



**TE RUNANGA O TE RARAWA**  
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**SUBMISSION: PRINCIPLES OF THE TREATY OF WAITANGI DELETION BILL**

**Our Organisation**

1. Te Runanga O Te Rarawa (the Runanga) is the iwi authority for the region from North Hokianga through to Kaitaia, up to Hukatere and bound by Te Oneroa a Tohe (Ninety Mile Beach) to the West. We represent twenty-seven marae in sixteen communities, which in turn service more than 12,000 descendants.<sup>1</sup> Our neighbouring iwi are Ngapuhi to the south, Ngati Kahu to the east and Ngaitakoto, Te Aupouri and Ngati Kuri to the north. As the principal point of contact The Runanga makes these comments on behalf of the whanau, hapu and iwi of Te Rarawa: past, present, and those future generations to come.
2. Our contact details:

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**Introduction**

3. The Rūnanga strongly opposes this Bill.

**Rationale for Bill**

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<sup>1</sup> Based on latest Census iwi population count. However, on our own iwi estimations our iwi population is nearer to 30,000.

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1. As outlined below, the Rūnanga contends that the given justifications for the Bill are unsustainable and unreasonable.

#### Māori did not ask for Treaty “Principles”

2. New Zealand First is arguing for the Treaty Principles’ removal on the basis that they are insertions made “*not at the request of Māori, but by paternalistic and interfering Ministers*”.<sup>2</sup> Unfortunately, to maintain the validity of this argument, New Zealand First must also be willing to strike out other such ‘paternalistic and interfering’ legislative insertions or provisions. However, we very much doubt that New Zealand First would apply this consistently – to, for example, the Foreshore and Seabed Act 2004. Rather we know from experience that they would promote paternalistic interference consistently *to our detriment*.
3. It is true that Māori never agreed that Treaty principles to be the focus of Government’s Treaty obligations to Māori. It is also true that Māori never asked for the Principles to supercede the articles of te Tiriti o Waitangi and that many Māori require that the Government honour the guarantees as recorded in Te Tiriti rather than the Principles. After all, our ancestors signed the letter of the Tiriti in good faith believing the Pākehā had the ethical fortitude to honour Crown promises.
4. However, in the absence of an equitable resolution of the Treaty interpretation issue (given there are both Māori and English texts) or a Government commitment to the same, both Māori and the rest of the nation are left with what we currently have: i.e. the Treaty principles to guide us by default. It is by no means the ideal situation for the Rūnanga or for Māori. But utilizing guiding principles (which may be likened to articulations about the ‘spirit’ of the Treaty), despite its flaws, is the only mechanism we have presently. The Rūnanga cannot see how eliminating this tool from legislation will enhance the protection of our Treaty rights. Indeed, we understand that

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<sup>2</sup>R Doug Woolerton, Principles of the Treaty of Waitangi Deletion Bill – Explanatory Note.

it will further weaken what little remaining ability we do have to protect our Treaty rights.

5. New Zealand First's claim that the Principles are "insidious" and have inflicted harm on both Māori and non-Māori<sup>3</sup> is in our view a deliberate distraction from the real issue: the fact that no Government has the vision, courage, maturity or leadership to initiate and take responsibility for resolving what is essentially a matter of constitutional significance, i.e. how Government will practically and meaningfully give enduring effect to and respect the founding document of this nation - Te Tiriti o Waitangi. Immeasurably more harm has been inflicted on Māori by successive governments skirting around this issue than inclusion of the Treaty Principles in our legislation ever has.

#### Principles Not Defined

6. New Zealand First argues that the Principles of the Treaty of Waitangi (the Treaty) are not defined in legislation, and are ill-defined by the courts. They argue therefore that the principles cannot be implemented, so including them in legislation adds nothing. On the contrary, including them is tokenistic and actually demeans the Treaty.
7. However, the Rūnanga struggles to see how this justification can be sustained given the considerable elaborations by the Waitangi Tribunal, the Court of Appeal, the New Zealand Law Commission and the Government itself<sup>4</sup> on Treaty principles. We therefore are left wondering "what really is the problem that needs fixing?"

#### The Principles Do Not Assist Māori "Success"

8. The Rūnanga strenuously disputes New Zealand First's claim that the Treaty Principles have not led to any tangible benefits for Māori. The Rūnanga

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<sup>3</sup>R Doug Woolerton, Principles of the Treaty of Waitangi Deletion Bill – Explanatory Note.

<sup>4</sup>E.g. in the Government's Treaty Claims Settlement policy.

notes for example that key outcomes such as retention of Crown forests and State Owned Enterprises (for use in Treaty settlements) were a direct result of recognition of Treaty Principles. Retention of these assets in Māori hands rather than sale to foreigners or privatization is of huge benefit not just for Māori but for all New Zealanders.

