



Committee Secretariat
Justice Committee
Parliament Buildings
Wellington

Via email: ju@parliament.govt.nz

Tēnā koe,

Te Kāhui Maru appreciates the opportunity to make a submission on the Principles of the Treaty of Waitangi Bill.

The Principles of the Treaty of Waitangi Bill, as currently proposed, raises significant concerns regarding its alignment with the foundational principles and articles of Te Tiriti/the Treaty of Waitangi. This submission outlines our reasons for opposing the Bill, highlighting its inconsistencies, the lack of consultation and negative impacts on Māori rights and interests.

We recommend the Bill be abandoned. The Crown should also consider a process in partnership with Māori to undo the damage to the Māori-Crown relationship resulting from the introduction of this Bill and the myriad of legislative changes pursued by this Government which undermine Māori rights and interests.

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Introduction

This submission is made by Te Kāhui Maru, the post-settlement governance entity of Te Iwi o Maruwharanui or Ngāti Maru (Taranaki) on the Principles of the Treaty of Waitangi Bill. The submission covers:

- who we are;
- our position – in opposition; and
- the reasons for that opposition.

We wish to make an oral submission in support of this written submission.

Who we are

Te Kāhui Maru are the post-settlement governance entity for Te Iwi o Maruwharanui or Ngāti Maru (Taranaki). The Ngāti Maru rohe is centred on the inland Waitara River valley, east to Whanganui River and its tributaries, and west to Taranaki Maunga. Our area of interest encompasses approximately 220,000ha. Our marae, Te Upoko o te Whenua, is located alongside the Waitara River in Tarata, a rural town located approximately 13km east of Inglewood.

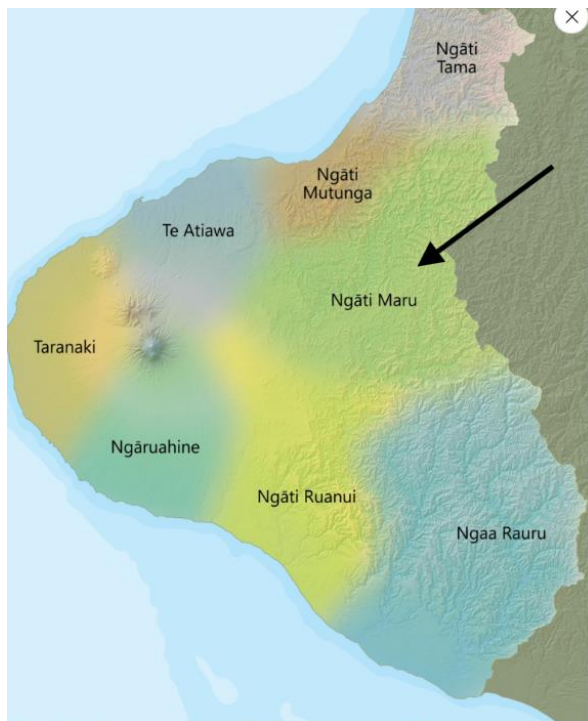


Figure 1: Ngāti Maru rohe

Ngāti Maru traditionally thrived by cultivating fertile river flats and utilising resources from forests, rivers, and wetlands. Due to their inland location, they had limited contact with Europeans in the 1840s and 1850s and were not involved in the land conflicts that led to the Taranaki War in 1860. However, in 1865, the Crown confiscated large areas of Taranaki land, including about half of Ngāti Maru's traditional lands, as punishment for so-called 'rebels'. This confiscation included many of their main settlements, burial grounds, and sacred sites, some of which have never been returned.

After the confiscation, Ngāti Maru continued to live on their lands, but the Crown's attempts to promote European settlement by offering compensation deeds to some Ngāti Maru on confiscated land covering around 60,000 acres, created significant divisions within the iwi, and compounded the damage caused by the loss of land.

The remaining Ngāti Maru land was put through the Native Land Court process, which was the only alternative if they wanted legal titles that could be legally recognised and protected from claims by others. A legal title was also necessary to enable leasing or selling. This process, however, led to the individualisation of customary titles, making the land more susceptible to alienation and further damaging tribal cohesion. Ultimately, Ngāti Maru lost all the land awarded to them by the court.

