

New Zealand Family Violence Clearinghouse submission on the Principles of the Treaty of Waitangi Bill

Date: 19 December 2024

About the New Zealand Family Violence Clearinghouse

The [New Zealand Family Violence Clearinghouse](#) (NZFVC) is the national centre for family violence and sexual violence research and information. We share information and analysis from policymakers, academics, practitioners and communities related to family violence, sexual violence and toiora whānau. Our vision is of families, whānau and relationships that are healthy, respectful and free from violence. Auckland UniServices at Waipapa Taumata Rau | University of Auckland has been contracted to provide the NZFVC since 2011.

Our submission

The New Zealand Family Violence Clearinghouse **opposes** the Principles of the Treaty of Waitangi Bill.

Our opposition to the Bill is based on our commitment to an honourable treaty relationship. The relationship agreed to in the Treaty of Waitangi provides a foundation for safe relationships, toiora whānau and ending violence.

Our opposition to the Bill is supported by the findings of several reports, including Treasury's Regulatory Impact Statement (RIS): Providing certainty on the Treaty principles¹, the Ministry of Justice Departmental Disclosure Statement: Principles of the Treaty of Waitangi Bill², and the Waitangi Tribunal's Wai 3300 interim reports: 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.³

We support the findings and recommendations of the Wai 3300 Ngā Mātāpono reports and the 8 November 2024 submission of the Human Rights Commission.

¹ Regulatory Impact Statement: Providing certainty on the Treaty principles. Ministry of Justice (28 August 2024)

² Ministry of Justice Departmental Disclosure Statement: Principles of the Treaty of Waitangi Bill (24 October 2024)

³ 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 (Wai 3300), Parts I and II

We recommend:

- that the Principles of the Treaty of Waitangi Bill does not proceed
- that the treaty clause review process stops immediately
- that the Crown constitute or resume a process in partnership with Māori to implement UNDRIP and Matike Mai Aotearoa.

We oppose the Bill for the following key reasons:

Failure to uphold Treaty of Waitangi obligations

The New Zealand Family Violence Clearinghouse understands the Treaty of Waitangi as an agreement between two sovereign peoples affirming the tino rangatiratanga of tangata whenua and allowing the Crown kāwanatanga.⁴ We support the findings and recommendations from Wai 3300.⁵

- The Treaty is already clear and easy to understand⁶
- The principles in the Bill bear no resemblance to the agreements in the Treaty.⁷
- The Bill ignores the Crown’s treaty obligations by failing to engage with its treaty partner.
- The Bill redefines the treaty relationship between tangata whenua and the Crown.
- If enacted, the Bill would extinguish tino rangatiratanga of tangata whenua.
- The Treaty Principles Bill ignores the context of colonisation and its harm to Māori and moves away from upholding and honouring the treaty.⁸

The Bill supports a colonising, discriminatory and harmful system

Colonisation has embedded structural oppressions in the state’s legal, economic and social systems, which harm Māori.⁹ This Bill would further entrench those systems and disadvantage Māori systems.¹⁰

- Waitangi Tribunal report 3300 has found the legislation breaches treaty principles.¹¹
- The Bill moves the state further from constitutional legitimacy.¹²
- The proposed principles “advance the discredited agenda of assimilation.”¹³

⁴ Waitangi Tribunal. (2014). He Whakaputanga me te Tiriti | The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry (Wai 1040)

⁵ Wai 3300 Waitangi Tribunal Report 2024

⁶ Wai 3300 Waitangi Tribunal Report 2024; Wai 1040 Waitangi Tribunal Report 2014

⁷ Wai 3300 Waitangi Tribunal Report 2024;

⁸ Wai 3300 Waitangi Tribunal Report 2024

⁹ Pūao te Ata Tū (1987); He Whaipaanga Hou (1988), Jackson; He Waka Eke Noa 2023; Violence within whānau and mahi Tūkinō – a litany of sound revisited (2023), Wilson et al; Seventh report | Pūrongo tuawhito : a duty to care | Me manaaki te tangata (2022), Family Violence Death Review Committee

¹⁰ Wai 3300 Waitangi Tribunal Report 2024

¹¹ Wai 3300 Waitangi Tribunal Report 2024

¹² Wai 3300 Waitangi Tribunal Report 2024; RIS Providing certainty on the Treaty principles 2024

¹³ Wai 3300 Waitangi Tribunal Report 2024

- Failure to recognise the mana of tangata whenua jeopardises the survival of Māori as a people.¹⁴

The Bill will create division

This Bill jeopardises work towards a just relationship between Māori and the Crown as treaty partners, and towards embodying a just understanding of the Treaty and its implications more widely for tangata whenua and tangata tiriti.¹⁵

- The Crown has not engaged with Māori as treaty partners on this Bill redefining that relationship, and public responses from Māori organisations universally oppose the Bill.¹⁶
- The Bill is likely to lead to increased misinformation and anti-Māori rhetoric, damage social cohesion and increase polarisation, division and social disorder.
- Māori will be disproportionately harmed by the division and disorder that this Bill will cause if enacted, and is already causing.¹⁷

