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**Submission to Justice Select Committee
Principles of the Treaty of Waitangi Bill:**



Ngāti Kahungunu Iwi
I N C O R P O R A T E D

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Introduction

1. **Ngāti Kahungunu** is one of the largest iwi in Aotearoa New Zealand, with a population of 95,751¹ and the second largest tribal rohe and coastline, extending from Paritū on the coast north of Wairoa, inland across the Wharerata ranges, down towards the Tararua ranges, and to Tūrakirae on the southern Wairarapa coastline.
2. Ngāti Kahungunu traces its origins to the Takitimu waka and its eponymous ancestor, Kahungunu, who was born in Kaitaia, Taitokerau, and is the great-grandson of Tamatea Arikiniui, the captain of the Takitimu waka. Kahungunu travelled extensively throughout Te Ika a Māui, forming alliances through strategic marriages, and eventually settled in Te Mahia, where he married Rongomaiwahine. Over time, the descendants of Kahungunu expanded their influence.
3. As an iwi authority, Ngāti Kahungunu Iwi Incorporated maintains an independent position to advocate for the rights, interests, and practices of Ngāti Kahungunu. This includes the right for tāngata whenua to exist as tāngata of the whenua without persecution, oppression, and threats thereof, intentionally or otherwise. This advocacy is informed by the principles of self-determination and partnership, principles central to the Matike Mai Aotearoa initiative for constitutional transformation.

The mission of Ngāti Kahungunu Iwi Incorporated is: “To enhance the mana and well-being of Ngāti Kahungunu”.

4. This submission, while aiming to serve as a summary, is not a comprehensive account of all that should be considered.

Ngāti Kahungunu Rights

5. Ngāti Kahungunu has exercised the rights, responsibilities, and obligations of rangatiratanga in our rohe from before 1840 to the present day. The rangatiratanga of Ngāti Kahungunu does not derive from the Crown or Parliament. In 1835, Ngāti Kahungunu Chief Te Hapuku signed He Whakaputanga declaring the independence of the United Tribes of New Zealand, asserting that sovereign power and authority in the land resided with Te Whakaminega, the Confederation of United Tribes. In December 2023, Ngāti Kahungunu held a Hui-a-iwi where people of the iwi came together to share their concerns. An outcome of this hui was the

¹ <https://tewhata.io/ngati-kahungunu-collective/>

unanimous support that the iwi reaffirms the Declaration of Kahungunu Rights and that Ngāti Kahungunu did not cede sovereignty. This assertion of inherent sovereignty aligns with the aspirations for constitutional transformation outlined in the Matike Mai Aotearoa report.

Te Tiriti o Waitangi

6. The following 9 chiefs of Ngāti Kahungunu signed Te Tiriti o Waitangi:

5-12 May 1840: Turanga – Mātenga Tūkareaho and Tūtapatūrangi signed the East Coast Sheet.

16-17 May 1840: Ūawa – Te Tore signed the East Coast Sheet.

26 May 1840: Manawatū – Wi Te Ota, Rāwiri Paturoa and Te Tohe signed the Cook Strait (Henry Williams) Sheet.

24 June 1840: Hawke’s Bay – Te Hapuku, Waikato and Harawira Mahikai signed the Herald (Bunbury) Sheet.

7. The rangatiratanga of Ngāti Kahungunu was recognised and guaranteed by Article II of Te Tiriti o Waitangi. Ngāti Kahungunu whānau, hapū, and iwi have never relinquished their rights and interests to their lands, waters, estates, forests, fisheries, and taonga. Te Tiriti o Waitangi was a reaffirmation of indigenous rights. Treaties are to be honoured, not ‘settled’. Establishing principles can provide broad fundamental guidelines, but they can also serve to obfuscate more direct objectives, implementation, and obligations, particularly if they are viewed as being too difficult. The Matike Mai Aotearoa process highlights the need for a more holistic and collaborative approach to Treaty interpretation and implementation.
8. This submission opposes the proposed Treaty Principles Bill due to its inherent contradictions and potential for detrimental consequences. Each principle, while seemingly benign, harbours flaws that necessitate their rejection.

Flawed Principles

9. The proposed bill contains several principles that, upon closer examination, are fundamentally flawed and potentially harmful to the ongoing relationship between the Crown and Māori.

