

# The Principles of the Treaty of Waitangi Bill

A submission to the Justice Committee

December 2024



Taituarā – Local Government Professionals Aotearoa (Taituarā) thanks the Justice Committee (the Committee) for the opportunity to submit on the Principles of the Treaty of Waitangi Bill (the Bill).

Taituara is New Zealand's leading professional organisation for local government managers and staff. Through our network of just over 1000 members we are able to provide a wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of legislation and policy. Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible.

We are a managerial organisation rather than a political one. Our purpose in writing this submission is to draw the Committee's attention to the managerial and technical implications that Bill itself and the way in which the Bill has been developed have for local authorities and their relationship with Māori.

**We recommend that the Justice Committee advise the House that this Bill not proceed.**

***Local authorities do have responsibilities to give effect to Te Tiriti.***

Article Two of Te Tiriti guarantees Māori the right to make decisions over the resources and taonga they wish to retain. Article Three commits the Crown to ensuring the rights and obligations of a New Zealand citizen apply equally to Māori.

Local authorities are public entities that make decisions that impact on lands, waters and taonga. Decisions such as RMA zoning, placement of infrastructure and levels of service, even the setting and enforcement of rates all have (or could have) such an impact.

Article Two recognises both shared authority over resources and taonga and the rights of Māori to contribute to council decisions, including representation in the governance process. This is one of the major pathways through which local authorities have responsibilities to Māori to give effect to te Tiriti.

While not signatories to Te Tiriti, the decisions that local authorities make can easily impact on the Crown's obligations to Māori. Local authorities must be cognisant of these principles and identify the impacts that their decisions will have.

Additionally, there are some activities where local authorities are acting as delivery agents on behalf of the Crown. Many of the regulatory services involve exercise of some function on behalf of the Crown, some public health activities are also provided on a similar basis.

We submit that the combination of these responsibilities, and that local government is the only sphere of government resident in each and every community, means that whether our responsibility or not, local authorities will be left to manage the consequences of this Bill at local level.

Together the existing Treaty principles form a robust foundation for building effective relationships with Māori. These relationships provide local authorities with longer-term, holistic, and richer insights into the needs of our local communities that make better outcomes for the entire community.<sup>1</sup> While this Bill will strain long-standing engagement and relationships with iwi and hapū, they will continue regardless of legislation.

***The undermining of existing jurisprudence will create legal uncertainty and cost.***

We direct the Committee's attention to paragraphs 47 to 50 of the regulatory impact statement (RIS). Officials note, quite correctly, that existing case law and established jurisprudence will be reconsidered against those principles specified in the Bill. This will lead to a period of uncertainty about the application of the new principles – most probably lengthy in our view.

The RIS highlights several statutes as being areas of risk including the Resource Management Act 1991 and an 'unknown' impact on Treaty claims. The intersection of both with the management of natural resources is highly likely to play out at local level either in challenges to local authority decisions under the RMA or in litigation or protracted processes to settle Treaty claims that often create obligations on local authorities.

In other words, we anticipate this Bill will create legal and financial risks for councils both immediately after enactment and most probably for some time to come.

***Enactment of this Bill would also require the review of many existing policies, practices, and procedures.***

The regulatory impact statement that accompanied this Bill states that there are now approximately 40 statutes that include references to Treaty principles.

To take some local government related examples, Parliament has directly conferred certain obligations on local government to consider and support the principles of Te

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<sup>1</sup> The Committee may wish to view examples from our Excellence Awards - winners of the last four years can be seen at <https://taituara.org.nz/excellence-awards>

Tiriti in their decision-making and action. For example, section 8 of the Resource Management Act 1991 requires that

*"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the [Treaty of Waitangi](#) (Te Tiriti o Waitangi)."*

The Land Transport Management Act 2003 takes a slightly different approach in that *"In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to land transport decision-making processes, [sections 18, 18A, 18G, 18H](#), and [100\(1\)\(f\)](#) provide principles and requirements that are intended to facilitate participation by Māori in land transport decision-making processes."*

The principles of Te Tiriti are also implicit in the overarching requirements that apply to any decision taken by a local authority set out in sections 77(1)(c) and 81 of the Local Government Act 2002.

We observe that taken as a whole, local authorities' general responsibilities to Māori and the web of more specific requirements prescribed in legislation reach into every aspect of local authority decision-making.

While enactment of this Bill does not automatically invalidate decisions taken in reliance on Treaty jurisprudence, it would create public expectations that any plan, policy, or procedures grounded in an application of these principles would be amended. And it would most certainly add to the time and resources required to engage with the community on those policies that are subject to requirements for regular review.

This would most likely be experienced with the application of Treaty principles in the Resource Management Act context and in the context of other environmental legislation. But the need to review plans and policies could equally manifest itself in decisions taken on water and wastewater treatment, the management of stormwater (including road run-off), the co-management of parks and reserves and a myriad of other decisions and actions.

***Our primary concern is that enactment of this Bill would adversely impact the relationships between Māori and local authorities.***

In the RIS, officials advised the Government of risks to the Crown-Māori relationship and (in paragraph 55) of risks that "the proposal, and the debate surrounding the Bill, could generate further division posing a threat to social cohesion."

While it is not for us to advise the Crown on the status of its relationship with Māori, the above has shown that Crown and local government cannot be neatly separated, especially with regard to Te Tiriti. That some in the community consider that 'it's all government' has been demonstrated many times in recent years.

This Bill fundamentally changes the basis on which existing relationships, policies and practices have developed over many years through a process that has, at best, been driven unilaterally by the Crown. We observe that some of these relationships and policies have been established following what was often protracted and contentious debate. The experiences that many local communities faced in establishing Māori wards serves as an example. Many of the local authorities that were among the first to establish partnerships with iwi could probably tell similar stories.

Local authorities, Māori and local communities will be left to work through the local implications that this Bill generates against a backdrop of tensions that have been created by the debate at national level. That cannot help but create unnecessary tension in council/Māori relationships inside and outside the Treaty context.



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