



Hato Anaru o te Parehua, Founded 1840

This submission opposes the Principles of the Treaty of Waitangi Bill

Who are we?

St Andrew's on The Terrace, Wellington, is the oldest Presbyterian congregation in Aotearoa New Zealand. Our first Minister, Rev. John MacFarlane, arrived at Pito-one on 20th February 1840 with his congregation from Paisley, Scotland, on the 'Bengal Merchant'. Our first service, attended both by new immigrants and Māori who lived nearby, was conducted on the ship at Pito-one on the 23rd of February 1840, just two weeks after the signing of Te Tiriti and some two months before it was signed in Wellington. Te Tiriti legitimises our presence in this land.

As a Christian community, (along with other Abrahamic religions), our concern for social justice and equity is summed up in the Hebrew scriptures from Micah 6:8:

He has told you, O Mortal what is good, and what the Lord require of you but to do justice, and to love kindness and to walk humbly with your God.

Ever since its founding St. Andrew's has maintained a progressive interest in and support for social justice issues. Many of our current members took part in the Hikoī in support of Te Tiriti, including our Minister, Rev Dr Fei Taule'ale'ausumai.

Why do we oppose the proposed Principles of the Treaty of Waitangi Bill?

In proposing this legislation The Hon David Seymour suggests that Māori enjoy rights not available to other New Zealanders and that this is wrong and needs correcting.

We dispute Mr Seymour's assessment. Notwithstanding the fact that – as tāngata whenua – Māori have claim to some rights which are not universal – rights which prevailed before the Treaty and were guaranteed by its signing – this has not resulted in a system skewed in favour of Māori. On the contrary, 180+ years of Pākehā governments of all stripes taking actions which breach the contact undertaken by the Crown in 1840 have resulted in Māori finding themselves on the losing side of many social indicators, including health, wealth, education and justice. This Bill is the latest in a long line of efforts to disrespect the promises made to Māori in 1840.

The idea of the principles of the Treaty of Waitangi was introduced in the Treaty of Waitangi Act and has been developed through subsequent reports and court decisions. By seeking unilaterally to define the principles the Bill seeks to impose a fabricated definition which fails to acknowledge:

- the position of Māori as parties to the signing of a document between two sovereign nations. The status of sovereign nation can legitimately be accorded to Māori iwi by virtue of the 1835 Declaration of the Independence of New Zealand.
- Māori were referred to as ‘the New Zealanders’ at the time, and the fact that ‘the New Zealanders’ has now taken on a broader definition cannot be used as justification for abrogation of the rights of Māori as promised by Te Tiriti.
- the extensive case law which has been developed following the Treaty of Waitangi Act, 1975.
- Article 37 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) -states, “Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.”¹
- The principle of *contra proferentem* applies - a principle of International Law which states that, where there is ambiguity in interpretation, the interpretation of the party which did not draft the document should be preferred.

The principles proposed in the Bill do not align with those developed by the due process of the Waitangi Tribunal:

As proposed by the Principles of the Treaty of Waitangi Bill	As articulated by the Waitangi Tribunal
<p>New Bill Principle 1</p> <p>The Government has full power to govern and Parliament has the full power to make law in the best interests of everyone. (Māori are not mentioned.)</p>	<p>Partnership</p> <p>The Treaty formalised a partnership between Māori and the Crown, and both parties must act with the utmost good faith.</p>
<p>New Bill Principle 2</p> <p>The Crown recognises and respects and protects the rights iwi (Māori tribes) and Hapu (sub-tribes) had when they signed the Treaty. Rights differ from the rights everyone has only when they are specified in legislation, Treaty settlements, and other agreements of the Crown.</p>	<p>Participation in decision making</p> <p>Early consultation with Tāngata Whenua , allowing for participation in decision making decision making at all levels, will result in better outcomes for all.</p> <p>Regulatory Impact Statement: “An interpretation of Article 2 that does not recognise the collective rights held by iwi and</p>

¹ United Nations Human Rights, Office of the High Commissioner, *Indigenous Peoples and the United Nations Human Rights System*, 2013; <https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2.pdf> retrieved 14 December 2024.