Governmental Sovereignty – Ignoring the Treaty’s Foundation

10. The assertion of the government's full power to govern, while seemingly straightforward, dangerously ignores the foundational role of the Treaty of Waitangi in shaping Aotearoa New Zealand's governance. This principle, by omitting any explicit mention of the Treaty, implicitly subordinates its principles and obligations to the whims of parliamentary power. This is not merely an

oversight, it's a fundamental flaw that risks undermining existing Treaty settlements and exacerbating the ongoing struggle for Māori self-determination.

11. The Crown's sovereignty is not absolute, it is inextricably linked to the Treaty and the obligations it entails. To assert otherwise is to ignore the historical injustices and ongoing inequities that stem from a failure to fully recognise and uphold the Treaty's intentions. Furthermore, this omission creates a legal vacuum, potentially opening the door to future conflicts and legal challenges as Māori continue to seek redress for past wrongs and the ongoing denial of their rights.
12. Instead of a simplistic assertion of power, Principle 1 should explicitly acknowledge the Treaty of Waitangi as a co-founding document and affirm the Crown's commitment to upholding its mana in all aspects of governance. Without this crucial acknowledgment, the principle serves only to reinforce the very power imbalances that have historically disadvantaged Māori. Therefore, this principle must be rejected in its current form.

Crown Recognition of Māori Rights – Ambiguity and its Perilous Consequences

13. The core problem with this principle is not merely its vagueness, but the potentially disastrous consequences stemming from that ambiguity. The phrase “rights that hapū and iwi had when they signed the Treaty/te Tiriti” is a legal minefield. Its lack of definition creates a breeding ground for protracted disputes, legal challenges, and ultimately, a further erosion of trust between the Crown and Māori.
14. The absence of clarity leaves the door open to inconsistent application, with the Crown potentially invoking the principle selectively to suit its own agenda. This could lead to arbitrary decisions, undermining the very notion of justice and fairness. Furthermore, the ambiguity risks exacerbating existing inequalities, as the undefined nature of these rights allows for their potential devaluation or outright denial.
15. Instead of offering a framework for reconciliation and redress, this principle, in its current form, creates a landscape ripe for conflict and further disenfranchisement. The potential for misinterpretation and misuse far outweighs any perceived benefit. Therefore, this principle must be scrapped and replaced with a commitment to a transparent and collaboratively defined framework for identifying and protecting Māori rights, ensuring genuine reconciliation and good relationships. This collaborative framework aligns with the spirit of partnership promoted by Matike Mai Aotearoa.

Equality Before the Law – A Principle Betrayed by Reality

16. While the assertion of equality before the law is laudable, its inclusion in this Bill is both naive and potentially harmful. The reality is that Māori are not treated equally under the current legal framework. The persistent overrepresentation of

Māori in negative statistics – concerning imprisonment, poverty, health outcomes, and more – serves as undeniable evidence of systemic inequities and ongoing discrimination.

17. Including this principle without addressing these deeply entrenched issues risks perpetuating the myth of equality while ignoring the harsh realities experienced by Māori. Far from resolving issues, this principle's inclusion creates fertile ground for ongoing legal action. The well-documented history of inequitable treatment, systemic racism, and unequal access to resources and opportunities will inevitably lead to challenges to any legislation based on this principle.
18. Instead of offering a solution, Principle 3 provides a shield for inaction, allowing the Crown to claim adherence to equality while failing to address the root causes of inequality. To include it without meaningful action to address systemic racism and historical injustices would be disingenuous at best and actively harmful at worst. This principle, therefore, should be removed, replaced with a commitment to genuine and measurable action to address the systemic inequalities that prevent Māori from enjoying true equality before the law.

