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**The Royal Australasian College of
Physicians' submission to the
Justice Committee**

**Principles of the Treaty of Waitangi
Bill**

Hakihea 2024 | December 2024

About The Royal Australasian College of Physicians

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to advise to the Justice Committee on the proposed Principles of the Treaty of Waitangi Bill.

The RACP works across more than 40 medical specialties to educate, innovate and advocate for excellence in health and medical care. Working with our senior members, the RACP trains the next generation of specialists, while playing a lead role in developing world best practice models of care. We also draw on the skills of our members, to develop policies that promote a healthier society. By working together, our members advance the interest of our profession, our patients and the broader community.

The Royal Australasian College of Physicians position on the Principles of the Treaty of Waitangi Bill

The RACP opposes the Principles of the Treaty of Waitangi Bill, viewing it as an incorrect and misleading interpretation of Te Tiriti o Waitangi.

1. The Bill undermines Aotearoa New Zealand's constitution and prejudices against Māori, representing an act of bad faith. It attempts to further assimilate Māori into the majority culture, undermining the rights of Māori to Tino Rangatiratanga (self determination) and weakening trust between Māori and the government.
2. The RACP urges the Justice Committee to recommend against the Bill's second reading, aligning with the Waitangi Tribunal's description of the Bill as a breach of Te Tiriti o Waitangi that continues to harm all Treaty partners.
3. The government has a responsibility to act and correct misinformation about Te Tiriti o Waitangi, monitor and mitigate disinformation, and promote accurate, expert-supported historical narratives, as recommended by the Waitangi Tribunal¹.
4. Efforts should focus on rebuilding trust and fostering cross-party cooperation to maintain social cohesion.
5. The RACP is particularly concerned about the Bill's potential negative impact on Māori health outcomes.
6. Undermining Māori rights, social cohesion, and trust will lead to worsening health inequities, affecting the well-being of the entire community.

This submission outlines the RACP's key concerns about the substance of the Bill, its wider implications for Aotearoa New Zealand's constitutional arrangements, and the process adopted.

¹ Waitangi Tribunal. 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 – Pre-publication Version, WAI 3300, Waitangi Tribunal Report 2024. Waitangi Tribunal, 2024. Available from: https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_217933408/Nga%20Mataponono%20W.pdf

Background

Te Tiriti o Waitangi is a binding agreement between the Crown and Māori, forming a cornerstone of New Zealand's constitutional framework. Parliament has embedded 'Treaty Principles' clauses in over 40 pieces of legislation, reflecting the long-standing recognition by successive governments of their obligations to uphold the rule of law and constitutional arrangements, including the Crown's guarantees under Te Tiriti.²

The existing "Treaty Principles", first introduced in the Treaty of Waitangi Act of 1975³, have been developed and applied by the Courts over the past 50 years. These principles now guide how the Crown fulfills its obligations to Māori in specific circumstances. The main principles include partnership, active protection, equity, and redress. They are designed to reflect the spirit and intent of the Treaty as a whole, encompassing the mutual obligations and responsibilities of the parties involved and do not supersede the articles themselves.

A Breach of Treaty Rights

The RACP is deeply concerned about the coalition government's Principles of the Treaty of Waitangi Bill, which aims to redefine the meaning of Te Tiriti by replacing the existing "Treaty Principles" with new ones that supposedly reflect the three articles of Te Tiriti. However, it is unclear where these new principles have come from and whose expertise was involved⁴.

Expert Māori translators described the translations used in the Bill as "deeply flawed" and failing to meet international translation ethical standards. The Bill is based on a translation of Te Tiriti o Waitangi that was factually incorrect and misleading. These new principles do not accurately represent the articles, effectively seeking to rewrite the Treaty itself.⁵

The Bill would unilaterally change the meaning and legal effect of Te Tiriti without the agreement of Māori, the Treaty partner.

