A PRINCIPLED APPROACH TO GOVERNMENT'S TREATY OBLIGATIONS

Government changes to the Treaty principles and commitments - what's happening and what you can do.

Most New Zealanders want to know that the people we elect to represent us are making decisions with everyone's best interests in mind. Te Tiriti o Waitangi is an inclusive agreement for all New Zealanders. It provides us with a foundation of ongoing peace and mutual benefit.

The principles of the Treaty have become an important part of how the agreement of Te Tiriti is upheld by government. But our current government has unilaterally decided to review, replace, and repeal or rewrite the Treaty principles. Any review of government Treaty principles should, however, follow a principled approach to ensure good governance and respectful Te Tiriti relationships.

A PRINCIPLED APPROACH

A principled approach to government's Treaty obligations would reflect these understandings established in law:

1 **A treaty is an agreement between independent nations**
Te Tiriti o Waitangi is an agreement between hapū (nations) and the British Crown (now the New Zealand government). It is an enduring, inclusive relationship that allows for people from other parts of the world to live peacefully in Aotearoa while affirming hapū authority.

2 **Any interpretation of meaning, or change of terms, must be agreed to by the parties to that agreement**
i.e., by representatives of the parties that signed Te Tiriti - hapū and the Crown. It is an abuse of power for only one party to determine the meaning of a shared agreement and impose that meaning on the other party.

3 **Any interpretation must reflect the agreement itself**
Te Tiriti o Waitangi must be understood as a whole and in context. This is best done by those who have an in-depth understanding of the language of the agreement (te reo Māori) and the historical and cultural context in which it was made.

WHAT ARE TREATY PRINCIPLES?

Te Tiriti o Waitangi is a commitment to peace and mutual benefit. It was signed by leaders of hapū and Crown representatives in 1840 and consists of a preamble and articles. Since signing, the Crown has consistently breached Te Tiriti o Waitangi over generations.

The Waitangi Tribunal was set up in 1975 to hear claims from Māori regarding Crown actions that are inconsistent "with the principles of the Treaty." Principles are the key ideas underpinning the treaty.

The Tribunal is required to consider both Te Tiriti o Waitangi (the text agreed to by both hapū and the Crown) and the English version to determine the principles. Treaty principles are a distillation of the full meanings and intentions of the full texts of Te Tiriti and the Treaty.

Treaty principles have not been determined in agreement with hapū; however, they have been developed by people with expertise in the wording and context of Te Tiriti, by the Courts and the Waitangi Tribunal. Since the 1980s, Parliament has also included "the principles of the Treaty" in many laws as a means of enacting its treaty obligations. The phrase now has a specialised meaning that determines how Te Tiriti is applied in our laws and decision making.

Work undertaken by the Courts, the Waitangi Tribunal and historians over the last nearly 50 years has grown the understanding of the meaning of Te Tiriti itself and of Treaty principles. The Tribunal's most recent determination on Treaty principles made in relation to Te Raki [Northern] Māori states:

> *"**The principles must be based in the actual agreement entered into in 1840** between Te Raki [Northern] rangatira and the Crown. Te Raki Māori leaders expected effective recognition from the Crown of their tino rangatiratanga over their own affairs and lands. They agreed to share power and authority with Britain and expected the Crown to exercise its authority over the growing number of settlers in their rohe."*

THE KEY ISSUES NOW

The government coalition agreements have commitments to review, replace, repeal (National and NZ First) or rewrite (National and ACT) the Treaty principles.

The government is enacting these coalition agreements by removing Te Tiriti references and commitments in many areas. The Oranga Tamariki Act and Corrections legislation are just two examples where commitments included to address inequity and ongoing harm experienced by Māori in these systems have been removed.

In other areas, Treaty clauses are critical to the protection of the environment and ensuring systems are fair and equitable. The changes currently being made by the government have not been agreed with hapū or iwi Māori leadership. Backtracking on Te Tiriti commitments will have enduring negative impacts for Aotearoa.

THE KEY ISSUES NOW (CONT.)

The government has recently introduced legislation to redefine Treaty Principles using new principles created by the ACT Party. ACT's proposed Treaty Principles are a misrepresentation of the Treaty based on ACT's broader policy agenda rather than Te Tiriti itself.

In an open letter to the government, 27 licensed te reo Māori translators have detailed how ACT's proposed principles misrepresent Te Tiriti. Part phrases have been selected from the Māori text of Te Tiriti, taken out of context, and reinterpreted in a way that distorts their meaning. As te reo Māori translators say:

> ***"Effective and responsible political debate and government actions should never be premised on misinformation. We encourage the Prime Minister to insist that all Ministers uphold truth and accuracy as the most basic standards of good governance."***

The National Party has supported the Treaty Principles Bill to its first reading and select committee. They have said they will not support the bill beyond this stage. Regardless of this, it is extremely harmful for the government to have introduced this bill.

Equally harmful is the government process to review, replace and repeal Treaty Principle clauses in all legislation (except for Treaty settlements). The Waitangi Tribunal has concluded that the Bill along with the review of all Treaty clauses is:

> ***"Consistent with an alarming pattern of the Crown using the policy process and parliamentary sovereignty against Māori instead of meeting the Crown's Treaty/te Tiriti obligations. The combined impacts of the policies are or will be highly prejudicial to Māori."***
> *Waitangi Tribunal Ngā Mātāpono/The Principles Report release.*

WHAT WE CAN DO

To ensure a future of ongoing peace and mutual benefit, we need to ensure our representatives hear our overwhelming support of Te Tiriti o Waitangi and our rejection of any reviews or repeals that distort the meaning and intention of our foundational agreement.

Learn about Te Tiriti o Waitangi itself, Treaty Principles and Te Tiriti and democracy

Support campaigns responding to current changes and longer-term movements for constitutional change that recognise Te Tiriti as critical for our future.

Advocate for a principled approach in relation to government Te Tiriti commitments. Write to your MP, make submissions, and talk with friends and family. Highlight that:

- **If the Crown wants to clarify or redefine Treaty Principles, it must do that in agreement with hapū and iwi leaders** – one party to an agreement shouldn't decide and impose its own meaning of an agreement onto the other party.
- **Any interpretation of Te Tiriti must reflect the terms of the agreement itself** – politicians can't change the meaning of the Treaty agreement to serve their own political purpose. Current meanings must reflect the understandings of people with a detailed knowledge of the language and context of the agreement, e.g., the Waitangi Tribunal and te reo Māori experts.
- **Governments should ensure informed conversation on constitutional issues** – in 2013, the National-led government funded a national constitutional conversation, led by the Constitutional Advisory Panel. Its recommendations include a strategy for Treaty education to ensure an informed conversation on Te Tiriti issues.