

Departmental Disclosure Statement

Principles of the Treaty of Waitangi Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

24 October 2024

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Part One: General Policy Statement

The Principles of the Treaty of Waitangi Bill (the Bill) implements the Government policy to introduce a Treaty Principles Bill, based on existing ACT Party policy, and to support it to a select committee as soon as practicable.

Parliament introduced the concept of the Treaty principles into legislation in the Treaty of Waitangi Act 1975, partially to reconcile the differences between the two texts. Parliament, however, did not define those principles.

The overarching objective of the Bill is to define what the principles of the Treaty of Waitangi are in statute to –

- create greater certainty and clarity to the meaning of the principles in legislation;
- promote a national conversation about the place of the principles in our constitutional arrangements;
- create a more robust and widely understood conception of New Zealand's constitutional arrangements, and each person's rights within them; and
- build consensus about the Treaty/te Tiriti and our constitutional arrangements that will promote greater legitimacy and social cohesion.

The Treaty principles, as defined at this time, help reconcile differences between the te reo Māori and English texts and give effect to the spirit and intent of the Treaty when applied to contemporary issues. They apply to policy and operational decisions by government (exactly what this requires depends on the context and there is guidance available to assist decision makers). They are used in the interpretation of legislation and are used by the Tribunal to review proposed Crown action or inaction, policies, and legislation.

Summary of key features

The Principles

The Bill proposes three principles:

Civil government – the Government of New Zealand has full power to govern, and Parliament has full power to make laws. They do so in the best interests of everyone, and in accordance with the rule of law and the maintenance of a free and democratic society.

Rights of hapū and iwi Māori – The Crown recognises the rights that hapū and iwi had when they signed the Treaty/te Tiriti. The Crown will respect and protect those rights. Those rights differ from the rights everyone has a reasonable expectation to enjoy only when they are specified in Treaty settlements.

Right to equality – Everyone is equal before the law and is entitled to the equal protection and equal benefit of the law without discrimination. Everyone is entitled to the equal enjoyment of the same fundamental human rights without discrimination.

Application

The Bill is an instrument of Parliament created for the purpose of interpreting Parliament's intent when it passes legislation.

The defined principles would be used exclusively to assist with the interpretation of an enactment, where Treaty principles would normally be considered relevant, in addition to legislation that refers to Treaty principles directly. This does not necessarily require Treaty principles to be explicitly referenced in the legislation in question. Their application in decision making is determined by the nature of the decision rather than the explicit reference in legislation.

The Bill does not alter or amend the text of the Treaty/te Tiriti itself and does not apply to the interpretation of a Treaty settlement Act.

Commencement

The Bill will come commence if a majority of electors voting in a referendum support it. The Bill will come into force six months after the date on which the official result of that referendum is declared.

If a majority of electors voting in a referendum do not support the Bill, it will automatically be repealed.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Constitutional Advisory Panel New Zealand's Constitution: A Report on a Conversation He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa (November 2013): https://www.justice.govt.nz/assets/Constitutional-Advisory-Panel-Full-Report-2013.pdf</p> <p>Waitangi Tribunal report <i>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</i>: https://forms.justice.govt.nz/search/Documents/WT/WT_DOC_217933408/Nga%20Matapono%20W.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	N/A

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The Ministry of Justice provided a Regulatory Impact Statement to inform the policy decision in the Bill. It can be found here: https://www.regulation.govt.nz/assets/Ministry-for-Regulation-files/Regulatory-impact-statements-RISs/published-10/10/2024/Regulatory-Impact-Statement-Providing-certainty-on-the-Treaty-principles.pdf</p>	
2.3.1. If so, did the RIA Team in the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>A quality assurance panel chaired by the Ministry for Regulation and with members from the Ministry of Justice has reviewed the <i>Regulatory Impact Statement (RIS): Providing certainty on the Treaty principles</i>, produced by the Ministry of Justice, dated 28 August 2024. The panel considers that it “does not meet” the Quality Assurance criteria.</p>	
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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Agencies responsible for providing advice on our international obligations were consulted throughout the process. To the extent that this could result in decision-makers and officials making narrower decisions about the extent of Māori rights and interests in certain areas of law, and acting accordingly, it may result in actions or outcomes that are seen to be discriminatory or inconsistent with international standards and obligations such as those affirmed by the International Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Crown has obligations to protect the rights affirmed to Māori under Te Tiriti o Waitangi when considering any reform to our constitutional arrangements. The policy to be given effect by the Bill was consulted on with the relevant agencies.

The Ministry of Justice's Regulatory Impact Assessment states that the policy is not consistent with the Treaty/te Tiriti. Similarly, the Waitangi Tribunal found that the Treaty Principles Bill policy is unfair, discriminatory, and inconsistent with the principles of the Treaty, contrary to the article 2 guarantee of tino rangatiratanga and will be significantly prejudicial to Māori.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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The Crown Law Office is preparing advice to the Attorney-General. This advice will be available on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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