



# **Treaty Principles Bill threatens public health and equity: It needs your submission**

18 December 2024

Carwyn Jones, Maria Bargh, Michael Baker, Rhys Jones

# Summary

The Principles of the Treaty of Waitangi Bill proposes redefining the principles of Te Tiriti o Waitangi, a move that would radically alter decades of established law and policy recognising Māori rights. The Bill's definition introduces three new principles, which, if enacted and approved via referendum, would replace current interpretations in all legislation and court decisions. This change undermines long-standing Treaty principles like partnership, active protection, equity, and mutual benefit, which have guided policies promoting Māori self-determination and equity.

This Bill threatens public health and equity in Aotearoa New Zealand by: Increasing racism and reducing social cohesion; Reducing rights of Māori to develop and lead public health solutions; Reducing commitment to address structural disadvantage experienced by Māori; Reducing commitment to improve health services for Māori and promote equity; and Limiting economic and environmental opportunities.

New Zealanders should reject this Bill, which could cause the most significant Treaty breach in modern times, jeopardising progress on equity and Māori self-determination.

---

[The Principles of the Treaty of Waitangi Bill](#) was introduced into Parliament on 7 November 2024. It proposes a radical reinterpretation of Te Tiriti o Waitangi and would remove an important legal and policy mechanism for recognising Māori rights and addressing inequity. The content of the Bill is further described in the [Appendix](#).

This Briefing summarises what this Bill could mean for public health and equity in Aotearoa New Zealand (NZ) and why we should make a submission opposing progression of this harmful law.

Aside from the legal uncertainty that such a radical change would create, the substantive effect of the proposed principles would be to erase the Tiriti guarantee of tino rangatiratanga, subordinating Māori rights of self-determination to the authority of the Crown. By hollowing out the substance of Treaty principles, the Bill would also remove the existing legal recognition of distinctive Māori rights. That is, the primary effect of the Bill would be to remove a legal mechanism that has been used to promote equity in social policy, including health.

Treaty principles have underpinned numerous Waitangi Tribunal recommendations that have helped to inform a wide range of government policy. In the context of health services, the Tribunal's application of principles of partnership, active protection, options, and equity in the [Hauora report](#),<sup>1</sup> led to the recommendation to establish an independent Māori health authority. The Tribunal's Treaty principles analysis was referenced by the then Minister of Health at [the first reading of the Pae Ora \(Healthy Futures\) Bill](#), which established Te Aka Whai Ora.<sup>2</sup>

In that report, the Waitangi Tribunal used the principles of active protection and equity as

central, relevant Treaty principles in the particular context of the inquiry's focus on health services and outcomes, noting:<sup>1</sup>

*... the Crown is obliged by the principle of active protection to provide health services that Māori need, in order to pursue actively the achievement of equitable outcomes for Māori. In turn, the principles of active protection and equity also mean these services must not only treat their patients equitably but be equitably accessible and equitably funded.*

## **Why this Bill threatens public health and equity in NZ**

This Bill actively damages Aotearoa New Zealand's ability to advance as a cohesive, progressive society committed to using human rights principles and evidence to find practical ways to improve health and achieve equity. Specific threats to public health from the new Bill include the following:

- **Increases racism and reduces social cohesion** - The content and process used in developing and progressing this Bill threatens social cohesion and could generate division according to the [Ministry of Justice](#).<sup>3</sup> The Select Committee process risks becoming a platform for racism and misinformation that would prejudice Māori.<sup>1</sup> The Bill supports a false narrative that Māori enjoy an unfair advantage in NZ which is contradicted by overwhelming evidence of structural disadvantage affecting Māori across a range of health and social indicators.<sup>4</sup> Racism is widely recognised as a major driver of ethnic health inequities, nationally and internationally.<sup>5,6</sup>
- **Reduces rights of Māori to develop and lead public health solutions** - The Treaty principles of rangatiratanga and partnership acknowledge the Māori right to govern, design, deliver and monitor services that will create the best health outcomes for Māori. They also recognise the importance of co-design of services for Māori with the Crown.<sup>7</sup> The new Bill would remove these principles.
- **Reduces our commitment to address the structural disadvantage experienced by Māori** - Māori experience manifest inequities across major health determinants, including education, income, employment, and housing.<sup>1,8</sup> For example, overcrowded housing and poor access to health care are major risk factors for acute rheumatic fever.<sup>9</sup> The existing Treaty principle of equity provides a commitment to addressing those determinants and improving public health that would be removed by the new Bill.
- **Reduces our commitment to improve health services for Māori and promote equity** - Comprehensive evidence in NZ shows that ethnicity is a strong marker of need.<sup>10</sup> There are multiple areas where health services are less effective for Māori, such as delivery of vaccines during the Covid-19 response,<sup>11</sup> management of cardiovascular disease,<sup>12</sup> and delivery of cancer prevention and treatment.<sup>13</sup>

Consequently, health services should actively focus on Māori (and Pacific Peoples) to improve the effectiveness and efficiency of the health system to deliver equitable health care and improve public health. One key area is affirmative action to raise the participation of Māori and other under-represented groups in the health workforce.<sup>14</sup> The Bill threatens the ability to improve health services for Māori by a change to prioritising formal equality over equity.

- **Limits economic and environmental opportunities** – There are significant direct and indirect economic costs from failing to address Indigenous health inequities in NZ. Most of these costs are borne by Indigenous communities and society.<sup>15 16</sup> Indigenous worldviews and knowledges also have great potential to guide planetary health towards a healthy, equitable, and sustainable future, [particularly the fight against climate change](#).<sup>17 18</sup> The Bill would limit these opportunities.

## Make a submission

It is important that this Bill is rejected. [Submissions](#) to the select committee considering the Bill can be made up till 7 January 2025. Multiple organisations [including the Human Rights Commission](#) have prepared commentaries that provide further background on points to consider.

---

### What this Briefing adds

- The Bill introduces three entirely new principles to replace established interpretations of the Treaty of Waitangi, disrupting nearly 50 years of legal and policy precedent.
- The proposed new definition of Treaty principles would mark a significant shift in how Treaty rights are determined.
- The Bill threatens to erase the Tiriti guarantee of tino rangatiratanga, prioritise formal equality over equity, and remove a key legal framework that has supported Māori rights and informed pro-equity social policies, including in health.
- The Bill threatens public health and equity in Aotearoa New Zealand in multiple direct and indirect ways.

### Implications for policy and practice

- The Treaty Principles Bill should be rejected.
- The public are encouraged to [make submissions](#) to select committee considering the Bill (closing 7 January 2025).

## Authors details

[Dr Carwyn Jones](#), Te Whare Whakatupu Mātauranga, Te Wānanga o Raukawa and Te Kawa a Māui—The School of Māori Studies, Te Herenga Waka | Victoria University of Wellington

[Prof Maria Bargh](#), Te Kawa a Māui—The School of Māori Studies, Te Herenga Waka | Victoria University of Wellington

[Prof Michael Baker](#), Director, Public Health Communication Centre, and Department of Public Health, Ōtākou Whakaihu Waka, Pōneke | University of Otago, Wellington

[Assoc Prof Rhys Jones](#), Te Kupenga Hauora Māori, Faculty of Medical and Health Sciences, Waipapa Taumata Ra | University of Auckland

## Appendix: Content of the Principles of the Treaty of Waitangi Bill

The Principles of the Treaty of Waitangi Bill ('the Bill') proposes to define 'the principles of the Treaty of Waitangi' as consisting of three newly imagined principles. The full text of the proposed definition is set out in clause 6 of [the Bill](#). In brief, the three proposed principles are:

'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;

'Principle 2' - If Māori rights under Te Tiriti differ from the rights 'of everyone', those rights will only be recognised if agreed as part of the settlement of historical claims;

'Principle 3' - Everyone is equal before the law and is entitled to the equal protection and equal benefit of the law without discrimination.

