

**YouthLaw Aotearoa**

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**Submission to** **Justice Committee**

**Principles of the Treaty of Waitangi Bill**

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# WHO WE ARE

YouthLaw Aotearoa is a Community Law Centre vested under the Legal Services Act 2000. We are a charity and part of the nationwide network of twenty-four community law centres throughout Aotearoa. We are a specialist law centre focussing on the legal needs and interests of children and young people under 25 years of age.

This submission is informed by YouthLaw Aotearoa’s insights from working with children and young people across New Zealand for over thirty years.

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# YOUTHLAW AOTEAROA’S SUBMISSION

## INTRODUCTION

YouthLaw Aotearoa strongly opposes the **Principles of the Treaty of Waitangi Bill** (**this Bill**). There are two main reasons why.

* The Bill unilaterally amends a binding constitutional agreement between Māori and the Crown. As a matter of a basic contractual principles this is unlawful. When directed at the founding constitutional document of Aotearoa it offends the basic principles which underpin New Zealand’s representative democracy.
* Rangatahi Māori have the highest legal needs of all young people in Aotearoa. Those needs are driven by the impact of colonisation in general but, more specifically, by persistent breaches of Te Tiriti o Waitangi. This Bill is a further and gross breach of Te Tiriti o Waitangi. It ignores the history that causes legal needs for rangatahi Māori and creates the very real risk those outcomes will be repeated.

## CONSTITITIONAL ISSUE

The Bill unilaterally amends a binding constitutional agreement between Māori and the Crown. If passed, it would amount to an unlawful breach of that agreement and undermine the basic principles which underpin New Zealand’s representative democracy.

We will not survey the legal and historical arguments supporting our position in this submission. Those arguments are covered elsewhere and will be covered in the submissions of other organisations. We support the following commentary on this Bill:

* Waitangi Tribunal, “*Ngā Mātāpono/The Principles: Part II of the Interim Report* [[1]](#footnote-2)
* Letter to the Prime Minister and the Attorney General, King’s Counsel, Nov 2024[[2]](#footnote-3)
* Te Hunga Roia Māori, Justice Select Committee submission on this Bill
* Community Law Centres Aotearoa, Justice Select Committee submission on this Bill.

## RANGATAHI MĀORI – LEGAL NEED

The past 20 years have seen an explosion of research into access to justice and legal need. We know more than ever about what access to justice is and why people face barriers. With regards to children and young people, we know that:

* socioeconomic disadvantage is the main driver of legal need and legal harm within communities[[3]](#footnote-4)
* young people and indigenous people are two groups with the highest risk of legal harm.[[4]](#footnote-5)

International research and New Zealand Treasury data point to the following risk factors for high legal need in young people:[[5]](#footnote-6)

* Being Māori
* Experience homelessness
* Experience disability
* Live in out-of-home care
* Are parents
* Having a Oranga Tamariki finding of abuse or neglect
* Being mostly supported by benefits since birth
* Having a parent with a prison or community sentence
* Having a mother with no formal qualifications.

The end result of these risk factors is that 63% of children and young people at high risk of poor socio economics are rangatahi Māori.[[6]](#footnote-7) It is well captured by the following quote from the Mana Mokopuna (NZ Children’s Commission):[[7]](#footnote-8)

*On many measures, about 20 percent are doing it tough, and 10 percent experience persistent, intergenerational, life-damaging disadvantage.*

*While there are mokopuna across all ethnic groups who are achieving excellent outcomes and thriving, there is significant over-representation of mokopuna Māori among those experiencing poor outcomes. Extra attention is needed to address systemic inequities for mokopuna Māori.*

The link between breaches of Te Tiriti o Waitangi and wellbeing are well known. It is discussed in detail in *Whanaketia[[8]](#footnote-9)* (the Royal Commission Report in to Abuse in State Care). Many whānau Māori are in vulnerable situations today, at least in part, because of the ongoing systemic effects of colonisation including the alienation from whenua, whānau, and whakapapa. The disconnection for rangatahi Māori (from their economic, political, social and cultural base) is caused by successive breaches of Te Tiriti o Waitangi and led to Māori being taken into care, where they experienced abuse and neglect.

This Bill is a continuation of that tradition. Like previous breaches, we believe it will increase the legal harm experienced by rangatahi Māori.

One way this will happen is by the reduction in access to justice to rangatahi Māori. The Bill reduces the ability for rangatahi Māori to seek redress through the Courts. It does so by narrowing the jurisdiction of the Courts to consider Te Tiriti o Waitangi claims based only to the principles described in the Bill.[[9]](#footnote-10)

Yet the ability of someone being harmed by legislation to seek redress through the Courts is an important tool for protecting human rights, including indigenous, civil, economic, political, social and children’s rights. This Bill diminishes access to justice and removes important tools for rangatahi Māori to:

* Challenge legislation that impinges on their rights
* Resist further alienation and dislocation from the rights and benefits promised under Te Tiriti o Waitangi.

Reducing access to justice for rangatahi Māori is not just a jurisprudential issue. There are very real practical implications. This Bill will:

* Increase the probability that rangatahi Māori will experience increased legal harm
* Risk repeating the mistakes outlined in graphic detail in the Royal Commission of Inquiry in to Abuse in State Care.

## OUR RECOMMENDATION

**We urge parliament to withdraw this Bill and not propose it again.** It represents a fundamental breach of our constitutional arrangements and creates a very real risk of additional legal harm for rangatahi Māori.



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1. The Waitangi Tribunal “*Ngā Mātāpono/The Principles: Part II of the Interim Report*”, [Ngā Mātāpono/The Principles: Part II of the Interim Report – Pre-publication Version](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_221817323/Nga%20Matapono%20Ch6%20W.pdf) [↑](#footnote-ref-2)
2. This letter was sent by 42 Kings Counsel, the most senior lawyers in Aotearoa. These eminent legal thinkers conclude the Bill should be abandoned. <https://wellington.scoop.co.nz/?p=165818> [↑](#footnote-ref-3)
3. See, for example, *The Legal Australia-Wide Survey (LAW Survey)*, Executive Summary, [http://www.nationallegalaid.org/resources/legal-australia-wide-survey/#](http://www.nationallegalaid.org/resources/legal-australia-wide-survey/), [↑](#footnote-ref-4)
4. See Justice Project, Law Council of Australia, <https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf> [↑](#footnote-ref-5)
5. See Justice Project, Law Council of Australia, <https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf> and See Treasury, <https://www.treasury.govt.nz/sites/default/files/2016-02/ap16-01-infographic.pdf> [↑](#footnote-ref-6)
6. See Appendix 3 for references and more detail. [↑](#footnote-ref-7)
7. See Mana Mokopuna, [*https://www.manamokopuna.org.nz/documents/438/OCC-Statement-of-Intent-2021-2024.pdf*](https://www.manamokopuna.org.nz/documents/438/OCC-Statement-of-Intent-2021-2024.pdf) [↑](#footnote-ref-8)
8. See <https://www.abuseincare.org.nz/assets/Whanaketia/PDF-downloads/Whanaketia-part-6.pdf>, Chapter 2. [↑](#footnote-ref-9)
9. *Ngā Mātāpono, 3.4.6*  [↑](#footnote-ref-10)