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Clerk of the Committee
Justice and Electoral Select Committee
Select Committee Office
Parliament Buildings
Wellington

Submission on Principles of the Treaty of Waitangi Deletion Bill 2006

1. This submission is from:

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Network Waitangi Otautahi is a voluntary group working for a society based on Te Tiriti o Waitangi / The Treaty of Waitangi, particularly in relation to sustainable development and Pakeha responsibility. We offer educational workshops, both introductory and implementation, but primarily our work involves advice to individuals and groups. We work on the basis of koha; we are not a consultancy charging fees. An incorporated society, we are associated with other similar organisations and groups working in this area of Treaty education and development throughout the country.

2. Consultation: Our protocols ensure a commitment and accountability to each other and to mana whenua, in particular to Te Runaka ki Otautahi. In preparation of this submission we have consulted with our members and with the networks of Treaty workers nationally.

3. Our Submission

The current Member's Bill proposes to eliminate all references to the expressions "principles of the Treaty", the "principles of the Treaty of Waitangi" and the "Treaty of Waitangi and its principles" from all New Zealand statutes including preambles, interpretations, schedules, regulations and other provisions included in or arising from each and every statute. We wish to declare our opposition to this Bill and our reasons for taking this position are presented below.

Given that the Treaty was the official agreement providing access to this land for colonial settlers, the removal from Government statutes of all references to any "principles" of the Treaty denies the history of the nation state established in this place. Such negation of the past would have detrimental ramifications for the whole of society now and into the future. The fact that we have a Treaty is what makes the inception of Aotearoa/New Zealand distinctly different from other colonial societies. The Crown's relationship with the tangata whenua was established on the foundation of the Treaty of Waitangi – an agreed contract whereby the indigenous peoples permitted the settlers to share the land and resources of this country. This is a unique state of affairs in modern history.

In our view, any reference to "Treaty Principles" or 'principles of the Treaty' can be interpreted merely as an attempt by government to define the Treaty. However,

while such oblique acknowledgement of the Treaty does not in itself constitute honouring the Treaty, at least it does indicate an awareness of the need to take it into account in decision-making. Such an understanding is part of the process towards living within a Treaty framework which, we believe, is the hope for the future of this country. Although any set of “principles” certainly will not in themselves constitute the Treaty, they do provide a platform for negotiation around Treaty issues. The concept of Treaty principles creates the space for debate at the point of enacting legislation. Without references to Treaty “principles” how would the Treaty be recognised or acknowledged in law? The adoption of this Bill would, in fact, render the Treaty invisible in law.

Similar attempts to deny the Treaty’s relevance are part of our history. This Bill echoes the infamous 1877 ruling of Chief Justice Prendergast in declaring the Treaty to be a simple ‘nullity’ in the case of *Wi Parata vs the Bishop of Wellington* (Claudia Orange, 1987). The society that has developed here over the past one hundred and sixty-six years is founded on an agreement between two parties to live in relation to one another, and the terms of this contract are morally and socially binding. Rather than attempting to deny the existence of the Treaty, the Crown has the responsibility to embrace it and accept the opportunity that the Treaty provides to develop a just society, one that may have been envisaged at the time that the Treaty was signed.

Among the many concerns that arise from this Bill the following require serious and urgent consideration:

- How will this submission affect the continued existence of the Waitangi Tribunal?
- What will be the status of existing statutory law interpretations that co-exist alongside Tribunal recommendations, e.g. settlements?
- How will the continued existence of obligations in legislation to consult with Maori, e.g. Resource Management Act, be safeguarded?
- How will the legal obligations to ensure tangata whenua are not further disadvantaged be upheld?
- How will the goal to have the Treaty applicable and relevant to all New Zealanders be implemented?

The impact on the Waitangi Tribunal would be devastating if this Bill were passed into law. Reducing the Treaty to an historical document would relegate it to the social and historical backwater of a time passed. Given that we are confronted with the consequences of past injustices on our news media every day, it is crucial that as a society we acknowledge that the past does indeed impact on and relate to our present.

That the New Zealand Parliament has never actually defined the “principles” indicates that the Treaty does not fit neatly into statutory structures and neither, in our view, should it. As we see it, a more appropriate approach is to understand the Treaty as a process, a way of building the relationship between the tangata whenua and all other peoples in this land. The notion of the Treaty as a living document, a guide to living in a relational community, is the understanding taken by the tangata whenua and, if embraced by all people who live in this land, will benefit the whole of society and endure for future generations.

From recent history, we can see that the idea of Treaty “principles” does enable the debate to take place. Since its establishment in 1975, the Waitangi Tribunal has identified a number of principles such as the need to act in good faith, to

acknowledge the special place of Maori as tangata whenua, the need for compromise and consultation in decision-making. While such sets of principles do not supplant the Treaty, they emerge from it. The Treaty needs to be assumed as a living document, interpreted within a contemporary context and negotiated as a social contract. The spirit of the Treaty demands that any principles associated with it be constantly developing according to the specific context.

That the courts have developed a set of guiding principles in relation to the Treaty, especially in relation to the Environment Act and the State Owned Enterprise Act during the 1980s, confirms the need to have legal acknowledgement of the Treaty as a reference point. In relation to these Acts, the Crown had to ensure that it did not act in a manner that is inconsistent with the principles of the Treaty. Rather than any literal meaning of the text, the courts have developed an approach to the Treaty that acknowledges the importance of certain principles of partnership, consultation and the right of tangata whenua to retain rangatiratanga over their resources and taonga, as well as the rights and privileges of citizenship.

Furthermore, the Treaty provides a framework for respecting the reality of cultural differences in this society. The development of a Treaty framework is an ongoing process, one that makes this country unique in the world, with Maori as tangata whenua in relationship with all other people who have made this land their home.

4. Conclusion

In the light of the above, our Submission urges that this Bill be withdrawn and that the Government commits to negotiating with Maori for a Treaty-based approach to all statutory decision-making. We consider that this Bill would spell a backward step in the relationship between the tangata whenua and all other citizens. At this stage in our history, when the Treaty is widely discussed, it is imperative that we keep the conversation alive – not close it down by removing all references to Treaty principles in New Zealand Statutes. The concept of “principles” being associated with the Treaty of Waitangi, while not the ultimate model, at least offers an agreed focus where the Treaty is widely acknowledged as being particularly relevant in certain situations. Elimination of all references to any such “principles” would render the Treaty invisible in law and bring misery to our society.

To conclude, we would like to offer this way of envisaging the Treaty as an overarching source of hope for this country, for the tangata whenua and for all other peoples who live here.

The Treaty:

- represents peace for all; enables kawanatanga (government) to operate;
- acknowledges the system of Rangatiratanga;
- provides access to kawanatanga for Maori and all others;
- advocates that each person’s mana be upheld.

We would welcome an opportunity to speak to this submission.

Katherine Peet
on behalf of Network Waitangi Otautahi