The proposed "Principle 2" retrospectively limits Māori rights to those that existed in 1840. It states that if these rights "differ from the rights of everyone", they are only recognised to the extent agreed in historical Treaty settlements with the Crown. This undermines the Crown's Article 2 guarantee to Māori of Tino rangatiratanga (chieftainship/self-determination/political authority over their communities, lands, and other taonga) provided in exchange for Māori agreement to the establishment of Crown kāwanatanga (governance). By recognising Māori rights only when incorporated into Treaty settlements, this principle also seeks to exclude the Courts, which play a crucial role in developing common law and protecting Indigenous and minority rights⁶.

² Radio NZ. Senior lawyers call for Treaty Principles Bill to be abandoned. [Internet]. Radio NZ: 14 November 2024. Available from: [Senior lawyers call for Treaty Principles Bill to be abandoned | RNZ News](#)

³ Te Kawanatanga o Aotearoa | New Zealand Government. Treaty of Waitangi Act 1975 No. 114, Public Act. Te Kawanatanga o Aotearoa | New Zealand Government, 1975. Available from: <https://www.legislation.govt.nz/act/public/1975/0114/latest/whole.html>.

⁴ Royal Australasian College of Physicians (RACP). Treaty Principles Bill a grave concern for Māori – peak physicians body. [Internet]. RACP: 12 September 2024. Available from: [Treaty Principles Bill a grave concern for Māori health- peak physicians body](#)

⁵ Radio NZ. Treaty Principles Bill: Māori translators pen letter over 'deeply flawed' translations. [Internet]. Radio NZ: 10 July 2024. Available from: [Treaty Principles Bill: Māori translators pen letter over 'deeply flawed translations' | RNZ News](#)

⁶ Radio NZ. Senior lawyers call for Treaty Principles Bill to be abandoned. [Internet]. Radio NZ: 14 November 2024. Available from: [Senior lawyers call for Treaty Principles Bill to be abandoned | RNZ News](#)

We oppose the retrospective limiting of rights to those that existed for Māori in 1840 or those within Treaty settlements legislation. This will freeze iwi and Māori interests at 1840, despite the evident evolution of these rights post-1840⁷.

The proposed "Principle 3", the right to equality, fails to recognise the fundamental Article 2 guarantee to Māori of the right to be Māori and to have their tikanga Māori (customs, values, and customary law) recognised and protected in law. As the Waitangi Tribunal has noted, "people in a liberal democracy can and do have different rights." Additionally, it does not acknowledge the impact of colonisation and past Te Tiriti breaches on Māori at the hand of the Crown, which have created profound inequities⁸.

The refabricated principles do not accurately reflect the texts or meaning of the Te Tiriti o Waitangi.

The Waitangi Tribunal's interim report following the urgent inquiry into the Principles of the Treaty of Waitangi Bill highlights significant concerns:

- The Crown's process to develop the Bill has breached the principles of partnership, good faith, and active protection, and of contractual Law as a binding agreement between Māori and the Crown.
- Additionally, the Crown has not consulted its Māori Treaty partner nor sought their consent, which is a significant breach of the principle of partnership⁹.

Nullifying Te Tiriti o Waitangi (Again) and Trading It Away

In 1877, the Supreme Court in *Wi Parata v The Bishop of Wellington*, under Chief Justice Sir James Prendergast, declared the Treaty of Waitangi as 'worthless' and a 'simple nullity'¹⁰. This case has since been viewed as evidence of the rejection of Māori rights by settlers, the government, and the law in Aotearoa New Zealand. It has been repudiated by successive courts and legal scholars.

We argue that this Bill undermines Te Tiriti in a similar manner. The inclusion of elements of this Bill in the 2023 Coalition Agreement¹¹ under the guise of "equal citizenship" effectively bargains away the essence of Te Tiriti o Waitangi. The 2023 Coalition Agreement itself constitutes a yet another Crown breach of Te Tiriti o Waitangi.

There is an implication in the Bill that every citizen of Aotearoa New Zealand has an equal and neutral starting point. This ignores the effects of colonisation on hapū and iwi Māori values and cultural practices. It also ignores the structural and intergenerational inequality designed into public services. The Treaty Principles Bill will create significant confusion and expense as the courts, community, and government agencies seek to understand what it means in practice.