Impact on Aotearoa New Zealand's Constitution

19. The inherent complexities and potential pitfalls of codifying the principles of the Treaty of Waitangi's demand a closer examination, particularly concerning their impact on Aotearoa New Zealand's constitutional framework. While acknowledging the Treaty's significance as a foundational document, we argue that enshrining its principles in a formal, legally binding manner risks undermining the very flexibility and adaptability that have characterised Aotearoa New Zealand's unique constitutional arrangement.
20. The current system, often described as an "unwritten constitution," possesses inherent strengths. Its flexibility allows for organic evolution in response to societal changes and evolving interpretations of the Treaty itself. The existing balance between written statutes, conventions, and judicial precedents fosters a dynamic interplay that ensures the constitution remains relevant and responsive to the needs of both Māori and Pākehā. This organic approach allows for nuanced interpretations and avoids the potential for rigid, legally defined interpretations that may become outdated or lead to unintended consequences.
21. The proposed Treaty Principles Bill, however, risks disrupting this delicate balance. Codifying these Treaty principles into law would inevitably lead to protracted legal battles over their precise meaning and application. The inherent ambiguities within the Treaty text - particularly the discrepancies between the Māori and English versions - would be amplified, potentially creating further division and conflict rather than fostering reconciliation. The current system, while imperfect, allows for ongoing dialogue and negotiation, enabling a more

fluid adaptation to changing circumstances and societal understandings of the Treaty's implications.

22. Furthermore, the Bill's potential impact on the existing legislative process warrants serious consideration. Introducing a codified set of Treaty principles would likely create a new layer of legal scrutiny for all proposed legislation, potentially leading to delays, increased costs, and a more cumbersome legislative process. This could stifle legislative efficiency and hinder the government's ability to respond effectively to pressing social and economic issues. The current system, while occasionally criticised for its lack of clarity, allows for a more streamlined legislative process, enabling quicker responses to evolving needs.
23. The existing mechanisms for incorporating Treaty principles into policy and legislation, such as the Waitangi Tribunal and various government departments' processes, provide a more nuanced and adaptable approach. These mechanisms allow for case-by-case consideration of Treaty implications, ensuring that the principles are applied in context and tailored to specific situations. A codified approach, on the other hand, risks imposing a one-size-fits-all solution, potentially neglecting the specificities of individual cases and undermining the flexibility of the existing system. Matike Mai Aotearoa offers a pathway to constitutional transformation that respects this nuanced approach.

Conclusion

24. In the wairua (spirit) of "Pinepine te Kura," a traditional Māori waiata (song) that speaks to the essence of Māori identity, whakapapa, and the deep connection to the land and ancestors, we strongly oppose the Treaty Principles Bill. This bill does not reflect the true intent of Te Tiriti o Waitangi and fails to uphold the principles of whakapapa, manaakitanga, tino rangatiratanga, and kotahitanga. The Matike Mai Aotearoa initiative provides a framework for a more equitable and just constitutional future, one that respects the principles of partnership and self-determination.
25. The Waitangi Tribunal, established in 1975 to investigate alleged breaches of the Treaty of Waitangi, has played a critical role in shaping the understanding and implementation of Treaty principles. Through its extensive inquiries and reports, the Tribunal has made numerous key arguments regarding the Crown's obligations under the Treaty, including:
 - **The Principle of Exchange and Reciprocity:** The Tribunal has consistently emphasised the fundamental principle of exchange inherent in the Treaty, arguing that Māori agreed to Crown kawanatanga in exchange for the protection of Māori rangatiratanga (self-determination). This principle of exchange requires a reciprocal relationship of mutual respect and good faith between the Crown and Māori. The Tribunal has further elaborated on this

principle by highlighting the notion of reciprocity, where both parties are obligated to act reasonably and with the utmost good faith towards each other.