If the Bill is enacted, this new definition of 'the principles of the Treaty of Waitangi' would be put to a referendum. If that referendum passed, that new definition would apply to the phrase 'the principles of the Treaty of Waitangi' in any piece of legislation or anytime the courts were called upon to interpret and apply that phrase. This would be a radical change to law and policy.

The phrase 'the principles of the Treaty of Waitangi' was first included in legislation in [the Treaty of Waitangi Act 1975](#), which established the Waitangi Tribunal. It has subsequently been used in numerous statutes, such as the Conservation Act 1987, the Resource Management Act 1991, the Local Government Act 2002, the New Zealand Public Health and Disability Act 2000, and the Pae Ora (Healthy Futures) Act 2022.

Parliament has never defined an exhaustive, authoritative list of Treaty principles, but with decades of Waitangi Tribunal reports and decisions from the courts, key principles such as partnership,<sup>19</sup> active protection,<sup>20</sup> mutual benefit,<sup>21</sup> and equity have become well-

recognised.<sup>1</sup> It is now a relatively settled area of law. And, as evidenced by its inclusion in a broad range of legislation, the concept of ‘the principles of the Treaty’ has become government’s preferred mechanism for engaging with and recognising Māori rights under Te Tiriti.

The Bill proposes to unsettle nearly fifty years of law and practice relating to Treaty principles by establishing a new definition of ‘the principles of the Treaty’. The full text of the proposed definition is set out in clause 6 of the Bill.

The Bill’s proposed principles are a radical departure from current understandings of Treaty principles and Te Tiriti itself. [A Cabinet paper](#) on the policy underlying the Bill noted the Ministry of Justice’s view that “the proposed policy is not grounded in the Treaty/te Tiriti or the existing Treaty principles, that the underlying rationale for the principles as described in the ACT party policy relies on a novel reading of the Treaty/te Tiriti that is not supported by the available evidence”.

For more information about the Bill, see the [‘Primer on the Principles of the Treaty of Waitangi Bill’](#) by Carwyn Jones.

For more information about the concept of ‘the principles of the Treaty of Waitangi’, see the [‘Primer on Treaty Principles’](#), also by Carwyn Jones.

## References

1. New Zealand Waitangi Tribunal. Hauora: Report on stage one of the health services and outcomes kaupapa inquiry: Legislation direct 2019. [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_195476216/Hauora%20023%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_195476216/Hauora%20023%20W.pdf)
2. Hon Andrew Little. Pae Ora (Healthy Futures) Bill, First Reading. In: Parliament N, ed. NZ Parliament: NZ Parliament 27 October 2021.
3. Ministry of Justice. Regulatory Impact Statement: Providing Certainty on the Treaty Principles, 2024. <https://www.beehive.govt.nz/sites/default/files/2024-09/Regulatory%20Impact%20Assessment%20Treaty%20Principles%20Bill.pdf>
4. Ministry of Health. Tatau Kahukura: Māori health chart book 2015. *Wellington: Ministry of Health* 2015
5. Devakumar D, Selvarajah S, Abubakar I, et al. Racism, xenophobia, discrimination, and the determination of health. *The Lancet* 2022;400(10368):2097-108. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(22\)01972-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(22)01972-9/fulltext)
6. Talamaivao N, Harris R, Cormack D, et al. Racism and health in Aotearoa New Zealand: a systematic review of quantitative studies. *NZ Med J* 2020;133(1521):55-68. <https://tinyurl.com/yw2wnhzz>
7. McKerchar C, Barthow C, Huria T, et al. Enablers and barriers to dietary change for

