on its obligation to recognise and protect the tino rangatiratanga of iwi and hapū⁶. He continued by referring to the honour in that agreement and that the focus should be on how rangatiratanga can be exercised for the benefit of all New Zealanders, including how it can contribute to solve the housing crisis and empower local communities to manage their affairs in innovative ways. This vision of a future based on respect for the rangatiratanga of ngā hapū and iwi promotes the social cohesion and inclusivity that Te Tiriti embodies.

Misguidance from the proposed principles

The principles listed in this Bill are not taken from Te Tiriti o Waitangi itself, nor are they explicitly obtained via consultation with Māori. We note the open letter published by te reo Māori experts who describe the bill as being "based on highly inaccurate translation that breaches international ethical standards of translation"⁷.

⁴ <https://natlib.govt.nz/he-tohu/korero/interview-with-moana-jackson>

⁵ <https://incommon.org.nz/>

⁶ <https://ngaitahu.iwi.nz/connect-2/connect/our-whakaaro/rangatiratanga-not-party-political/>

⁷ <https://actionstation.medium.com/treaty-principles-bill-open-letter-to-the-coalition-government-of-aotearoa-new-zealand-from-0ee4b8aee40e>

The New Zealand government use the principles as a mechanism in legislation to meet Crown obligations under Te Tiriti. Such principles cannot fulfil this role if they contradict the Treaty agreement made with ngā hapū in 1840.

We agree with previous Prime Minister Jenny Shipley that "The Treaty is a gift to us to invite us to work together" and "...is a relationship we committed to where we would try and find a way to govern forward"⁸.

Ignoring of the Preamble

Any interpretation of the Treaty is incomplete and invalid if it doesn't align with the text of Te Tiriti as a whole and this Bill does not acknowledge the preamble to Te Tiriti. Indeed it contradicts the intentions laid out there. The preamble says that the Treaty was an agreement between ngā hapū and the Crown, and that the Crown recognises the paramount authority of ngā hapū. The preamble establishes that Te Tiriti was essentially a peace agreement signed to protect the rights of Māori and to bring order to the lawless state of Pākehā settlers in Aotearoa New Zealand at the time, and those who will come later.

Misdirections in proposed principle one

"Full right to govern"

The Ngāpuhi claim (WAI 1040) concluded that rangatira who signed Te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain. That is, they did not cede authority to make and enforce law over their people or their territories. This conclusion is supported by oral accounts and examination of the historical context, and is in line with International Law, which gives precedence to Te Tiriti o Waitangi (the text in te reo). The Treaty Principles Bill ignores the conditionality of the right to govern - which rests on its obligation to recognise and protect the tino rangatiratanga of iwi and hapū, as referred to by Justin Tipa in our earlier comment.

"best interests of everyone"

These Principles do not consider that acting "in the best interest of everyone" does not always mean treating everyone the same. Treating everyone "equally" and "entitled, without discrimination" means it is sometimes necessary to treat people differently to address and eliminate existing inequalities in order to act "in the best interest of everyone". This means invoking *Special Measures* which are well established under international human rights laws.

"a free and democratic society"

The reference to the "maintenance of a free and democratic society" is limited to maintenance of individual equal rights, yet the prevention of discrimination not only requires measures to protect vulnerable people but also positive actions by the wider community in order to enable all people to enjoy full human rights. Decision-making in a "free and democratic society" requires more than reliance on decision-making by majorities. The Bill does not allow for relational politics between the authority of Māori - tino rangatiratanga - as retained in the Treaty and the authority established at the time of the signing of the Treaty in 1840 – Kāwanatanga.

Divisiveness created in proposed principle 2

Crown obligations under Te Tiriti to respect and protect the rights of hapū and iwi are ongoing - those rights persist over time. Yet the Bill states that principles of the Treaty "other than those set out" by the Treaty Principles Bill "must not be used to interpret an enactment" and clarifies that the Treaty Principles Bill does not apply to the interpretation of a Treaty Settlement Act or the Treaty of Waitangi Act 1975 in relation to historical Treaty claims. This stipulation creates division between those hapū / iwi who have "settled" with the Crown and those who have not.

Creation of confusion in proposed principle three

Suggesting that article three of Te Tiriti is a statement about universal human rights for all people living in New Zealand, and not specifically about rights granted to Māori, is again a novel and fringe

⁸ <https://www.rnz.co.nz/news/top/533944/treaty-principles-bill-inviting-civil-war-jenny-shipley-says>

interpretation. There is no historical evidence that article three of Te Tiriti refers to all people living in New Zealand.

Fundamental human rights are protected by relevant legislation that is already in place – including the Bill of Rights and the Human Rights Act.

Conclusion

If passed, this Bill would create the most comprehensive breach of Te Tiriti in modern times. We emphasise again the fringe nature of the interpretation of Te Tiriti in this Bill and the injustice it would create if enacted. The idea that rangatira agreed to their tino rangatiratanga being limited by legislation made more than a century later is fanciful and bizarre.

Those who do not whakapapa to a Māori ancestor were invited through the Treaty to belong here – if the Treaty is honoured. Many such people now identify as Tangata Tiriti and just relationships are being forged in many places.

The Treaty of Waitangi is a Treaty of peace and friendship and Tangata Whenua authority has upheld its side of the arrangement. It is time for Kāwanatanga to act honourably.

Recommendations

This Bill should be withdrawn at the earliest opportunity – it is creating misinformation, disunity and confusion about the meaning of a Treaty-based future where the indigenous status of Tangata Whenua in this land is recognised.

The Crown should

- formally accept the findings of Waitangi Tribunal's WAI 1040 claim (the Ngā Puhi claim)⁹.
- reflect in all Government policies and legislation the commitment made in article two of Te Tiriti to recognise tino rangatiratanga of hapū and iwi
- re-establish the Office of Māori Crown Relations as a Parliamentary Office and investigate codifying constitutional arrangements that reflect the primacy of Te Tiriti and He Whakaputanga o te Rangatiratanga o Nu Tireni, as explored in the Matike Mai report¹⁰.

⁹ <https://www.waitangitribunal.govt.nz/en/inquiries/district-inquiries/te-paparahi-o-te-raki-northland>

¹⁰ <https://nwo.org.nz/resources/report-of-matike-mai-aotearoa-the-independent-working-group-on-constitutional-transformation/>