⁷ Radio NZ. Rewriting history: how the Treaty 'principles' evolved and why they don't stand up to scrutiny. [Internet]. Radio NZ: 10 September 2024. Available from: [Rewriting history: how the Treaty 'principles' evolved and why they don't stand up to scrutiny | RNZ News](#)

⁸ Radio NZ. Senior lawyers call for Treaty Principles Bill to be abandoned. [Internet]. Radio NZ: 14 November 2024. Available from: [Senior lawyers call for Treaty Principles Bill to be abandoned | RNZ News](#)

⁹ Waitangi Tribunal. Tribunal releases report on Treaty Principles Bill. [Internet]. Waitangi Tribunal: 16 August 2024. Available from: <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-treaty-principles-bill>

¹⁰ Manatū Taonga - Ministry for Culture and Heritage. Chief Justice declares treaty 'worthless' and a 'simple nullity'. [Internet]. Manatū Taonga: updated 7-Sep-2020. Available from: <https://nzhistory.govt.nz/the-chief-justice-declares-that-the-treaty-of-waitangi-is-worthless-and-a-simple-nullity>

¹¹ New Zealand National Party & ACT New Zealand. Coalition Agreement: New Zealand National Party & ACT New Zealand – 54th Parliament. [Internet]. New Zealand National Party & ACT New Zealand: 24 November 2023. Available from: [National ACT Agreement.pdf](#)

Overall, the proposed Bill is viewed as a significant breach of the Treaty/Te Tiriti, with the potential to cause extensive prejudice to Māori, undermine the constitutional foundation of Aotearoa New Zealand, and negatively impact public health.

Importance of Community Involvement in Legislation

The RACP emphasises that good legislation requires broad community involvement and a thorough policy process. For instance, the Bill of Rights Act 1990¹² was preceded by extensive public discussion.

For Te Tiriti o Waitangi, foundational work has been done by the Constitutional Advisory Panel's 2013 report and Matike Mai Aotearoa's hui¹³, providing valuable insights into an inclusive constitution for Aotearoa. The WAI 3300 inquiry¹⁴ also contributes to this understanding.

Documents like Matike Mai¹⁵ should inform any Bill clarifying the principles of Te Tiriti. If the Government, including its coalition partners, were acting in good faith to create an open conversation in Aotearoa about Te Tiriti, they would wait for that conversation to be informed by the Wai 3300 inquiry's outcome before proceeding.

The RACP asserts that the Principles of the Treaty of Waitangi Bill lacks sufficient community engagement, risking the health and well-being of both Māori and Pākehā. Inclusive legislation is crucial for social cohesion and equitable health outcomes.

Impact on Māori Health and Well-being

The RACP emphasises that these changes could severely impact Māori health outcomes, as the erosion of rights and social cohesion can worsen health inequities. The RACP is deeply concerned about the Bill's direct and indirect effects on Māori health. Challenging the principles of the founding document fosters racism and causes harm, which can lead to or exacerbate a range of health issues.

The persistent life expectancy gap reflects the Crown's historical and ongoing failures to uphold Te Tiriti's principles in health and social systems, highlighting the need for more action, not less, as proposed by this bill. This could further widen the life expectancy gap in Aotearoa between Māori and non-Māori, with Māori women living on average, seven years less than European/other women, and Māori men eight years less than European/other men¹⁶.

¹² Te Kawanatanga o Aotearoa | New Zealand Government. New Zealand Bill of Rights Act 1990 No 109, Public Act. Te Kawanatanga o Aotearoa | New Zealand Government, 1990. Available from: <https://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html>.

¹³ Constitutional Advisory Panel. Te Ranga Kaupapa Ture. [Internet]. Constitutional Advisory Panel: November 2013. New Zealand's Constitution: A Report on a Conversation, He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa. Retrieved from [Disputes Tribunal Constitutional Advisory Panel Full Report 2013.pdf](https://www.disputes-tribunal.govt.nz/Constitutional-Advisory-Panel-Full-Report-2013.pdf)

¹⁴ Waitangi Tribunal. Tomokia ngā tatau o Matangireia: Constitutional. [Internet]. Available from: [Tomokia ngā tatau o Matangireia: Constitutional | Waitangi Tribunal](https://www.waitangi-tribunal.govt.nz/Constitutional/Waitangi-Tribunal)

¹⁵ Working Group on Constitutional Transformation. Report of Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation. [Internet]. Available from: <https://nwo.org.nz/resources/report-of-matike-mai-aotearoa-the-independent-working-group-on-constitutional-transformation/>.

