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Justice Committee
Parliament Buildings
Wellington

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Submission on the Principles of the Treaty of Waitangi Bill

Introduction

As one of the leading environmental Non-Governmental Organisations (eNGOs) in Aotearoa New Zealand, World Wide Fund for Nature-New Zealand (WWF) supports science-based, pragmatic solutions that can deliver a future where humanity lives in harmony with nature.

Our mission is to protect and restore the natural environment while advocating for sustainable development and equity. Central to this mission is our recognition of the importance of Te Tiriti o Waitangi / the Treaty of Waitangi (the Treaty) in recognising and uplifting Māori leadership and partnership in environmental governance.

The Treaty is not only a cornerstone of Aotearoa's constitutional framework but also a vital foundation for achieving just and effective environmental outcomes. Its principles have fostered collaboration between Māori, the Crown, and other stakeholders, enabling sustainable resource management and addressing critical issues such as climate change and biodiversity loss.

The Treaty of Waitangi Principles Bill threatens to undermine these achievements by distorting the principles of the Treaty, excluding Māori from decision-making processes, and weakening the Crown-Māori partnership.

WWF strongly opposes the Principles of the Treaty of Waitangi Bill.

This submission outlines the critical flaws in the Bill, its implications for environmental and social outcomes, and our recommendations for a more equitable and sustainable path forward.

The role of the Treaty in environmental and social outcomes

The Treaty is central to Aotearoa New Zealand's constitutional arrangement, providing a framework for equitable relationships between Māori and the Crown. Its principles of partnership, informed decision-making, active protection, redress, and equity should ensure that Māori rights and interests are integral to all government decision-making, especially that related to or impacting the environment.

Māori have long served as kaitiaki (guardians) of Aotearoa's natural resources. The deep connection of tangata whenua to the whenua (land), awa (rivers), and moana (oceans) is reflected in mātauranga Māori, which offers invaluable insights into sustainable resource management.

Collaborative efforts grounded in Treaty principles have yielded significant progress in environmental restoration over the past decades. Examples include co-governance arrangements in freshwater management, iwi and hapū-led biodiversity protection initiatives, and the beneficial integration of mātauranga Māori into environmental policies. These efforts have demonstrated that honouring Treaty obligations benefits all New Zealanders by fostering biodiversity protection, climate resilience, and social cohesion.

The Principles of the Treaty of Waitangi Bill jeopardises these gains by undermining the Treaty's intent and potentially excluding Māori from critical decision-making processes, including those related to the management of New Zealand's natural resources and environment.

1. Distortion of Treaty principles

The proposed Bill misrepresents the Treaty's intent, discarding decades of legal jurisprudence and introducing principles that undermine or erase Māori customary rights and Treaty obligations.

Proposed principle one: overstatement of Crown authority

The first proposed principle asserts that the Executive Government and Parliament have full authority to govern in the best interests of everyone. This overstates Crown kāwanatanga (governance) while disregarding the dual spheres of governance established by the Treaty:

- **Kāwanatanga:** The authority granted to the Crown to govern its subjects;
- **Tino Rangatiratanga:** The sovereignty and self-determination guaranteed to Rangatira Māori over their people, lands, and taonga (treasures).

This principle misrepresents the Treaty as a one-sided transfer of power, ignoring its intended partnership. As the Waitangi Tribunal has emphasised, the Treaty envisions cooperation between the Crown and Māori, with overlapping spheres of authority resolved through good faith dialogue.

Proposed principle two: unjustified erasure of Māori rights

The second proposed principle limits Māori rights to those codified in Treaty settlements, effectively denying rights recognised by the common law and guaranteed under Article two of the Treaty, including that of tino rangatiratanga / self-determination. This creates several issues:

1. **Erosion of inherent rights:** It implies that Māori customary rights derive from the Crown, rather than being inherent and recognised by the Treaty. This is legally incorrect.

Further, this attempted nullification of the customary rights of Māori is in clear contravention of New Zealand's obligations under the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights instruments.

2. **Exclusion of non-settled iwi and hapū:** Many iwi and hapū remain outside the Treaty settlement process. This principle denies their rights and creates a two-tier system.

The Waitangi Tribunal has roundly condemned this principle, stating that it revokes the guarantees made to Rangatira Māori in 1840 and undermines the very purpose of the Treaty. WWF agrees.

Proposed principle three: misguided focus on equality

The third proposed principle emphasises formal equality before the law but fails to address systemic inequities faced by Māori. Article three of the Treaty guarantees Māori the same rights and privileges as other citizens, but equity—not mere equality—is essential to address historical and ongoing disparities.

Systemic disadvantages, such as land alienation, health disparities, and socioeconomic inequities, require targeted support and active protection. The proposed principle disregards this reality, perpetuating injustice and inequality.

Conclusion: a step backward

The proposed principles distort the Treaty's meaning and undermine the partnership it envisions. They represent a significant regression in Crown-Māori relationships and risk legal uncertainty, prolonged litigation, and harm to social cohesion.

2. Erosion of Māori leadership in environmental governance

Māori leadership in environmental governance is critical to achieving sustainable outcomes. As kaitiaki, iwi and hapū have demonstrated their ability to protect and restore ecosystems, often drawing on mātauranga Māori to address complex environmental challenges.

The Bill undermines this leadership in its clear intent to sideline tangata whenua from decision-making processes, to erase the customary rights of Māori – including rights to environmental taonga, and to erode environmental co-governance models that are clearly working for the benefit of all.

3. Broader legislative programme

The Principles of the Treaty of Waitangi Bill is part of a broader programme of legislation being advanced by the Coalition Government that marginalises Māori rights and interests and weakens environmental protections. Policies like the Fast-Track Approvals regime prioritise development at the expense of environmental stewardship and Treaty obligations.

These legislative efforts will significantly undermine progress made over the past decades in integrating Treaty principles into environmental governance, threatening both biodiversity outcomes and Crown-Māori relationships.

Recommendations

WWF-New Zealand calls for the immediate withdrawal of the Principles of the Treaty of Waitangi Bill. Instead, we recommend that Government:

1. **Acknowledge the current Treaty Principles are working effectively:** Cancel the review of Treaty of Waitangi clauses in current legislation.
2. **Commit to genuine dialogue:** Engage with tangata whenua and the wider public in meaningful conversations about constitutional transformation, in line with the recommendations of Matike Mai Aotearoa.

Conclusion

The Principles of the Treaty of Waitangi Bill is unnecessary, harmful, and inconsistent with Aotearoa's obligations under the Treaty and international law. By distorting Treaty principles and excluding Māori voices, it risks reversing decades of progress toward equity, reconciliation, and sustainability.

WWF-New Zealand urges the Government to respect the Treaty's promises, uphold Māori rights and interests, and work collaboratively toward a just and sustainable future for all New Zealanders.