



# Principles of the Treaty of Waitangi Bill

Submission to the Justice Committee  
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**CONTACT**

Sue Stover

Yearly Meeting Clerk

[clerk@ym.quakers.nz](mailto:clerk@ym.quakers.nz)

## **ABOUT THE RELIGIOUS SOCIETY OF FRIENDS (QUAKERS) TE HĀHI TŪHAUWIRI**

Quakers are a religious society. There are around 400 000 Quakers worldwide; about 1000 people identified as Quakers in the 2018 Aotearoa New Zealand census.

Quakerism has its roots in Christianity and many Quakers find the life and teachings of Jesus, as described in scripture, inspirational; but Quakers believe that there are no definitive teachings which are applicable for all time. The revelation of truth is ongoing and there is no creed. Quaker worship is based on silence and listening to the spirit. Quakers seek to experience God directly, within ourselves and in our relationships with others and the world around us: Quakerism is a way of life, rather than a set of beliefs.

The Quaker vision over the centuries is of a world of justice, equality and peace. Quakers practise truth and integrity, simplicity and sustainability, and pursue paths leading to peace and equality.

### **EXECUTIVE SUMMARY**

1. The Religious Society of Friends (Quakers) Te Hāhi Tūhauwiri opposes the Principles of the Treaty of Waitangi Bill (the bill) in its entirety because its introduction, without negotiation, proposes to unilaterally diminish the rights negotiated in good faith by Māori and the Crown, as articulated in Te Tiriti o Waitangi 1840. The process demonstrably lacks integrity.
2. We oppose several specific aspects of the bill, in particular, clause 6, Principle 2, subclause (2). This clause would have the effect of curtailing the effective, largely unique, Aotearoa New Zealand approach to constitutional arrangements that involves ongoing conversation and experimentation. Legislation developed in this way has successfully led to incremental change to our constitutional arrangements, with a high degree of community consensus.
3. We also oppose clause 2 of the bill which provides for a referendum, as we consider that there are complex issues of social and legal justice involved for which a simple referendum question is an inappropriate process, and risks social division rather than consensus.
4. We consider the bill a breach of Aotearoa New Zealand's international obligations as a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, which explicitly recognises the right to self-determination for indigenous peoples (tino rangatiratanga).
5. Accordingly, we recommend that the Committee does not proceed with any part of the bill.
6. We also recommend that the Committee give consideration to Citizens' Assemblies and other means of building consensus around the role of Te Tiriti through ongoing education and national discussion.
7. We would like to make an oral submission.

## INTRODUCTION

8. This submission is made on behalf of the national body of Quakers in Aotearoa New Zealand. Our interest in the bill stems from both our historical experience and from our belief in the potential of every human life to flourish in an environment of peace, justice and equality. Quakers have always actively advocated for social and economic policies that create such an environment.
9. As a religious minority during the English revolution, the English parliament persecuted Quakers through the Quaker Act of 1662 and the Conventicles Act of 1670, which made it illegal to hold religious meetings of more than five people outside the Church of England. From our earliest beginnings, therefore, we have had direct experience of unjust laws designed to diminish the rights of citizens.
10. Quaker activism played a significant role subsequently in securing religious freedom, the abolition of slavery, prison reform, and the peace movement. Throughout our history, we have actively advocated for citizens' rights, particularly minority rights that are under threat from the 'tyranny of the majority'.
11. The fact that the Quaker Act was passed by a majority in the English Parliament is an example of how a democratic process can lead to an unjust outcome. Other examples include pieces of legislation that legalised slavery, which Quakers also opposed.
12. We consider the Principles of the Treaty of Waitangi bill is a further example of such unjust legislation.
13. Honesty and integrity are foundational values of Quakerism. We consider our 'word to be our bond' and we therefore consider that treaties negotiated in good faith must always be upheld.

## DISCUSSION

### General comments

14. This submission refers to Te Tiriti o Waitangi (Te Tiriti) throughout because Te Tiriti was the text considered at Waitangi and first agreed to by most Māori. Our understanding is that the legal doctrine of 'contra proferentem' applies to treaties and means that if a term in a contract is unclear, it should be interpreted against the party who drafted or introduced the term.
15. We consider, as a matter of common sense and integrity, that the proposer and drafter of a treaty has the responsibility to ensure that the meaning is clear to both parties. The attempt by the Crown to post facto 'reconcile differences' between the Māori text and the English version as stated in the Explanatory Note to the bill is, in effect, an attempt to renege on the agreement.