¹⁶ Te Whatu Ora | Health New Zealand. Aotearoa New Zealand Health Status Report 2023. Te Whatu Ora | Health New Zealand, 2024. Available from: <https://www.tewhatauora.govt.nz/publications/health-status-report>.

The Bill represents another attack on Māori health, following the passing of the Pae Ora (Disestablishment of Māori Health Authority) Amendment Bill under urgency in March 2024¹⁷, and the subsequent disestablishment of Te Aka Whai Ora in June 2024. The RACP strongly supported the establishment of Te Aka Whai Ora to work in tandem with Te Whatu Ora, allowing opportunities for co-governance and giving effect to Te Tiriti o Waitangi¹⁸.

Systemic barriers that have led to poorer health outcomes for Māori, including the significant life expectancy gap. These barriers risk being amplified by current policy changes that prioritise “equality for all New Zealanders” over equity. While equality may seem fair on the surface, it overlooks unique cultural, societal, political, and economic contexts. Equality-based policies perpetuate systemic inequalities and hinder Māori, whānau, and communities from thriving¹⁹. Equity is not about special treatment; it acknowledges the generations of advantage afforded to non-Māori through colonisation and is an established right afforded to all Māori in Te Tiriti o Waitangi. We have already seen equity-based initiatives halted due, in part, to the emboldenment of racism by those who look to this Bill and this government for guidance.

The Principles of the Treaty of Waitangi Bill fails to acknowledge, let alone address, systemic inequalities in health, economic, and social outcomes for Māori, and the RACP believes the Bill will exacerbate existing inequalities rather than working towards the shared prosperity and partnership envisaged by Te Tiriti o Waitangi. By ignoring these disparities, the Bill contradicts the Treaty’s spirit of active protection and equity, which demands proactive measures to improve outcomes for Māori. The issue raised in the Bill’s definition of principle 3 that ‘everyone is equal before the law’ is already appropriately addressed by the protections contained in the Bill of Rights Act 1990²⁰.

Until we achieve equality, such as equal life expectancy, we should not change the discourse of the Treaty. It remains a live and ongoing issue.

Concerns from the RACP on the Principles of the Treaty of Waitangi Bill

The RACP is deeply concerned that the Principles of the Treaty of Waitangi Bill poses a significant threat to social cohesion, which would negatively impact the health and well-being of both Māori and Pākehā in Aotearoa New Zealand.

The RACP views the Bill as discriminatory, and consider the Bill to not accurately reflect the Articles of Te Tiriti o Waitangi. It fails to support a consensus-building national conversation about Te Tiriti o Waitangi, and alienates and excludes Māori from policy development and input into the direction of

¹⁷ Te Kawanatanga o Aotearoa | New Zealand Government. Pae Ora (Disestablishment of Māori Health Authority) Amendment Act 2024 No 5, Public Act. Te Kawanatanga o Aotearoa | New Zealand Government, 2024. Available from:

<https://www.legislation.govt.nz/act/public/2024/0005/latest/whole.html#LMS939836>.

¹⁸ Royal Australasian College of Physicians (RACP). General Position Election Statement 2023. RACP, 2023. Available from: [general-position-election-statement-2023.pdf](#)

¹⁹ Bourke, J, Owen, H, Derrett, S. *et al*. Disrupted mana and systemic abdication: Māori qualitative experiences accessing healthcare in the 12 years post-injury. [Internet]. BMC Health Serv Res 23: 130. Available from:

<https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-023-09124-0>

²⁰ Te Kawanatanga o Aotearoa | New Zealand Government. New Zealand Bill of Rights Act 1990 No 109, Public Act. Te Kawanatanga o Aotearoa | New Zealand Government, 1990. Available from: <https://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html>.