St Andrew's view: This ignores enduring Māori right to self-determination, which was solemnly promised in the Treaty.	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. ²
<p>New Bill - Principle 3</p> <p>Everyone is equal before the law, and entitled to equal protection and benefit without discrimination. Everyone is entitled to the equal enjoyment of the same human rights without discrimination.</p> <p>Here again our main concern is the absence of any acknowledgement of rangatiratanga - Māori authority – which was solemnly promised in the Treaty.</p>	<p>Protection of Māori interests</p> <p>The active protection of Māori interests, rights, taonga and rangatiratanga by the Government is a key component of honouring the Treaty.</p>

These proposed principles represent a unilateral effort to redefine the terms of a legal contract.

The Hon David Seymour asserts that the principles he promulgates are universal and based in fairness. He claims that this Bill expresses the principles of the Treaty. Instead it brushes aside the Treaty and its specific guarantees, and thousands of New Zealanders of all ages and ethnic groups made clear their feelings about this take on fairness and rights through their participation in the Hikoi of 19 November 2024. This was a huge, positive, united and peaceful crowd, despite having to oppose such a divisive and disappointing Bill from the coalition government.

In a time when, worldwide, polarisation seems to be on the rise, this Bill is a highly inflammatory addition to a climate of divisiveness. Interestingly, the Prime Minister himself says it is divisive, simplistic, and does nothing to get New Zealand back on track. Our own Theologian in Residence, Sir Lloyd Geering, put it this way:

“To the extent to which we are still identifiably Māori or Pakeha, the spirit of the treaty requires of us that we take a more positive and sympathetic interest in our treaty partner.”³

We believe the Bill does nothing to benefit New Zealand society as a whole and rather devalues, diminishes and dishonours Tāngata Whenua.

The relationship between the Government and Māori under the Treaty of Waitangi is interpreted today as a special partnership between constitutional equals - two peoples – where we are committed to ensuring the best for each other. The Principles of the Treaty of Waitangi Bill is a unilateral proposal from one party (the Crown), without input or support from the other party (te iwi Māori). It is manifestly wrong for one party to a Treaty to change the terms on their own, as well as violating Article 37 of UNDRIP.

² *Regulatory Impact Statement: Providing certainty on the Treaty Principles*, (RIS), Executive Summary, p.2

³ Geering, *Spiritual bond of the treaty gives life*, Dominion, 24 December 1990.

Comparing what is in the Treaty itself and the Principles of the Treaty of Waitangi Bill, we have huge concerns about the extent to which Māori are not mentioned in the Bill. Note that there are two versions of the original Treaty - in English and Māori. In the Māori version (the version which was signed by most and is recognised in International Law as the authoritative version) the chiefs did not cede sovereignty to the Crown in 1840 and there are some iwi whose ancestors did not sign at all.

Referring to the Regulatory Impact Statement prepared by the Ministry of Justice it is clear that based on their analysis, the Principles of the Treaty of Waitangi Bill is inconsistent with the Treaty itself, with a number of concerns raised. In particular:

- It reduces indigenous rights to a set of ordinary rights that could be exercised by all citizens.⁴
- The Waitangi Tribunal has found that the Bill is “unfair, discriminatory, and inconsistent with the principles of the Treaty and contrary to the article 2 guarantee of tino rangatiratanga...”⁵
- The Tribunal also stated that the Bill could possibly undo “years of progress in restoring the [Māori-Crown] relationship”⁶
- While neither the status quo nor the proposed Bill will address broader questions of how the treaty/Te Tiriti shapes our constitutional arrangements, “the status quo preserves space for future engagement with iwi and hapū...in a process that prioritises public engagement, social cohesion, transparency and the legitimacy of the outcome.”⁷

This Principles of the Treaty of Waitangi Bill does nothing to clarify the existing, carefully considered and evolved principles of our founding document, instead riding roughshod over years of work and consideration of principles of equity in the name of a specious version of equality.

To sum up :

- Protecting the integrity of Te Tiriti is important for all of us, Māori and Tauīwi alike. It is an inclusive document for Aotearoa New Zealand, where everyone's unique contribution is acknowledged and which affords us all a place to stand.
- We support the official advice that the status quo offers better opportunities for future development of our constitutional arrangements.
- The Principles of the Treaty of Waitangi Bill is misconceived and divisive and strongly opposed by St. Andrew's on The Terrace, Wellington.

*Submitted on behalf of the congregation of St Andrew's on The Terrace
Sue Hirst, Parish Council Convenor.*

⁴RIS, Section 2, paragraph 43.

⁵ RIS, Section 2, paragraph 45

⁶ RIS, Section 2, paragraph 53

⁷ RIS, Executive Summary, p.3.