16. We fully accept the finding of the Waitangi Tribunal in the Te Paparahi o te Raki inquiry (WAI 1040) that by signing Te Tiriti, Māori did not cede sovereignty. Any consideration of Te Tiriti principles must therefore proceed from that starting point and fully involve both the Crown and Māori in a bilateral process similar to Te Tiriti's original negotiation.
17. Moreover we submit that in 1840, there was a highly religious and spiritually charged bicultural atmosphere in Aotearoa, brought about by the combination of Māori spirituality and the pervasive missionary influence during the 25 years after Marsden's arrival. Many rangatira - for example, Patuone, Tāmati Wāka Nene and Rāwiri Taiwhanga - were baptised, along with their entire tribes.
18. At the ceremony for the signing of Te Tiriti, it was Tāmati Wāka Nene's intercession as a Christian, that won over Māori kaumatua who were not convinced about signing.<sup>1</sup> Thus Māori agreement to Te Tiriti was a spiritual act of trust and must be viewed as a covenant between the two sovereign nations, not merely a legal document. The spiritual component gives it a much deeper meaning.
19. The bill belies this trust and ignores the covenantal nature of Te Tiriti.
20. The fact that a temporary majority in Parliament can enact legislation affecting the rights of citizens is no guarantee of the justice of such legislation, as Quakers can attest from our own historical experience. For this reason, many jurisdictions protect human rights from such majority decision-making through entrenched constitutional instruments, like Bills of Rights.
21. With no Upper House or entrenched Bill of Rights in Aotearoa New Zealand, a temporary majority in Parliament can simply override human rights protections, and has done so on several occasions, most notably in the case of the Foreshore and Seabed Act 2004. The bill, if enacted, would be another egregious example of the Crown's failure to protect rights.
22. Aotearoa New Zealand has some of the weakest human rights protections, and indeed, as reported to the United Nations (UN) Human Rights Council, "*Extensive law and policy changes, accompanied by new austerity measures by the New Zealand Government, have meant human rights in Aotearoa are falling behind.*"<sup>2</sup>
23. In her address to the UN on the Government's formal response to the 259 recommendations made by UN member states to improve human rights in New Zealand in 2024, Acting Chief Human Rights Commissioner Saunoamaali'i Dr Karanina Sumeo was unequivocal: "*Aotearoa trails other democracies in realising*

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<sup>1</sup> Te Ara - the Encyclopedia of New Zealand, <https://teara.govt.nz/en/biographies/1n2/nene-tamati-waka> (accessed 1 December 2004)

<sup>2</sup> New Zealand Human Rights Commission. News. October 9, 2024. <https://tikatangata.org.nz/news/human-rights-in-aotearoa-new-zealand-falling-behind>

*Indigenous peoples' tino rangatiratanga (self-determination). There is a serious flaw in how readily Parliament can override human rights, and especially the rights of Indigenous peoples. There is a growing understanding that greater constitutional protection for Indigenous rights and te Tiriti o Waitangi is needed.*"<sup>3</sup>

24. This bill directly opposes the direction of the recommendations made in the 2024 UN Universal Periodic Review of Human Rights in New Zealand.

### Part 1 Clause 2 Commencement

25. We submit that the bill ignores the rights of Māori by seeking to redefine provisions of Te Tiriti through a referendum, without consultation or negotiation with Māori who are the other party to the bilateral agreement.

26. We support the Waitangi Tribunal findings in its urgent inquiry into the bill (WAI3300) that in:

- introducing the bill without reference to Māori;
- declining to allow sufficient time frames for engagement with Māori; and
- failing to engage Te Tiriti experts to advise on the bill,

the Crown breached Te Tiriti principles of partnership and reciprocity, active protection, good government, equity, redress, and Article 2, the guarantee of rangatiratanga. This process lacks the integrity expected of the Crown.

### Part 2 Principles of the Treaty of Waitangi

27. The bill, as acknowledged by the Waitangi Tribunal in WAI3300, does not address an existing issue. In fact, it risks worsening the 'uncertainty' it purports to resolve. This uncertainty supposedly arises from the Court, the Waitangi Tribunal and the public services' role in articulating and implementing Te Tiriti Principles.

28. However, as the Courts have set out, the principles are clear and primarily include: partnership, active protection, good faith, redress and consultation.

29. While the Court and Tribunal have acknowledged that the principles are not limited, the core principle of a good faith partnership makes clear the "spirit" of Te Tiriti<sup>4</sup>. This emphasis on the spirit in Te Tiriti Principles case law is one which Quakers, in our practice of listening to the spirit, find clear and compelling.

30. Further, the Regulatory Impact Statement; multiple officials' advice; and WAI3300, all note that the introduction of this bill will create greater legal uncertainty. The

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<sup>3</sup> *ibid*

<sup>4</sup> References to the spirit of Te Tiriti and the Treaty partnership can be noted in decisions of President Cooke and Justice Richardson, *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641, p663,672-673 and the Court of Appeal in *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142, 152.

Courts will still play a role in interpreting Te Tiriti principles, albeit the bill's novel, ahistorical and non-Treaty based principles, in a legal landscape grown around well-established existing Treaty principles.

31. As the WAI3300 report notes, the bill has the potential to directly affect over 40 pieces of legislation and indirectly affect countless others. Crucially, WAI3300 notes that it has the potential to significantly affect Te Tiriti settlements in future, potentially leading to vastly unequal results for iwi and hapū yet to reach Treaty settlement agreements.

