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Principles of the Treaty of Waitangi Bill Submission to the Justice Select Committee

Introduction

1. NZEI Te Riu Roa is the professional organisation and union that represents the interests and issues of its nearly 50,000 members. Our members are employed as teachers and leaders in the early childhood education (ECE) and primary sectors (including Kura Kaupapa Māori and Wharekura), support staff in the early childhood, primary, intermediate, and secondary education sectors, school advisers employed by universities, and Learning Support staff employed by the Ministry of Education.
2. The main objective of NZEI Te Riu Roa is to advance the cause of quality public education generally while upholding and maintaining the just claims of its members individually and collectively. NZEI Te Riu Roa is a values-led, Te Tiriti o Waitangi-based organisation. This means that in all areas of work mokopuna Māori are considered first. We call this Mōku te Ao.
3. NZEI Te Riu Roa is one of the largest unions and professional bodies in Aotearoa and has a long history of playing a positive role in the education sector and on wider social issues affecting our members and the tamariki and whānau they serve.

4. Under Te Tiriti o Waitangi we have an obligation to operationalise a system that recognises and uplifts Māori people and their identity. We believe that a system based on rangatiratanga centres children with rights to control their own aspirations and destiny and would work for all children through values of mutual benefit to society.
5. NZEI Te Riu Roa recognises Te Tiriti o Waitangi as the singular, definitive Treaty between the Crown and iwi Māori. Te Tiriti o Waitangi is recognised and applied in the Education and Training Act 2020 and the teachers' Code of Professional Responsibility and Standards for the Teaching Profession. While The Treaty of Waitangi (English document) is considered by the Waitangi Tribunal to some degree, our commitment to giving effect to Te Tiriti o Waitangi is supported by international law and the Tribunal itself, where 'Contra Proferentem' gives preference to the non-drafter (in this case, iwi Māori).
6. NZEI Te Riu Roa membership comprises tāngata tiriti (party to te Tiriti by way of the Crown) and tāngata whenua. As such all our members and the tamariki mokopuna they are responsible for, are impacted by the introduction of this Bill and its implications should it proceed further.
7. Members are responsible for upholding Te Tiriti o Waitangi through the Code of Professional Responsibility and Standards for the Teaching Profession which states "as teachers, we are committed to honouring Te Tiriti o Waitangi, and we understand this has implications in all of our practice".¹

NZEI Te Riu Roa stands in solidarity with the hundreds of thousands of New Zealanders in opposition of this bill

8. Everyone who makes Aotearoa their home can do so because of the manaaki of Māori expressed in Te Tiriti o Waitangi.
9. NZEI Te Riu Roa joined the mass opposition to this policy introduced by Act and agreed to by New Zealand First and The National party in the 2023 coalition agreement. In January 2024, the growing movement opposing the Bill was buoyed by Kiingi Tūheitia Pōtatau Te Wherowhero VII who said,

¹ <https://teachingcouncil.nz/professional-practice/our-code-our-standards/>

“Ko te kotahitanga te waka e kawe ai tātou ki tua o ngā tai e papaki mai ana ki a tātou i tēnei wā. Mā te kotahitanga e taea ai e tātou te hāpai i ngā taumahatanga o ngā iwi katoa.” Which translates as "Unity is the vessel that will carry us beyond the tides that challenge us today. It is through unity that we can uplift the burdens of all our people."

10. NZEI Te Riu Roa stands in kotahitanga with Māori, tamariki mokopuna, kaiako, kura and school communities and other trade unions calling for this bill to be dropped. We also support the 440 Christian leaders, and 40 Kings Council Lawyers concerned about the wider implications of the bill for the country’s constitutional arrangements. We agree with the lawyers’ statement that “by imposing a contested definition of the three articles, the bill seeks to rewrite the Treaty itself” which would have the effect of “unilaterally changing the meaning of Te Tiriti and its effect in law, without the agreement of Māori as the Treaty partner”.²
11. NZEI Te Riu Roa is proud to represent members, who as actors of the Crown and under the Education and Training Act 2020 have responsibilities to give effect to Te Tiriti o Waitangi in partnership with Māori. Te Tiriti is recognised in 19 sections of the Act and section 4 states that “the purpose of this Act includes establishing and regulating an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships”.³
12. NZEI Te Riu Roa issued a joint statement opposing the Government’s proposal to remove Te Tiriti as a stand-alone objective in section 127 of the Education Act with eleven other national education peak bodies. These included unions, The Teaching Council of Aotearoa New Zealand, Early Childhood Education and secondary education organisations. We urged the Government to stop the Treaty Principles Bill, reconsider the proposals to section 127 and to instead focus on investing in education to meet the needs of ākongā Māori⁴.