Undermining of trust increases risk of harm

[Te Aorerekura](#), the national strategy to eliminate family violence and sexual violence, identifies that "Violence that impacts whānau is rooted in the marginalisation of tangata whenua and societal changes enforced during the colonisation of Aotearoa." It also talks about the importance of a strong treaty relationship for ending violence and achieving wellbeing:

"The Treaty of Waitangi |Te Tiriti o Waitangi, te ao Māori, and whānau-centred approaches ... provide a unique perspective for Aotearoa New Zealand about how family violence and sexual violence can be eliminated and how safety and wellbeing can be realised for all people."¹⁸

The Bill seriously risks undermining treaty relationships and is likely to result in a subsequent erosion of trust in the Crown. Evidence from many sources shows that erosion of trust in the Crown and its processes leads to greater exposure of whānau to harm, increased risk of family and sexual violence, and decreased help seeking.¹⁹

¹⁴ Winiata, Whatarangi and Luke, Daphne. (2021). *The Survival of Māori as a People*. Huia Publishers, Wellington.

¹⁵ Wai 3300 Waitangi Tribunal Report 2024

¹⁶ For example, see Wai 3000 Waitangi Tribunal Report 2024; [Open letter](#) from Iwi Chairs Forum to King Charles; [Open letter](#) from Te Hunga Rōia Māori to Prime Minister

¹⁷ Wai 3300 Waitangi Tribunal Report 2024

¹⁸ Te Aorerekura | The enduring spirit of affection: The National Strategy to Eliminate Family Violence and Sexual Violence. (2021)

¹⁹ He Waka Eke Noa 2023; Violence within whānau and mahi Tūkino – a litany of sound revisited (2023), Wilson et al; Seventh report | Pūrongo tuawhitu: a duty to care | Me manaaki te tangata (2022), Family Violence Death Review Committee.

[He Waka Eke Noa](#) was the first comprehensive study of violence centring kaupapa and mātauranga Māori. Its findings include:²⁰

- “The failure of the Crown to uphold Te Tiriti o Waitangi is highlighted in all components of the research as a structural reason that underpins the level to which whānau have been exposed to generations of violence.”
- “Transforming the impact of violence upon whānau requires approaches that are aligned to the wider notions of tino rangatiratanga and mana Motuhake.”
- “Honouring, enacting and upholding Te Tiriti o Waitangi is considered a critical part of the solution to the underlying systemic issues that sustain violence.”
- “Honouring Te Tiriti o Waitangi will begin to unlock the appropriate frameworks and models for good partnership and decision making that will support whānau wellbeing.”

The Bill is inconsistent with New Zealand’s international obligations

This Bill is inconsistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which New Zealand is a signatory.

- UNDRIP’s preamble recognises that, “treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States”.
- Section 37 upholds “indigenous peoples’ own understanding of the treaties negotiated by treaty nations, as documented and evidenced by indigenous people’s oral histories, traditions and the concepts expressed in their own languages.”

There is a lack of evidence that the Bill will achieve its stated purpose

The stated objectives of the Bill are to create greater certainty and promote a national conversation about the principles of the treaty, create a more robust conception of our constitutional arrangements, and build consensus, legitimacy and social cohesion about those arrangements. There is no available evidence that the Bill will achieve these objectives. All available evidence suggests the Bill is worse than the current situation.²¹

- There is no evidence this Bill will promote a constructive national conversation about treaty principles or constitutional arrangements.
- There is no available evidence of a lack certainty and clarity about treaty principles, nor that this Bill will provide certainty and clarity.
- There is no evidence of a path from this Bill to a better understanding of New Zealand’s constitutional arrangements and our rights within them.
- There is no evidence that this Bill will build consensus about the treaty, our constitutional arrangements, nor promote legitimacy and social cohesion.

²⁰ He Waka Eke Noa 2023

²¹ RIS Providing certainty on the Treaty principles 2024; DDS Principles of the Treaty of Waitangi Bill 2024; Wai 3300 Waitangi Tribunal report 2024.

- There is evidence indicating this Bill will increase uncertainty, create division and harm social cohesion and consensus, cause harm to relationships between Māori and the Crown, and move further from constitutional legitimacy.²²
- The Bill is an example of bad policy and process: it is not evidence-based, has not been adequately tested nor consulted upon, and fails regulatory standards.²³

Conclusion

We urge the Justice Select Committee to recommend the Principles of the Treaty of Waitangi Bill **does not** proceed.

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²² E.g., RIS Providing certainty on the Treaty principles 2024 stated “the status quo is more beneficial”, and found the (then draft) Bill is “worse than the status quo” for: upholding the Treaty; clarity and certainty; promoting social cohesion and consensus; and maintaining constitutional legitimacy. There were no criteria where the Bill was better than the status quo.

²³ Wai 3300 Waitangi Tribunal Report 2024