9. We are also skeptical of New Zealand First's criticism of judges who "have taken an increasingly activist, liberal and broad licence" in defining the Treaty Principles.<sup>5</sup> The Rūnanga asks, "According to whose standards?" It seems to us to be simply a case of certain political parties becoming uneasy whenever the Courts make judgments which empower Māori. This is a strange state of affairs when New Zealand First actually purports to support "*the true pathway to success for...Māori*".<sup>6</sup> However in its list of 'true pathways' to Māori success, no-where does New Zealand First mention the attainment of strong cultural identity (including fluency in te reo me ona tikanga), a healthy and sustainable natural environment, or tino rangatiratanga – factors which are central to our concept of whānau, hapū and iwi wellbeing or 'success'.
10. If New Zealand First's understanding on such a fundamental matter can be so out of touch with the Māori view, it is also likely that they do not know what we as Māori want or need in relation to other matters such as the Treaty Principles. Moreover we are very concerned that members of New Zealand First claim to be leaders of Māori constituents. Rather, we ask that all politicians and political parties refrain from the paternalistic behaviour of purporting or assuming to know what we want, and instead come and ask Māori directly.

### The Bill Creates Opportunity to 'Debate' the Issues

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<sup>5</sup> R Doug Woolerton, Principles of the Treaty of Waitangi Deletion Bill – Explanatory Note.

<sup>6</sup> R Doug Woolerton, Principles of the Treaty of Waitangi Deletion Bill – Explanatory Note.

11. The lack of justification for this Bill cannot be saved by the mere fact that its introduction will provide a forum within which Māori or the general public can discuss and debate the issues. Firstly, the Parliamentary Select Committee process is a forum where interested parties will only have the chance to make submissions. A different process outside highly political Parliamentary processes is required for true dialogue to be achieved. Secondly, due to the marginalization of Māori opinion in past Select Committee processes (e.g. concerning the Foreshore and Seabed Bill), the Rūnanga is not overly confident in the Select Committee process. Rather we continue to participate in the hope that our voice will eventually be heard and to have our views put on record.
12. Thirdly, Māori are the stakeholder group and the indigenous peoples with a direct interest who will lose the most through the enactment of this Bill. Therefore our views on the matter ought to be weighted accordingly over and above third party interests. In the Select Committee process however, we feel that Māori are being forced to participate as just another 'submitter'.

### **Technical Matters**

13. New Zealand First states on the one hand that this Bill is “not an attack on the Treaty [of Waitangi]”<sup>7</sup> and yet has also explained that “This Bill eliminates all references to...”the Treaty of Waitangi and its principles” from New Zealand Statutes (our emphasis).<sup>8</sup> The Rūnanga has taken the precautionary approach in interpreting this to mean that the Bill does indeed provide for all references not only to the Principles but the Treaty itself to be removed from legislation. This is something we will never agree with.
14. The Rūnanga supports concerns raised regarding the indiscriminate application of the Bill with an apparent lack of regard for the consequences –

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<sup>7</sup> R Doug Woolerton, Principles of the Treaty of Waitangi Deletion Bill, First Reading, 26 July 2006, [www.hansard.parliament.govt.nz/hansard/Final/FINAL\\_2006\\_07\\_26.htm](http://www.hansard.parliament.govt.nz/hansard/Final/FINAL_2006_07_26.htm).

<sup>8</sup> R Doug Woolerton, Principles of the Treaty of Waitangi Deletion Bill – Explanatory Note.

for example the impact on Treaty Settlement Legislation and the Treaty of Waitangi Act 1975.

### **Closing Remarks**

15. On the whole, the Rūnanga considers this Bill to have no redeeming features whatsoever. By its own admission, the Labour Party has voiced that removal of all references to Treaty principles as proposed under this Bill:
- a. Is unnecessary, as there is sufficient jurisprudence and elaboration from within Government and under common law as to interpretation and application of the principles.<sup>9</sup>
  - b. May give rise to “*significant potential risk and negative impact on the relationship between many Māori and the Crown*” and “*would undermine the good-faith relationship between the Crown and those it settled with*”,<sup>10</sup> and
  - c. Is “*deliberately ignorant and morally repugnant.*”<sup>11</sup>
16. The Bill is also indefensible by international indigenous human rights standards. If New Zealand First or the Government was serious about addressing Treaty Principles or Treaty interpretation issues it believes exist it would initiate meaningful research and dialogue with the tangata whenua of this country as the descendants of those who signed te Tiriti, and the surviving Tiriti right-holders. Giving effect to the contra proferentem rule, recognized under international law, would also resolve interpretation issues: i.e. that where the meaning of a contractual provision is ambiguous, it should be read against the party who wrote it. That is, the preferred interpretation will be the one that helps the party who drafted it the least.

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<sup>9</sup> Note 17 above.

<sup>10</sup> Hon Mark Burton, Questions in the House on Treaty of Waitangi – Legislation, 25 July 2006.

<sup>11</sup> Note 17 above.

17. Government has announced that it will not support the Bill past the First Reading because of the damage it would do to the Crown-Māori relationship.<sup>12</sup> However, in supporting the Bill even at this preliminary stage, much 'lack of good faith' damage to the relationship is already done. It sends ambiguous messages to the public about the importance of the Treaty and the principles. It leads to speculation about what policies the Government might support or implement in future to stay in power. Finally, our Rūnanga has been forced to expend precious time, energy and resources to respond to a matter which ultimately will not see the light of day because it lacks the necessary Labour Support to progress through the House.

### **Oral Submissions**

4. We would like the opportunity to be heard in support of this submission, at a location as close as possible to the Far North.

Heoi anō,

Catherine Davis  
**Policy Analyst**

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<sup>12</sup> New Zealand Herald, "Treaty bill passes first reading but won't go any further" (26 July 2006).