² <https://www.rnz.co.nz/news/political/533674/senior-lawyers-call-for-treaty-principles-bill-to-be-abandoned>

³ Education and Training Act 2020 , s4

⁴ <https://www.nzeiteriuoroa.org.nz/about-us/media-releases/education-leaders-unite-against-governments-moves-to-downgrade-place-of-te-tiriti-in-education>

13. Te Tiriti o Waitangi reaffirmed pre-existing rights of Māori as tāngata whenua. The subsequent, and continuing colonisation of Aotearoa, through breaches of Te Tiriti o Waitangi by the Crown has resulted in a plethora of adverse outcomes and inequalities for Māori in all areas of life. NZEI Te Riu Roa actively supports members to address the needs of tamariki Māori in education which have arisen from these breaches. Addressing the needs of tamariki Māori can only be achieved in partnership with whānau, hapū and iwi, through Te Tiriti o Waitangi.
14. If passed, the proposed principles of the bill would redefine Te Tiriti itself and affect the day-to-day mahi of kaiako in giving life to Te Tiriti. The bill poses huge risks to tamariki Māori who would no longer be guaranteed access to their reo, matauranga Māori or the input of iwi and hapū to their education. The development of this bill has already damaged Māori-Crown relations and exposed Māori, including tamariki to anti-Māori racism.
15. As a voice for a strong public education system and workers' rights, NZEI Te Riu Roa knows that the private sector and this coalition government have long viewed Indigenous rights as obstacles to the ability of corporates to maximise profits at the expense of social justice and environmental sustainability. The National-led coalition and the corporations that support it, see an opportunity in weakening the protections of Te Tiriti o Waitangi in legislation, to further exploit land, resources, and worker labour without the constraints that Indigenous rights impose. NZEI Te Riu Roa are clear that this Bill is an example of how corporate interests are being prioritised by the coalition Government over Māori and the environment, and by extension, us all.

The work of educators in progressing Te Tiriti o Waitangi in the public education system

16. For decades the education system demanded tamariki Māori literally leave their identities and rights as tāngata whenua at the school gate. This has caused incalculable intergenerational trauma and immense loss of language, land, culture and economy. An education system underpinned by Te Tiriti means ākongā can see themselves, their whānau, iwi, hapū and history in their learning community.
17. This Bill fails to acknowledge the impacts of ongoing colonisation, that Māori have been subject to deliberate inequitable treatment in education and in other areas of life since 1840.

18. The inclusion of Te Tiriti o Waitangi and the principles as they stand in education legislation and policy, recognises this reality and provides a means for rectifying damage done by breaches of Te Tiriti and in working to prevent any further. The associate minister of education and architect of the Bill claims treating people based on their ethnicity to be unjust. The late Moana Jackson says it best, explaining,

‘it seems to me to be quite wrong to therefore call the addressing of need based on a breach of rights as a special privilege, it’s also wrong because it misinterprets our history where the taking of power, the taking of land from Māori actually resulted in the privileging of Pākehā, that the establishment of Pākehā institutions of power and Pākehā wealth was a privileging done at the expense of Māori’⁵.

19. NZEI Te Riu Roa supports the educators of Aotearoa with their duty of ensuring that every child receives an inclusive education, based on their needs. This means ākongā Māori are safe and thriving at school and kura, as Māori. That they can bring their whole selves to the classroom. That their whānau, hapū and iwi are directly involved in their education and that tamariki Māori can learn as Māori.