- **Active Protection of Māori Interests:** The Tribunal has stressed that the Crown's duty to protect Māori interests extends beyond simply refraining from actions that breach the Treaty. The Crown has a positive obligation to actively protect Māori rights and interests, ensuring their full and undisturbed possession of our language, culture, and resources. This active protection requires the Crown to take proactive steps to uphold Māori interests, not simply passively avoid actions that might infringe upon them.
- **The Crown's Fiduciary Duty:** The Tribunal has recognised the Crown's fiduciary duty to Māori, stemming from the power imbalance inherent in their partnership. As the more powerful partner in the relationship, the Crown has a responsibility to act in the best interests of Māori, particularly when making decisions regarding resources or assets. This fiduciary duty requires the Crown to prioritise Māori interests and ensure that our rights are not compromised.
- **The Principle of Options:** The Tribunal has acknowledged that the Treaty grants Māori the right to choose their own path, whether to embrace traditional Māori ways or to participate in the wider Aotearoa New Zealand society. This principle of options allows Māori to "walk in two worlds," preserving their cultural heritage while also enjoying the rights and privileges of British subjects. The Tribunal has emphasized that Māori should be able to choose their own direction, free from undue influence or coercion.
- **The Importance of Consultation:** The Tribunal has consistently emphasized the importance of consultation with Māori in all matters that affect their interests. Consultation is not merely a courtesy but a fundamental requirement of the Treaty partnership. The Crown has a duty to consult with Māori in a meaningful and genuine way, seeking our input and perspectives before making decisions that impact our rights and interests.
- **The Development Principle:** The Tribunal has acknowledged that the Treaty principles can be applied to resources and technologies that were unknown in 1840. This development principle allows Māori to participate in the development and utilisation of new resources and technologies while still upholding their rights under the Treaty. However, the Tribunal has also cautioned against an overly expansive interpretation of the development principle, ensuring that it does not undermine the core principles of partnership and protection.
- **The Crown's Duty to Act in Good Faith:** The Tribunal has repeatedly emphasized the Crown's duty to act in good faith towards Māori. This principle of good faith requires the Crown to be honest, transparent, and fair in its dealings with Māori. The Tribunal has found that breaches of the Treaty often

stem from a lack of good faith on the part of the Crown, such as failing to consult properly or deliberately misleading Māori.

- **Redress for Historical Wrongs:** The Tribunal has consistently recognised the need for redress for historical injustices suffered by Māori as a result of Crown breaches of the Treaty. The Tribunal's reports have documented numerous instances of land confiscation, cultural suppression, and systemic discrimination against Māori. The Tribunal has recommended various forms of redress, including financial compensation, return of land, and recognition of Māori cultural rights.
- **The Importance of Māori Self-Determination:** The Tribunal has repeatedly emphasized the importance of Māori self-determination in its reports. The Tribunal has recognised that Māori have the right to make decisions about their own affairs, including their cultural practices, language, and resources. The Tribunal has argued that the Crown should support and facilitate Māori self-determination, rather than seeking to impose its own will on Māori communities.

26. We believe that the Treaty of Waitangi remains a cornerstone of Aotearoa New Zealand's identity and a vital element of its constitutional framework. However, codifying its principles into a legally binding document presents significant risks. The inherent ambiguities within the Treaty text, the potential for protracted legal challenges, and the potential for a more cumbersome legislative process all suggest that the current, more flexible system, despite its imperfections, offers a more effective and sustainable approach to upholding the Treaty's principles and ensuring a just and equitable society for all. The potential benefits of the proposed Bill are significantly outweighed by the risks of rigidity, legal uncertainty, and a potentially less efficient legislative process. Therefore, we strongly oppose the enactment of the Treaty Principles Bill.

Ngāti Kahungunu Iwi Recommendations

27. In light of the significant concerns outlined above, Ngāti Kahungunu Iwi Incorporated strongly recommends the following:

- I. **Immediate Rejection:** All parties should resolutely oppose this bill and halt its progression. Its content and intent are divisive and violate the original intent of Te Tiriti that was signed, and its predecessor He Whakaputanga.
- II. **Partnership in Drafting:** Any legislation that directly or indirectly makes mention of Te Tiriti o Waitangi is to be developed in authentic partnership with Ngāti Kahungunu iwi, hapū and whānau and their respective experts.
- III. **Constitution For Aotearoa:** Matike Mai Aotearoa should be engaged to lead constitutional transformation between tangata whenua, tangata Tiriti

and the Crown, ensuring a process that is truly inclusive and respects the principles of self-determination and partnership.

- IV. **Recognition of Māori Sovereignty:** The Crown should honour the commitments set out in Te Tiriti o Waitangi, He Whakaputanga, United Nations Declaration of Indigenous Rights, and other international human rights instruments. Failing to do so continues a pattern of white supremacy, colonialism, colonisation, systematic disenfranchisement, and denial of Ngāti Kahungunu iwi, hapū, whānau sovereignty.

28. This bill's advancement would eradicate Ngāti Kahungunu iwi, hapū and whānau rights, and Māori rights but also regress public confidence in the Government's commitment to equity, justice and partnership as outlined in Te Tiriti o Waitangi.



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