

7 January 2025



Health Coalition Aotearoa

Principles of the Treaty of Waitangi Bill

Submission from Health Coalition Aotearoa

Health Coalition Aotearoa

Health Coalition Aotearoa (HCA) is a collective organisation of public health NGOs, health professional associations, and academics with a shared goal of promoting equitable health outcomes in Aotearoa New Zealand. We advocate for healthier public policy in the areas of unhealthy food, tobacco and other nicotine products, and alcohol. Guided by Te Tiriti o Waitangi, HCA is committed to upholding its principles, embedding tikanga Māori and kaupapa Māori values into all aspects of our work. We have four expert advisory panels that provide guidance to our efforts, to ensure that our advice is both evidence-based and culturally responsive.

Summary

Health Coalition Aotearoa (HCA) strongly opposes this Bill and urges the Select Committee to immediately halt its progress and unequivocally reject its content. The Bill seeks to rewrite fundamental aspects of New Zealand's constitution, undermining Māori rights, stalling progress toward equity, and dismantling critical safeguards against environmental degradation and privatisation. It disregards established Treaty principles and breaches Te Tiriti, as widely recognized by the Regulatory Impact Statement, the Waitangi Tribunal, and numerous experts. Furthermore, the Bill's development process failed to consult Māori or specialists, resulting in legislation that is discriminatory, unjust, and inconsistent with New Zealand's commitments to equity and justice.

This Bill also distorts the intent of Te Tiriti, threatening the shared future of Aotearoa New Zealand. Its harmful implications have been highlighted by academics, organizations, Māori, the Waitangi Tribunal, King's Counsel, and former Prime Ministers and Ministers of the Crown, all of whom oppose its direction and consequences.

Health Outcomes

Disparities in health outcomes between Māori and non-Māori are immense, with harmful products like alcohol, tobacco, and unhealthy food causing a third of preventable deaths and disproportionately affecting Māori. Te Aka Whai Ora was established to address these inequities, recognizing the importance of culturally informed, trusting healthcare relationships. However, weak policies on obesity, alcohol harm, smokefree progress, and the dis-establishment of Te Aka Whai Ora fail to address the ongoing impact of harm towards Māori. This ongoing neglect of Māori health by successive governments breaches Article 3 of Te Tiriti and undermines efforts to achieve equity.

The health of our populations is largely determined by societal factors with only a minority of population health status attributable to our healthcare systems. Mindsets, institutions, and policies determine how society deals with its biggest killers – tobacco, alcohol and ultraprocessed foods.

Upholding Te Tiriti o Waitangi, including through the application of its principles, is a fundamental institutional building block for health and wellbeing, although successive governments, including this one, have failed to uphold the Crown’s commitment to Māori by not implementing its provisions. The Treaty Principles Bill, with its proposed redefinition of Treaty Principles, represents a continuation of this failure.

HCA supports the statement below by the Public Health Communication Centre:

“This Bill poses a significant threat to public health and equity in Aotearoa New Zealand by: exacerbating racism and undermining social cohesion; limiting Māori rights to design and lead public health solutions; weakening efforts to address structural disadvantages faced by Māori; diminishing commitment to improving health services for Māori and advancing equity; and restricting economic and environmental opportunities.”¹

The Bill’s proposed principles represent a drastic shift from the current interpretations of Treaty principles and the intent of Te Tiriti.

‘Principle 1’ - The Executive Government of New Zealand has full power to govern, and the Parliament of New Zealand has full power to make laws;

¹ Jones, C. (2024, December 18). Treaty Principles Bill threatens public health and equity: It needs your submission. PHCC. <https://www.phcc.org.nz/briefing/treaty-principles-bill-threatens-public-health-and-equity-it-needs-your-submission>

Article 1 of Te Tiriti o Waitangi, recognized as the definitive Treaty under international law, does not grant the Crown unrestricted sovereignty. Instead, the Crown was accorded limited kawanatanga (governance), while rangatira retained their authority over their hapū and territories. According to the Waitangi Tribunal's 2014 He Whakaputanga me te Tiriti report, the rangatira who signed Te Tiriti did not cede sovereignty but agreed to share power and establish a partnership where Māori and the Crown held equal but distinct roles.

‘Principle 2’ – If Māori rights under Te Tiriti differ from the rights ‘of everyone’, those rights will only be recognised if agreed as part of the settlement of historical claims;

Principle 2 seeks to diminish and erase the guarantee of tino rangatiratanga promised to Māori under Article 2 of Te Tiriti o Waitangi. This narrow interpretation undermines long-standing Māori rights, with Section 7(2) explicitly nullifying existing applications of Treaty Principles and reversing historical gains.

The principle claims the Crown will respect and protect hapū and iwi rights under Te Tiriti, but only if those rights align with Treaty settlements. This approach is a deliberate and egregious breach of Article 2, ignoring the tino rangatiratanga guaranteed to Māori in 1840. Unilaterally altering Treaty terms or confining Māori rights to settlements contradicts the foundational intent of Te Tiriti. The kawanatanga granted to the Crown under Article 1 is inherently constrained by the Crown’s obligation to uphold and respect the rangatiratanga of Māori communities under Article 2.

‘Principle 3’ - Everyone is equal before the law and is entitled to the equal protection and equal benefit of the law without discrimination.

Principle 3 attempts to diminish the explicit protections for Māori under Article 3 of Te Tiriti o Waitangi, which extended the rights, privileges, and duties of British subjects to Māori. Successive governments have breached this provision, leading to persistent disparities in health, education, and justice for Māori. Redefining this guarantee as mere ‘equality before the law’ removes the Crown’s responsibilities and obligations to Māori.

Conclusion

The Bill seeks to disrupt nearly fifty years of legal precedent and practice concerning Treaty principles by introducing new definitions of 'the principles of the Treaty.' The Bill is

profoundly anti-Māori and anti-health and will achieve the opposite of the objectives set out in the Bill. It would extinguish existing Māori rights, stall pro-equity progress, and remove constitutional brakes on environmental degradation and privatisation. As noted by the Regulatory Impact Statement and Waitangi Tribunal findings, the Bill failed in its process (no consultation with Māori or experts in the field) and its content is unfair, discriminatory, inconsistent with the existing Treaty Principles, and contrary to Te Tiriti itself.