20. NZEI Te Riu Roa is also concerned that the development of this Bill has promoted a one-size-fits-all environment in education, where removing or demoting Te Tiriti o Waitangi and te ao Māori in education is deemed acceptable. This current climate, including cuts to te reo Māori programmes and ending programmes specifically for ākongā Māori represents a retrograde shift back to assimilation policies of the past where one form of knowledge and one way of teaching and learning was fastidiously maintained at the expense of Māori and Māori knowledge systems. What is currently presented as ‘knowledge rich’ curriculum content is described by many educationalists as knowledge impoverished.

21. Te Tiriti has been demoted from the 2023 outline of the draft English medium curriculum framework Te Mātaiaho. The words ‘centrality of Te Tiriti o Waitangi and its principles’ are replaced with ‘based on the science of learning’. What started as a te Tiriti-based framework is now narrow and prescriptive.

⁵ <https://www.youtube.com/watch?v=fvP6HEFQIkQ>

22. The proposed charter school legislation includes no specific Te Tiriti obligation, unlike legislation covering mainstream public schools. According to the Ministry of Education, ‘there will be no formal requirement to ensure charter schools’ plans, policies and curricula reflect local tikanga Māori, mātauranga Māori and te ao Māori, or to take reasonable steps to make instruction in tikanga Māori and te reo Māori’.⁶ Because of this the Regulatory Impact Statement states that ‘charter schools could also reinforce existing inequities experienced by ākonga Māori, particularly if a schools leadership lacks the skills needed to address Māori concerns and inequities’.⁷
23. We will resist moves by the coalition Government to change or repeal Treaty provisions in the Education and Training Act (among 27 other Acts) as proposed by the coalition government.

Response to the proposed principles

24. The Bill claims to clarify the principles of the Treaty but fundamentally alters their meaning by selectively and incorrectly interpreting te reo Māori. It is deeply flawed and ahistorical. The new principles betray Te Tiriti and seek to deny Māori tino rangatiratanga.
25. This Bill seeks to replace a relational approach to applying Te Tiriti with a singular permanent interpretation by introducing a new set of fixed principles, determined by a minority political party with no iwi involvement.
26. The proposed principles eliminate recognition of Māori as tāngata whenua, focusing instead on individual rights ‘for all New Zealanders. This ignores the historical context and recent understandings, which confirm Māori have sovereignty over their land, resources, and all their taonga.

Proposed principle 1: *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.*

27. Proposed principle 1 is a statement that bears no relation to article 1 of te Tiriti. This proposal ignores the guarantee of tino rangatiratanga in article 2. It misinterprets and

⁶ Departmental Disclosure Statement: Education and Training Amendment Bill, 12 June 2024, p.10, https://disclosure.legislation.govt.nz/assets/disclosures/bill_government_2024_66.pdf

⁷ Regulatory Impact Statement: Reinstating a New Zealand Model of Charter Schools, p.3

overstates the kāwanatanga granted to the Crown in 1840, which is not an unbridled power restrained only by its own sense of what is in the best interests of everyone. Kāwanatanga is predicated on the existence of tino rangatiratanga. Importantly, as the Waitangi Tribunal found, this proposal ‘ignores the two spheres of Crown and Māori authority that the Treaty/te Tiriti established, where overlaps must be resolved by good faith cooperation between partners’.⁸

Proposed principle 2: *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.*

28. This proposed principle is the opposite of article 2. Its inclusion in this Bill was found to be a breach of the Treaty by the Waitangi Tribunal⁹. If enacted it would revoke the promises and guarantees the Queen made to Māori in 1840 of tino rangatiratanga, kāwanatanga, partnership, and active protection.

29. It also offers no recognition or protection of Māori rights (preexisting and confirmed through Te Tiriti). Māori rights would now depend on settlement legislation or recognition by some other instrument that applies to everyone.

30. Proposed principle 2 makes tino rangatiratanga subordinate to or subject to kāwanatanga and erases recognition of Māori rights altogether. This is contrary to Te Tiriti o Waitangi and international standards set out in United Nations Declaration on the Rights of Indigenous people. Te Tiriti o Waitangi and its principles is the primary mechanism by which the government provides for Indigenous rights in Aotearoa.