32. Overall, the bill provides a highly simplistic representation of Te Tiriti and its meaning for Aotearoa New Zealand, in particular, ignoring:

- the vital role of the relationship established;
- the extensive abuse which Te Tiriti has suffered, which has done tragic harm to Māori; and
- the extensive work put into working through that relationship in many treaty settlements and other negotiations.

33. Yet that very simplicity may be attractive to some who are uncomfortable with the recent social changes in order to uphold Treaty rights and compensate for past breaches.

34. The result of the bill may be increased polarisation, undermining any consensus and making it a highly divisive and potentially dangerous exercise, contrary to its objectives.

#### Clause 6

35. We note that the three principles set out in Part 2 of the bill do not mention tino rangatiratanga, which is the basis for national and international recognition of Te Tiriti as a binding agreement between two sovereign nations.

36. This is a serious omission that would fundamentally breach both the spirit and intent of Te Tiriti. It would also constitute a breach of Aotearoa New Zealand's international obligations as a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, which explicitly recognises the right to self-determination for indigenous peoples.

#### Principle 2, subclause (2)

37. Moreover, Principle 2, subclause (2), in determining that the Crown will:

*'respect and protect, the rights that hapū and iwi Māori had under the Treaty of Waitangi/te Tiriti o Waitangi at the time they signed it... only if those rights*

*are agreed in the settlement of a historical treaty claim under the Treaty of Waitangi Act 1971'*

would have the effect of curtailing the ongoing discussion and experimentation around Te Tiriti that has served us so well.

### Developing Constitutional Consensus

38. The Quaker belief in the potential of every human life to flourish in an environment of justice and equality has driven our peace activism over the centuries. We share the desire to build the consensus about Te Tiriti that is expressed in the Explanatory Note to the bill.
39. Consensus on key social and justice issues is the foundation of a peaceful society. We submit that the way to address any discomfort and build consensus is through ongoing conversation in wider society and experimentation with Te Tiriti responsiveness mechanisms at all levels of government and civil society. The development of, for example, Te Tiriti-based governance arrangements in museums and other organisations, and Māori advisory groups in many local authorities and Government departments testifies to the efficacy of this peaceful, incremental process.
40. We refer to the Waitangi Tribunal's recommendations in WAI3300 and support consideration of Citizens' Assemblies to contribute to the 'national conversation' on Te Tiriti.
41. These approaches have led to widely accepted and internationally acclaimed legislation granting legal personhood to rivers and lakes with Te Tiriti-based bilateral governance structures. Without such conversation and experimentation, it may be less likely that such innovative solutions will emerge.
42. Legislation developed in this way has successfully led to incremental change to our constitutional arrangements, with a high degree of community consensus. This is why it is critical that both parties to Te Tiriti must be involved in any consideration of how Te Tiriti is to be interpreted.
43. Having said that, we are aware that such an incremental approach means that Te Tiriti aspirations of Māori will continue to be met very slowly and in a piecemeal manner, which would call on the continued patience and forbearance of Māori.
44. We note, and draw the Committee's attention to our belief, that such patience and forbearance from Māori has been the primary reason for the peaceful coexistence of Māori and non-Māori since the cessation of the New Zealand Wars, Ngā Pakanga o Aotearoa.

## **CONCLUSION**

45. In line with our historical experience, advocacy for social justice, and convictions, Quakers Aotearoa New Zealand Te Hāhi Tūhauwiri opposes the Principles of the Treaty of Waitangi bill in its entirety because:

- it was developed without consultation with Māori, and therefore breaches Te Tiriti o Waitangi, the partnership negotiated in good faith between Māori and the Crown in 1840;
- it would unilaterally diminish Te Tiriti rights of Māori;
- it is divisive and, potentially, dangerously so;
- the referendum it proposes is an inappropriate mechanism for complex decision-making about constitutional principles;
- it would curtail the ongoing conversation, experimentation and emerging body of law around Te Tiriti that has successfully led to incremental change in constitutional arrangements, in line with changing social attitudes; and
- it would constitute a breach of Aotearoa New Zealand's international obligations as a signatory to the United Nations Declaration on the Rights of Indigenous People, which explicitly recognises the right to self-determination for indigenous peoples (tino rangatiratanga).

## RECOMMENDATIONS

46. We recommend that the Committee:

- **Does not** proceed with any part of the bill;
- **Agree** that the development of the bill without Māori or expert opinion, transgresses both the terms and the spirit of Te Tiriti, bringing the Crown into disrepute, and risking significant and unnecessary social division;
- **Agree** that patience and forbearance has been the primary reason for the peaceful coexistence of Māori and non-Māori since the cessation of the New Zealand Wars, Ngā Pakanga o Aotearoa;
- **Agree** to investigate a continuous process of education and discussion around the role of Te Tiriti in Aotearoa New Zealand; and
- **Note** that we wish to make an oral submission.

In Friendship

Sue Stover  
Yearly Meeting Clerk.