Aotearoa New Zealand's constitutional arrangements. Moreover, the Bill has not been developed with Māori as the Crown's Te Tiriti partner.

Toi Mata Hauora - Association of Salaried Medical Specialists (ASMS) has raised concerns that if the Bill were put to a public referendum, there is a significant risk that the will of a non-Māori majority would be imposed on the minority partners, who are most likely to be affected by the policy²¹, echoing concerns raised in the Ministry of Justice's Regulatory Impact Statement²². This would be an unacceptable breach of the United Nations Declaration on the Rights of Indigenous Peoples²³, causing harm to Māori, Pākehā and Tauīwi, and driving further inequitable health outcomes for Māori.

The RACP is particularly concerned that the Bill, and the process it has followed, will stoke disinformation and hate speech targeted at Māori. Research shows that disinformation and hate speech spikes in response to particular events²⁴, such as the disestablishment of Te Aka Whai Ora²⁵. This has the potential to cause significant harm. The RACP agrees with Toi Mata Hauora ASMS's concerns and urges all members of the Justice Committee to be aware of this harm. We recommend that relevant government agencies monitor patterns in race-based disinformation and hate speech in relation to the Bill and take steps to build Aotearoa New Zealand's resilience to misinformation and disinformation.

Conclusion

The RACP considers that the Principles of the Treaty of Waitangi Bill will bring no benefit, and has serious concerns that its continued progress through Parliament will negatively impact the health and well-being of both Māori and Pākehā in Aotearoa New Zealand. The RACP urges the Justice Committee to recommend that the Bill not proceed to a second reading in the House.

We would like to request the opportunity for an oral hearing to speak to the Justice Committee and would be happy to provide further clarification on matters covered in this submission.

The RACP thanks the Justice Committee for the opportunity to provide feedback on this consultation. To discuss this submission further, please contact the Hauora Māori Team at HauoraMāori@racp.org.nz.

²¹ Toi Mata Hauora | Association of Salaried Medical Specialists. Toi Mata Hauora ASMS submission on the Principles of the Treaty of Waitangi Bill. Toi Mata Hauora | Association of Salaried Medical Specialists, December 2024. Available from: <https://asms.org.nz/wp-content/uploads/2024/12/Submission-Treaty-Principles-Bill.pdf>

²² Te Tāhū o te Ture | Ministry of Justice. Regulatory Impact Statement: Providing certainty on the Treaty principles. Te Tāhū o te Ture | Ministry of Justice, 2024. Available from: <https://www.beehive.govt.nz/sites/default/files/2024-09/Regulatory%20Impact%20Assessment%20Treaty%20Principles%20Bill.pdf>

²³ United Nations. United Nations Declaration on the Rights of Indigenous Peoples. United Nations, 13 September 2007. Available from: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

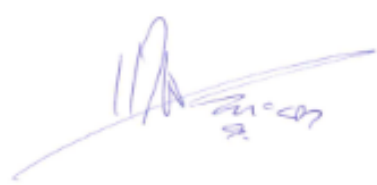
²⁴ Wardle, C. Report - A Conceptual Analysis of the Overlaps and Differences between Hate Speech, Misinformation and Disinformation (June 2024). Department of Peace Operations, United Nations, June 2024. Available from: https://peacekeeping.un.org/sites/default/files/report_-_a_conceptual_analysis_of_the_overlaps_and_differences_between_hate_speech_misinformation_and_disinformation_june_2024_grup_date.pdf

²⁵ Renner, E. A HEIA Thematic Report / Report # 4 - Harmful Inaccurate Information and Māori. Hate & Extremism Insights Aotearoa (HEIA), June 2024. Available from: <https://www.heiaglobal.com/post/harmful-inaccurate-information-and-m%C4%81ori>

Nāku noa, nā

Handwritten signature in black ink, appearing to read "MBL W.S."

Dr Matt Wheeler
Chair, Māori Health Committee
**The Royal Australasian College
of Physicians**

Handwritten signature in blue ink, appearing to read "H. McCay" with a date "21/07/17" below it.

Dr Hamish McCay
Aotearoa NZ President
**The Royal Australasian College
of Physicians**