By the early 1890s, many Ngāti Maru were virtually landless and appealed to the Crown for assistance. The Crown's response was slow and inadequate, with legislation enacted only in 1907, providing poor-quality and limited land. Despite further petitions, the Crown declined to provide additional land in 1946. Much of the remaining land came under Public Trustee administration and was leased to benefit Pākehā farmers. The extensive loss of land eroded tribal structures, created severe poverty, and damaged the physical, cultural, and spiritual health of Ngāti Maru people, leading to a profound sense of loss and disconnection.

The intense sense of loss and disconnection is expressed in the following Ngāti Maru lament: Maru Hāhā. Hāhā te whenua. Hāhā te tangata. Maru of extreme loss and breathlessness. The land is deserted. The people are gone and gasping for breath.

In 2016, the Crown recognised the mandate of Te Rūnanga o Ngāti Maru Trust to represent Ngāti Maru in negotiating a comprehensive historical Treaty settlement. The Crown signed Terms of Negotiation with Ngāti Maru on 27 July 2016. On 20 December 2017, the Crown and Ngāti Maru signed an Agreement in Principle which formed the basis for this settlement.

On 17 August 2020, Ngāti Maru and the Crown initialled a Deed of Settlement (Deed). The Deed was then ratified by the people of Ngāti Maru and signed on 27 February 2021 at Tarata. The Ngāti Maru Claims Settlement Act 2022 came into force on 30 March 2022.

The deed contains a series of acknowledgements by the Crown where its actions arising from interaction with Ngāti Maru have breached the Treaty of Waitangi and its principles.

The deed includes a Crown apology to Ngāti Maru for its acts and omissions which breached the Crown's obligations under the Treaty of Waitangi and for the damage that those actions caused to Ngāti Maru. These include acknowledgements relating to the wars in Taranaki in the 1860s, the Crown's confiscation of approximately half of the Ngāti Maru rohe, its imprisonment of Ngāti Maru men without trial following their participation in protests initiated at Parihaka regarding the confiscation of Taranaki lands, and its subsequent invasion and destruction of Parihaka.

The deed also includes an acknowledgement that the Crown failed to ensure that Ngāti Maru retained sufficient land for their present and future needs, and that it failed to protect their rangatiratanga.

In its apology to Ngāti Maru for its historical Treaty breaches, the Crown recognises that:

- the resilience of Ngāti Maru iwi is connected intrinsically to the whenua, awa, and taonga of their rohe. Through this settlement, and with this apology, the Crown **commits to building an enduring relationship of mutual trust, respect and cooperation with Ngāti Maru based on te Tiriti o Waitangi/the Treaty of Waitangi and its principles.**

The principles of the Treaty of Waitangi/Te Tiriti o Waitangi

The concept of Treaty principles was introduced to Parliament through the Treaty of Waitangi Act 1975. This Act aimed to ensure the recognition and confirmation of the principles of the Treaty of Waitangi by creating a Tribunal to review claims related to the Treaty's practical application and assess whether certain actions were inconsistent with its principles.

As a standing Commission of Inquiry, the Tribunal is tasked with investigating Māori claims regarding potential breaches of the Treaty by the Crown. The Act grants the Tribunal exclusive authority to interpret the meaning and implications of the Treaty, including resolving issues arising from differences between the Māori and English versions of the document.

Since the Act was passed in 1975, the Tribunal and New Zealand courts have further developed and clarified the principles of the Treaty. These principles embody the Treaty's core values, emphasising mutual obligations and responsibilities between the parties. The Court of Appeal determined that the fundamental agreement of the Treaty was the exchange of sovereignty for the protection of rangatiratanga.

Examples of how Treaty principles are referenced in legislation include:

- "In the management of natural and physical resources, full and balanced account is taken of (among other things) the principles of the Treaty of Waitangi" (Environment Act 1986).

- "Nothing in this Act shall allow the Crown to act in a manner inconsistent with the principles of the Treaty of Waitangi" (State Owned Enterprises Act 1986).
- "This Act must be interpreted and administered to give effect to the principles of the Treaty of Waitangi" (Conservation Act 1987).
- 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)' (Resource Management Act 1991).
- 'All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)' (Crown Minerals Act 1991).

The proposed Bill does not reflect the principles of the Treaty of Waitangi developed by the Courts over the past 50 years and instead offers a crude misinterpretation of the articles of the Treaty of Waitangi.

Issues with the Principles of Treaty of Waitangi Bill and its impacts

Ngāti Maru strongly oppose the proposed Principles of the Treaty of Waitangi Bill as it will limit the interpretation, application, and recognition of the Treaty of Waitangi and the principles of the Treaty of Waitangi developed through jurisprudence in this country over the past 50 years.