Proposed principle 3: *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.*

⁸ WAI3300 Waitangi Tribunal Report 2024.

⁹ WAI3300 Waitangi Tribunal Report 2024.

31. This bears no resemblance to the meaning of article 3. Article 3 of Te Tiriti is a promise made specifically to Māori that they would receive the same rights and privileges as British subjects, which they have not received.
32. We already have mechanisms in the New Zealand legal system to protect all citizens from discrimination and ensuring equality before the law.¹⁰ Proposed principle 3 doesn't add anything new. Rather than add a mechanism, proposed principle 3 would remove a mechanism that helps Māori enjoy the equal rights and protection of the law.

Recommendations on the Principles of the Treaty of Waitangi Bill

NZEI Te Riu Roa calls for the bill to be dropped because it is divisive, dishonourable and a distraction.

1. NZEI Te Riu Roa recommends, in the strongest terms, that the National-led Coalition Government abandons The Principles of the Treaty of Waitangi bill.
2. The Waitangi Tribunal found that the Bill has 'novel' Treaty interpretation, is based on disingenuous historical narrative and distorts the text of Te Tiriti o Waitangi¹¹.
3. That the Bill has been created at the exclusion and expense of Māori is a breach of Te Tiriti itself. The Waitangi Tribunal states the Bill is 'prejudicial and the impacts will not fade for a long time even if the Bill does not proceed beyond the select committee'.
4. Additionally, NZEI Te Riu Roa supports the Waitangi Tribunal recommendations from the Constitutional Kaupapa inquiry panel¹² that:
 - a) The Crown should constitute a Cabinet Māori–Crown relations committee that has oversight of the Crown's Treaty/te Tiriti policies.
 - b) The Treaty clause review policy should be put on hold while it is reconceptualised through collaboration and co-design engagement with Māori.

¹⁰ New Zealand Bill of Rights Act 1990

¹¹ Ngā Mātāpono | The Principles WAI3300 Waitangi Tribunal Report 2024.

¹² WAI3300 Waitangi Tribunal Report 2024.

- c) 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.

Recommendations for the Crown to continue giving effect to Te Tiriti o Waitangi in the education system

5. NZEI Te Riu Roa reiterates our call for the National-led coalition government to reinstate full funding for the hugely successful Te Ahu o Te Reo Māori language programme. It is the only programme specific to improving the capability and competency of kaiako using te reo Māori in the classroom. We recommend committing baseline funding to the programme and expanding it, so that every child in early learning and all levels of schooling has te reo Māori integrated into their learning to give effect to Te Tiriti.
6. We call on the Crown to fund and support the Ministry of Education to continue the work of Maihi Karauna (Crown strategy for Māori language revitalisation 2019-2023) in creating the conditions for te reo Māori to be learned throughout our education system. Continuing the work of this strategy is critical given 97% of ākonga Māori learn in mainstream schooling.
7. To that end, we recommend reinstating Te Aho Ngārahu (resourcing the Aotearoa New Zealand’s histories) and Kura Whānau Reo programmes (supporting whānau of ākonga who learn te reo Māori), which worked alongside Te Ahu o Reo Māori with an iwi, hapū and community-led approach to education. These programmes give effect to tino rangatiratanga promised in Te Tiriti o Waitangi.
8. We also recommend the coalition government drops its policy of re-balancing Aotearoa New Zealand’s histories. This ahistorical bill is testament to the need for thorough teaching and learning of histories, with a focus on local and national histories, in classrooms all around the country. Any attempt to standardise or direct which historical accounts can be taught and to what degree, risks breaching Te Tiriti. Māori have tino rangatiratanga over their own knowledge and education. How and when histories are taught is up to each learning community and local iwi and hapū to determine.
9. Teaching histories is embedded and cherished in classrooms across the motu and teachers are using increasingly more te reo Māori with confidence thanks to Te Ahu o Te Reo Māori. The profession is proud of these advances and they will not be undone.