

Principles of the Treaty of Waitangi Bill

Government Bill

Explanatory note

General policy statement

The Principles of the Treaty of Waitangi 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.

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:
- build consensus about the Treaty/te Tiriti and our constitutional arrangements that will promote greater legitimacy and social cohesion.

Parliament introduced the concept of the Treaty principles into legislation in the Treaty of Waitangi Act 1975, partially to reconcile the differences between the 2 texts. Parliament, however, did not define those principles.

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

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 into force if a majority of electors voting in a referendum support it. The Bill will come into force 6 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.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=94>

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 28 August 2024 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.beehive.govt.nz/release/next-steps-agreed-treaty-principles-bill>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Bill to come into force 6 months after the date on which the official result of a referendum is announced if a majority of electors voting in that referendum support the Bill coming into force.

Part 1

Preliminary provisions

Clause 3 states the purpose of the Bill.

Clause 4 defines terms used in the Bill.

Clause 5 provides that the Bill, when enacted, will bind the Crown.

Part 2

Principles of Treaty of Waitangi

Clause 6 sets out the principles of the Treaty of Waitangi for the purposes of the Bill.

Clause 7 provides that the principles of the Treaty of Waitangi set out in the Bill must be used to interpret an enactment if principles of the Treaty of Waitangi are relevant to interpreting that enactment. This is the case whether the reference to principles is express or implied.

Clause 8 provides that the Bill does not apply to the interpretation of a Treaty settlement Act, or the Treaty of Waitangi Act 1975 in relation to the settlement of a historical Treaty claim entered into after the commencement of the Bill.

Clause 9 provides that the Bill does not amend the text of the Treaty of Waitangi/*Te Tiriti o Waitangi*.

Hon David Seymour

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Principles of the Treaty of Waitangi Act **2024**.

2 Commencement

- (1) If a majority of electors voting in a referendum respond to the question in **sub-section (2)** supporting this Act coming into force, this Act comes into force 6 5

- months after the date on which the official result of that referendum is declared.
- (2) The wording of the question to be put to electors in a referendum for the purposes of **subsection (1)** is—
- “Do you support the Principles of the Treaty of Waitangi Act **2024** coming into force?” 5
- (3) The wording of the 2 options for which electors may vote in response to the question is—
- “Yes, I support the Principles of the Treaty of Waitangi Act **2024** coming into force.” 10
- “No, I do not support the Principles of the Treaty of Waitangi Act **2024** coming into force.”
- (4) If a majority of electors voting in a referendum respond to the question in **subsection (2)** that they do not support this Act coming into force, this Act is repealed on the day after the date on which the official result of that referendum is declared. 15
- (5) This Act is repealed if it does not come into force under **subsection (1)** within 5 years after the date on which it receives Royal assent.
- (6) In this section, **referendum**—
- (a) means a referendum providing electors with an opportunity to decide whether this Act should come into force; and 20
- (b) includes any fresh referendum required to be held if the High Court, on a petition, declares the referendum under **paragraph (a)** to be void.

Part 1

Preliminary provisions 25

3 Purpose

The purpose of this Act is—

- (a) to set out the principles of the Treaty of Waitangi in legislation; and
- (b) to require, where relevant, that those principles must be used when interpreting legislation. 30

4 Interpretation

In this Act,—

historical Treaty claim has the same meaning as in section 2 of the Treaty of Waitangi Act 1975

Treaty settlement Act means— 35

- (a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; and

- (b) any of the following:
- (i) the Maori Commercial Aquaculture Claims Settlement Act 2004:
 - (ii) the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:
 - (iii) the Nga Wai o Maniapoto (Waipa River) Act 2012: 5
 - (iv) the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010:
 - (v) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and secondary legislation that gives effect to section 10 of that Act: 10
 - (vi) any other Act that—
 - (A) provides collective redress or participation arrangements for claimant groups whose historical Treaty claims are, or are to be, settled by another Act; or
 - (B) otherwise relates to the settlement of a historical Treaty claim. 15

5 Act binds the Crown

This Act binds the Crown.

Part 2

Principles of Treaty of Waitangi

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6 Principles of Treaty of Waitangi

The principles of the Treaty of Waitangi are as follows:

Principle 1

The Executive Government of New Zealand has full power to govern, and the Parliament of New Zealand has full power to make laws,—

- (a) in the best interests of everyone; and
- (b) in accordance with the rule of law and the maintenance of a free and democratic society.

Principle 2

- (1) The Crown recognises, and 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.
- (2) However, if those rights differ from the rights of everyone, **subclause (1)** applies only if those rights are agreed in the settlement of a historical treaty claim under the Treaty of Waitangi Act 1975.

Principle 3

- (1) Everyone is equal before the law.
- (2) Everyone is entitled, without discrimination, to—
 - (a) the equal protection and equal benefit of the law; and
 - (b) the equal enjoyment of the same fundamental human rights.

7 Principles of Treaty of Waitangi set out in section 6 must be used to interpret enactments

- (1) The principles of the Treaty of Waitangi set out in **section 6** must be used to interpret an enactment if principles of the Treaty of Waitangi are relevant to interpreting that enactment (whether by express reference or by implication). 5
- (2) Principles of the Treaty of Waitangi other than those set out in **section 6** must not be used to interpret an enactment.
- (3) This section applies despite any other enactment, except **section 8**.

8 Act not to apply to interpretation of Treaty settlement Act or settlement of historical Treaty claim under Treaty of Waitangi Act 1975 10

This Act does not apply to the interpretation of a Treaty settlement Act, or the Treaty of Waitangi Act 1975 in relation to the settlement of a historical Treaty claim entered into after the commencement of this Act.

9 Treaty of Waitangi/te Tiriti o Waitangi not amended

Nothing in this Act amends the text of the Treaty of Waitangi/te Tiriti o Waitangi. 15