This Bill undermines the constitutional relationship established under Te Tiriti o Waitangi and disregards the Crown's obligations to protect Māori rights, interests, and tino rangatiratanga.

This submission outlines the reasons for our opposition to the Bill, including:

- Inconsistency with the articles of the Treaty
- Failure to uphold Treaty settlements
- Lack of alignment with the Government's stated objectives
- Lack of consultation and poor policy development process
- Inconsistency with Treaty principles developed by the Courts
- Limitation of Māori rights and interests

Inconsistency with the articles of the Treaty of Waitangi

The Treaty of Waitangi, signed in 1840, is a foundational document that establishes the relationship between Māori and the Crown. The Bill, however, is inconsistent with the articles of the Treaty in several ways:

- **Article One:** the Bill undermines the Crown's obligation to govern in partnership with Māori, as it fails to recognize the shared authority and decision-making established under the Treaty.
- **Article Two:** The Bill does not adequately protect Māori tino rangatiratanga over their lands, resources and taonga.
- **Article Three:** The Bill does not ensure equal protection and participation for Māori, as guaranteed by the Treaty.

The Bill is a crude misinterpretation of the articles of the Treaty of Waitangi which seeks to undermine Māori rights and interests and sow division amongst the people of New Zealand.

Failure to uphold the Ngāti Maru Claims Settlement Act 2022

The Bill does not uphold the commitments made in our Treaty settlement, which is a legally binding agreement between the Crown and Ngāti Maru. The settlement is intended to address historical grievances and provide redress for past injustices. The Bills provisions undermine these settlements by introducing new policies which conflict with them.

In its apology to Ngāti Maru for its historic breaches of the Treaty of Waitangi, the Crown:

commits to building an enduring relationship of mutual trust, respect and cooperation with Ngāti Maru based on te Tiriti o Waitangi/the Treaty of Waitangi and its principles

If the Crown were to retrospectively change the principles of the Treaty of Waitangi, as is proposed through this Bill, this fundamentally changes the nature and premise on which our treaty settlement was negotiated. This would undermine the apology made to us by the Crown and its commitment to working together to build an enduring relationship of mutual trust, respect and co-operation.

Lack of alignment with the Government's stated objectives

The Government has stated objectives to promote equity, equality, partnership and the protection of Māori rights and interests. However, the Bill does not align with these objectives:

- **Equity:** the Bill does not address the systemic inequities faced by Māori and would exacerbate existing disparities.
- **Partnership:** the Bill does not foster a genuine partnership between Māori and the Crown, as it lacks mechanisms for meaningful engagement and collaboration.
- **Protection of Māori rights and interests:** the Bill does not adequately protect Māori rights and interests, as it introduces mechanisms that would erode those rights.

The Government has stated its objectives for the Bill are to provide certainty and clarity of the meaning of the principles in legislation, to promote a national conversation about the place of the principles in New Zealand's constitutional arrangements and to create a more robust and widely understood conception of New Zealand's constitutional arrangements and each person's rights with them. However, the Bill does not align with these objectives:

- **Certainty and clarity:** the Bill does not provide the necessary certainty and clarity of the meaning of the principles in legislation. Instead, it introduces ambiguity and confusion, making it difficult for individuals and institutions to understand and apply the principles. Furthermore, it opens the door for future litigation to determine how the new principles should be applied in specific circumstances.
- **National conversation:** the Bill does not promote a national conversation on the meaning of the principles in legislation. The lack of consultation and engagement with Māori has stifled meaningful dialogue and debate. It is disappointing to say the least, that the only opportunity Māori have to input on this Bill is through the select committee process.
- **Robust constitutional understanding:** the Bill does not contribute to a more robust and widely understood conception of New Zealand's constitutional arrangements. Instead, it creates divisions and misunderstandings, undermining efforts to build a cohesive and inclusive society.

Lack of consultation

The development of the Bill has been marked by a lack of engagement with Māori communities. This lack of engagement is concerning for several reasons:

- **Inadequate representation:** Māori voices have not been adequately represented in the policy development process.
- **Lack of transparency:** The process has lacked transparency, with no opportunity for Māori to input and feedback until the select committee process.
- **Failure to meet obligations:** The Crown has an obligation to consult with Māori on matters that affect their rights and interests. The failure to do so undermines the principles of partnership and good faith.

