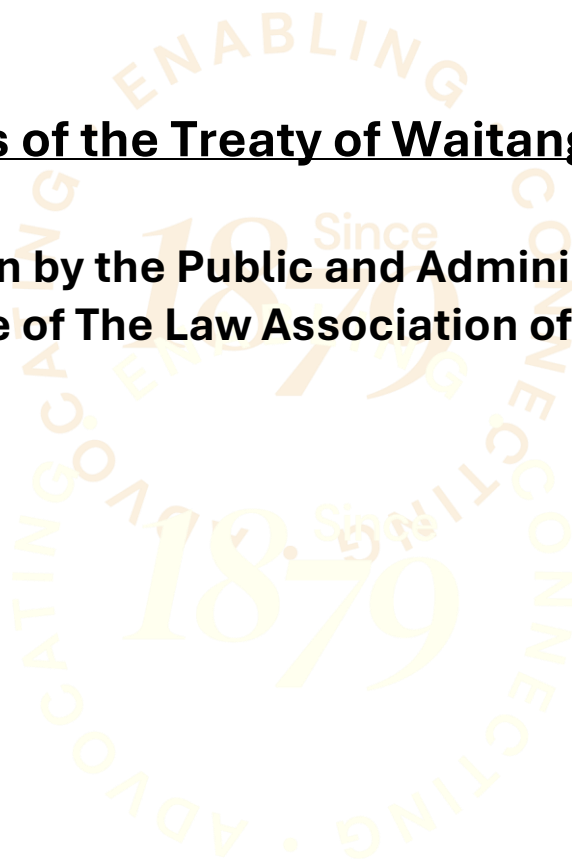


Principles of the Treaty of Waitangi Bill

**Submission by the Public and Administrative Law
Committee of The Law Association of New Zealand**



1. INTRODUCTION

- 1.1. The Law Association of New Zealand (TLANZ) is an independent membership organisation for the New Zealand legal profession with over 7,600 members. Through its specialist law committees, TLANZ provides informed and expert representation on legal review, policy matters and recommendations for legislative improvement.
- 1.2. TLANZ Public and Administrative Law Committee appreciates the opportunity to submit on the Principles of the Treaty of Waitangi Bill (the Bill).
- 1.3. TLANZ Public and Administrative Law Committee members hold diverse views on the Bill, therefore this submission does not seek to express a view or take a position on the Bill; rather it provides feedback and highlights points of significance.

2. EXECUTIVE SUMMARY

- 2.1. The TLANZ Public and Administrative Law Committee reminds Parliament that it must maintain and defend Parliamentary sovereignty and New Zealand's commitment to the rule of law. Accordingly, the Justice Committee should explicitly reject any suggestion that Parliament's power to make laws in New Zealand is limited when reforming or clarifying the Principles of the Treaty of Waitangi.

3. SUBMISSION

- 3.1. One approach for a committee such as ours, when submitting on a bill, is to identify how Parliament's aims can be better delivered. However, in this case, there is considerable uncertainty about the Coalition Government's aims and the extent to which the Bill could command the support of a majority in the House, even with refinement. Additionally, within our committee are conflicting views about the issues raised by the Bill and the mode of addressing them.
- 3.2. Consequently, by this submission, the committee does not attempt to refine or develop the Bill. Instead, it makes some general comments about the significance of the topic and the significance of core Treaty Principles enunciated in the Bill to the administration of law in New Zealand, based on established values of a free and democratic society.
- 3.3. Despite correspondence sent to the Attorney-General by some Senior Counsel, TLANZ Public and Administrative Law Committee considers that Parliament can undoubtedly define the Principles of the Treaty of Waitangi, a concept coined by Parliament and a

creature of statute. References to “the principles” in enactments can be refined, reinterpreted, amended, or repealed by Parliament.

- 3.4. TLANZ Public and Administrative Law Committee asks the Justice Committee to explicitly reject any suggestion that Parliament’s power to make laws in New Zealand is limited when reforming or clarifying the Principles of the Treaty of Waitangi.
- 3.5. Leaving to one side the desirability of narrowing the Treaty of Waitangi Principles in the manner set out in the Bill, our committee considers that Principles 1 and 3 are fundamental to the constitutional framework of New Zealand and the rule of law. In many respects, these provisions are already acknowledged in existing legislation.
- 3.6. The Bill addresses the apparent mischief of developing and applying Treaty Principles under many enactments to undermine Parliament’s authority and citizens’ equality in ordinary affairs. These are matters of considerable interest to Parliament and are significant to a wide range of New Zealanders.
- 3.7. The concerns underlying the Principles of the Treaty of Waitangi Bill are not idle or without substance.
- 3.8. For example, the Waitangi Tribunal is currently undertaking at pace a Constitutional Inquiry because it claims this to be within its mandate as expressed in the Treaty of Waitangi Act 1975.^[1] That statute expressly incorporates the Principles of the Treaty of Waitangi as the yardstick for measuring the conformity of laws with the demands of the Treaty.^[2]
- 3.9. The principles referencing the Treaty of Waitangi Act 1975 were intended to support the practical application of the Treaty, recognising linguistic differences between what the 1975 Act decreed to be two versions which were scheduled to the Act.^[3] The statutory reference to pragmatism is deliberate since any debate must acknowledge the course of history and cultural understanding developed over many years.
- 3.10. TLANZ Public and Administrative Law Committee is concerned that core principles of the rule of law are potentially up for debate in the Waitangi Tribunal, where the principles of the Treaty are the yardstick. Only “any Maori” or “any group of Maoris” may make a claim to the Tribunal. The Crown is the only respondent.
- 3.11. New Zealanders generally have not participated in the formulation of the Principles. New Zealanders generally cannot participate in the Tribunal’s inquiry. Yet all New Zealanders are legitimately concerned in our constitutional arrangements.

^[1] [Constitutional Kaupapa Inquiry \(Wai 3300\)](#)

^[2] Treaty of Waitangi Act 1975, s6

^[3] Treaty of Waitangi Act 1975, Preamble

3.12. The rule of law and the sovereignty of Parliament are twin pillars of New Zealand's constitution. The Tribunal's Constitutional Inquiry showcases how confidence in Parliament and the rule of law in New Zealand can be undermined by use of "principles" of the Treaty.

3.13. For a viable public and administrative law system that respects New Zealand's constitutional structure, Parliament must maintain and defend Parliamentary sovereignty and New Zealand's commitment to the rule of law.

The views represented in this submission are not representative of the views of all TLANZ members but are those of individual TLANZ Public and Administrative Law Committee members.

Should clarification be required with regards to any matters raised, please contact Gandhya Senanayake, TLANZ Committee Executive at: gandhya.senanayake@thelawassociation.nz

Ngā mihi,

A handwritten signature in black ink that reads "Samira Taghavi". The signature is written in a cursive, flowing style.

Samira Taghavi

Convenor - TLANZ Public and Administrative Law Committee