- Māori with nutrition-related conditions in Aotearoa, New Zealand: a scoping review. *Public Health Nutr* 2024;1-51. <https://doi.org/10.1017/S136898002400212X>
8. Loring B, Paine SJ, Robson B, et al. Analysis of deprivation distribution in New Zealand by ethnicity, 1991-2013. *N Z Med J* 2022;135(1565):31-40. doi: [10.26635/6965.5879](https://doi.org/10.26635/6965.5879)
  9. Baker MG, Gurney J, Moreland NJ, et al. Risk factors for acute rheumatic fever: A case-control study. *Lancet Reg Health West Pac* 2022;26:100508. doi: [10.1016/j.lanwpc.2022.100508](https://doi.org/10.1016/j.lanwpc.2022.100508)
  10. Loring B, Reid P, Curtis E, et al. Ethnicity is an evidence-based marker of need (and targeting services is good medical practice). *New Zealand Medical Journal* 2024;137(1603):9-13. <https://doi.org/10.26635/6965.e1603>
  11. Datta S, Vattiato G, Maclaren OJ, et al. The impact of Covid-19 vaccination in Aotearoa New Zealand: A modelling study. *Vaccine* 2024;42(6):1383-91. doi: [10.1016/j.vaccine.2024.01.101](https://doi.org/10.1016/j.vaccine.2024.01.101)
  12. Brewer KM, Grey C, Paynter J, et al. What are the gaps in cardiovascular risk assessment and management in primary care for Maori and Pacific people in Aotearoa New Zealand? Protocol for a systematic review. *BMJ open* 2022;12(6):e060145. doi: [10.1136/bmjopen-2021-060145](https://doi.org/10.1136/bmjopen-2021-060145)
  13. Mako M, Gurney J, Goza M, et al. Te Aho o Te Kahu: weaving equity into national-level cancer control. *Lancet Oncol* 2022;23(9):e427-e34. doi: [10.1016/S1470-2045\(22\)00279-0](https://doi.org/10.1016/S1470-2045(22)00279-0)
  14. Barham S, Baxter J, Crampton P. What is affirmative action in tertiary education? An overview of affirmative action policies in health professional programmes, drawing on experience from Aotearoa and overseas. *New Zealand Medical Journal* 2023;136(1577):76-83. doi: [10.26635/6965.6119](https://doi.org/10.26635/6965.6119)
  15. Reid P, Paine SJ, Te Ao B, et al. Estimating the economic costs of Indigenous health inequities in New Zealand: a retrospective cohort analysis. *BMJ open* 2022;12(10):e065430. doi: [10.1136/bmjopen-2022-065430](https://doi.org/10.1136/bmjopen-2022-065430)
  16. Paine SJ, Li C, Wright K, et al. The economic cost of Indigenous child health inequities in Aotearoa New Zealand-an updated analysis for 2003-2014. *New Zealand Medical Journal* 2022;136(1568):23-45. doi: [10.26635/6965.5874](https://doi.org/10.26635/6965.5874)
  17. Jones R, Reid P, Macmillan A. Navigating fundamental tensions towards a decolonial relational vision of planetary health. *Lancet Planet Health* 2022;6(10):e834-e41. doi: [10.1016/S2542-5196\(22\)00197-8](https://doi.org/10.1016/S2542-5196(22)00197-8)
  18. Bargh M. A Tika Transition. In Hall, D. ed. *A Careful Revolution: Towards a Low-Emissions Future*. Bridget Williams Books 2019.
  19. New Zealand Maori Council v Attorney General [1987]. *New Zealand Law Reports* 641. p 667.
  20. Waitangi Tribunal. The Ngāpuhi Mandate Inquiry Report (2015) .p 23. [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_95773963/Ngapuhi%20Mandate%20Inquiry%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_95773963/Ngapuhi%20Mandate%20Inquiry%20W.pdf)
  21. Waitangi Tribunal. Mangonui Sewerage Claim Report (1988). p 4. [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_68480325/Mangonui%201988.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68480325/Mangonui%201988.pdf)



---

**Source URL:**

<https://www.phcc.org.nz/briefing/treaty-principles-bill-threatens-public-health-and-equity-it-needs-your-submission>