Poor policy development process

The policy development process for this Bill has been deficient in several key areas:

- **Lack of clear problem definition:** the Bill does not clearly define the problem it seeks to address, making it difficult to assess its necessity and effectiveness.
- **Limited options considered:** the Bill appears to have been developed without considering a range of policy options, limiting the potential for innovative and effective solutions.

- **No consultation:** as previously mentioned, there has been a lack of consultation with Māori.
- **No testing:** the Bill has not been adequately tested or piloted to assess its potential impacts and effectiveness.

Inconsistency with the Treaty Principles developed by the Courts

The Bill is inconsistent with the principles of the Treaty developed by the Courts. These principles include:

- **Partnership:** the principle of partnership requires the Crown and Māori to act reasonably and in good faith towards each other. The Bill does not reflect this principle.
- **Active protection:** the Crown has a duty to actively protect Māori rights and interests. The Bill seeks to undermine Māori rights and interests and limit them to only those specified in Treaty settlements, which goes against the guarantees made by the Crown in article two of the Treaty of Waitangi.
- **Redress:** the principle of redress requires the Crown to address past wrongs and provide remedies. The Bill serves as a modern injustice and breaches the principles of the Treaty of Waitangi.

Limitation of Māori rights and interests

The Bill is part of a broader trend of legislative changes that seek to limit Māori rights and interests. This trend is concerning for several reasons:

- **Erosion of rights:** the Bill introduces policies that would erode Māori rights and interests, undermining the progress made through Treaty settlements and other legal mechanisms.
- **Undermining self-determination:** the Bill does not support Māori self-determination and limits the ability for Māori to exercise their tino rangatiratanga.
- **Negative impacts on relationships:** the Bill negatively impacts the relationship between the Crown and Māori, leading to increased tensions and conflicts.

Negative impacts on the Māori Crown relationship

The introduction of this Bill to Parliament, regardless of whether it progresses any further, has serious implications for the Māori-Crown relationship:

- **Erosion of partnership:** the Bill does not foster a genuine partnership between Māori and the Crown, as it lacks mechanisms for meaningful engagement and collaboration.
- **Undermining trust:** the Bill provisions erode the trust that has been built through years of negotiations and Treaty settlements.

- **Limiting Māori rights and interests:** the Bill introduces policies which limit Māori rights and interests, undermining the progress that has been made.

Te Tiriti is about respect and honour. The existing principles establish a framework to enable the Crown and Māori to meet their obligations via reasonable co-operation. The development of te Tiriti principles is the role of the Waitangi Tribunal and courts, removing any conflict of interest that may arise due to the government's dual role in meeting its Crown te Tiriti obligations and as the government of the day.

For a government that emphasizes efficiency, clarity, and adherence to Treaty settlements and the Articles of Te Tiriti, this Bill fails on all fronts. It does not solve the problem it claims to address but creates further complexity and undermines the stability of Crown-Māori relationships. Te Tiriti is not a barrier to progress—it is the foundation of our shared future. To attempt to circumvent it is to sow division and weaken the unity and resilience of Aotearoa New Zealand.

Erosion of Treaty Obligations

The Treaty principles serve as the foundation for the partnership between Māori and the Crown, ensuring active protection, participation, and mutual benefit. Restricting their application undermines the Crown's ability to meet its Treaty obligations and weakens the ability for iwi and hapū to hold the Crown accountable.

- **Consequence:** Māori voices and interests can be easily sidelined, leading to further breaches of Te Tiriti o Waitangi. Limited opportunities for participation in policy development and decision-making processes, undermining tino rangatiratanga.
- **Impact:** A loss of trust and confidence in government processes, particularly in resource management, health, education, and justice sectors.

Undermining of Kaitiakitanga

Iwi and hapū play an essential role as kaitiaki (guardians) of their whenua (land), moana (sea), and taiao (environment). The Treaty principles provide a legal and ethical foundation for Māori involvement in environmental governance and decision-making. The interpretation of Treaty principles in this Bill would diminish the recognition of kaitiakitanga interests.

- **Consequence:** this would contradict the process of developing treaty settlements and undermine the positive progress that has been made between Māori and the Crown in moving towards honouring Te Tiriti o Waitangi.
- **Impact:** Environmental degradation and the loss of indigenous ecological knowledge as Māori voices are excluded from resource management decisions.

Disruption of Social Cohesion

The Treaty principles promote dialogue and understanding between Māori and non-Māori communities. The limited interpretation of those principles in this Bill would increase inequalities, divide communities, and heighten societal tensions.

- **Consequence:** Greater alienation and resentment within Māori communities as their rights, interests and ability to contribute are diminished.
- **Impact:** A fractured national identity and reduced social cohesion, undermining the promise of a bicultural partnership. Māori would again be forced to take actions to be recognised on their own ancestral homelands. Greater alienation and non-recognition for Māori would cause racial division between Māori and non-Māori communities.

Stifling Māori Development

The Treaty principles have allowed Māori to advocate for equitable policies and funding in areas like health, education, and housing. The principles, as developed by the Courts, enable Māori aspirations to be acknowledged and supported within New Zealand's legal and political systems.

- **Consequence:** Limiting the application of Treaty principles would obstruct Māori development and perpetuate disparities in critical areas.
- **Impact:** Further entrenchment of social and economic inequities, disproportionately affecting Māori communities.

Impacts on society

If passed, this Bill would not only harm iwi and hapū but would also reverse progress towards a more equitable and inclusive New Zealand society.

- **For Iwi and Hapū:** The Bill threatens to disempower Māori, removing protections and limiting opportunities to engage in decision-making processes. This would severely restrict the ability for iwi to exercise tino rangatiratanga and protect their cultural heritage.
- **For Society:** The removal of Treaty principles would exacerbate systemic inequities, create legal uncertainty, and damage New Zealand's international standing as a leader in indigenous rights and reconciliation.

The principles in this Bill:

- Do not reflect the texts or meaning of the Treaty/te Tiriti;
- Breach the article 2 guarantee of tino rangatiratanga;

- Misinterpret the kāwanatanga granted to the Crown in 1840, which is not an unbridled power restrained only by what the Government determines to be in the best interests of everyone.
- remove the right to redress where the Crown breaches its obligations under article 2 especially.
- claim executive and parliamentary sovereignty as opposed to existing conditional sovereignty (the essential bargain).
- reduce Māori rights to only those contained in Treaty settlements for historical grievances.
- bear no resemblance to te Tiriti in either spirit, intent or text.
- are so far removed from te Tiriti jurisprudence as to be a breach of te Tiriti themselves.

Although the ACT Party claims that this Bill will promote equality, it will have the opposite effect. It will create greater uncertainty, inefficiency, and inequity. Far from addressing the perceived ‘problem’ of clarity in interpreting Treaty principles, this Bill will result in a fragmented legal framework that invites costly litigation, delays, and ongoing disputes. It undermines government objectives of certainty, clarity, and effectiveness in policy development and decision-making.

The Bill is also fundamentally inconsistent with Te Tiriti o Waitangi itself. The Articles of Te Tiriti guarantee Māori tino rangatiratanga (Article 2) and partnership with the Crown (Article 1), as well as the protection of Māori interests. Māori rights and interests far extend those specified in settlements. This Bill seeks to limit Māori rights and interests to only those specified in Treaty settlements, which undermines the settlements themselves.

Treaty settlements were agreed in good faith and underpinned by the principles of Te Tiriti as developed by the Waitangi Tribunal and the Courts. This Bill erodes the Crown’s integrity and credibility, both as a Treaty partner and as a government committed to honouring its obligations. The Waitangi Tribunal has long cautioned against the dangers of policies and legislation that fail to engage meaningfully with Te Tiriti principles.

The ACT Party’s decision to write this Bill in isolation of Māori communities who will ultimately be the victim of this Bill is a demonstration of a flawed policy development process. It reflects the lack of understanding and respect for the unique constitutional role of Te Tiriti. Instead, the Bill perpetuates discriminatory practices, further alienating Māori and exacerbating the harm caused by generations of racially biased legislation.

Māori have already long suffered from disconnection to whenua, cultural suppression, and legislative exclusion, resulting in intergenerational harm to mental health, identity, and wellbeing which are all prevalent and seen today. The Tohunga Suppression Act 1907 and the banning of Te Reo Māori are prime examples of policy failures that continue to impact Māori today. This Bill risks repeating those mistakes by further eroding the protections and rights enshrined in Te Tiriti.

The ACT Party's failure to engage with Māori communities when drafting this Bill shows that it is a racially motivated attempt to further discriminate against Māori. This approach will only deepen the negative impact on Māori in the future. We believe the ACT Party lacks the expertise and cultural understanding necessary to interpret Te Tiriti o Waitangi.

As such, they should not have the authority to propose a Bill that seeks to reinterpret the intentions of Māori and rangatira from 1840. Had they the necessary knowledge and respect for Te Tiriti, they would recognise that this proposed Bill is not in line with its principles and constitutes a direct violation of the promises made to our ancestors.

Submissions and reports by other parties

We fully support the submission in opposition made by Ngā Iwi o Taranaki on this Bill. In its submission Ngā Iwi o Taranaki discuss the destructive consequences of this Bill and how it will undermine Māori rights and interests.

We also concur with the findings and recommendations made by the Waitangi Tribunal in its pre-publication report *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* which concerns Crown policies to progress a Treaty Principles Bill and to review legislative enactments referring to 'the principles of the Treaty of Waitangi'.

The Waitangi Tribunal concluded that the Bill attempts to address a problem that does not exist. The Tribunal made the following observations:

- There is no policy imperative justifying the Bill.
- It offers 'novel' interpretations of Te Tiriti o Waitangi.
- It is based on a distorted historical narrative.
- The policy rationale behind the Bill is unsustainable.
- It distorts the language of Te Tiriti/the Treaty.

Additionally, the Tribunal found that:

- The Bill has been pursued without regard for the Crown's constitutional and Treaty obligations to Māori.
- Senior officials warned the Bill would undermine the Māori-Crown relationship and damage social cohesion.
- The equality of all New Zealanders is already safeguarded by common law, statutes, and international law, and by engaging in this policy, the Crown is sanctioning a process that will undermine indigenous rights.

- The Bill is unfair, discriminatory and inconsistent with the principles of partnership and reciprocity, active protection, good government, equity and redress, and contrary to the Article 2 guarantee of tino rangatiratanga.
- The policy is consistent with an alarming trend of the Crown using the policy process and Parliamentary sovereignty against Māori instead of meeting its Te Tiriti obligations.
- The impacts of the Bill will be highly prejudicial to Māori.
- If passed, the Treaty Principles Bill would have far-reaching and detrimental impacts on iwi, hapū, Māori communities, and New Zealand society.

Recommendations from the Tribunal include:

- The Treaty Principles Bill policy should be abandoned.
- The Crown should constitute a Cabinet Māori–Crown relations committee that has oversight of the Crown’s Treaty/te Tiriti policies.
- The Tribunal did not consider it appropriate that these matters are considered by the Social Outcomes Cabinet Committee.
- The Crown should consider a process in partnership with Māori to undo the damage to the Māori–Crown relationship and restore confidence in the honour of the Crown.

We also support the submission made by the King’s Counsel, which acknowledges the following critical issues with this Bill:

- A distinct and deliberate lack of meaningful consultation with Māori, te Tiriti experts, and constitutional experts;
- It limits Māori rights to those that existed in 1840;
- It undermines human rights rather than advancing them;
- It is incompatible with the rule of law and constitutional jurisprudence;
- It discriminates against Māori and abrogates their rights;
- It will damage the Māori-Crown relationship and risk undermining social cohesion;
- It is an inappropriate method of addressing an issue of such importance and complexity, especially one that profoundly impacts indigenous rights;
- It misrepresents foundational Treaty concepts and misinforms public discourse; and
- It will cause serious, long-term harm to national unity and confidence in good governance.

Our Position and Recommendations

Te Kāhui Maru strongly opposes the Principles of the Treaty of Waitangi Bill and recommend its immediate withdrawal.

We urge the Crown to strengthen the mechanisms available which foster a more meaningful partnership between Māori and the Crown. We call for the Crown to engage with Māori on the co-design of policy and legislative processes that reflect the intent and true spirit of Te Tiriti o Waitangi.

The application of the principles of Te Tiriti as developed by the Waitangi Tribunal and the courts should be enhanced across all areas of governance to promote equitable outcomes for Māori and all New Zealander's.

Conclusion

The Treaty Principles Bill represents a fundamental step backward for New Zealand, undermining the mana of Māori, the mauri of our relationships, and the fabric of our society. Te Kāhui Maru urges the Crown to fulfil its obligations under Te Tiriti o Waitangi and to reject any legislation that seeks to weaken the principles upon which our partnership is based.

We are committed to working collaboratively with the Crown and all New Zealanders to uphold Te Tiriti o Waitangi and secure a just and equitable future for all.