



**TE OHU
KAIMOANA**

Te Ohu Kaimoana response to the Principles of the Treaty of Waitangi Bill

December 2024



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We are Te Ohu Kaimoana

1. Te Ohu Kaimoana was established to protect and enhance the Māori Fisheries Settlements.¹ The Māori Fisheries Settlements, the Māori Fisheries Act 2004 (**MFA**) and the Māori Commercial Aquaculture Claims Settlement Act 2004 (**MCACSA**) are expressions of the Crown's legal obligation to uphold Te Tiriti o Waitangi, particularly the guarantee that Māori would maintain tino rangatiratanga over our fisheries resources.
2. The Te Ohu Kaimoana Kāhui structure is below as figure 1. All entities under the group were established pursuant to the Māori Fisheries Settlements.

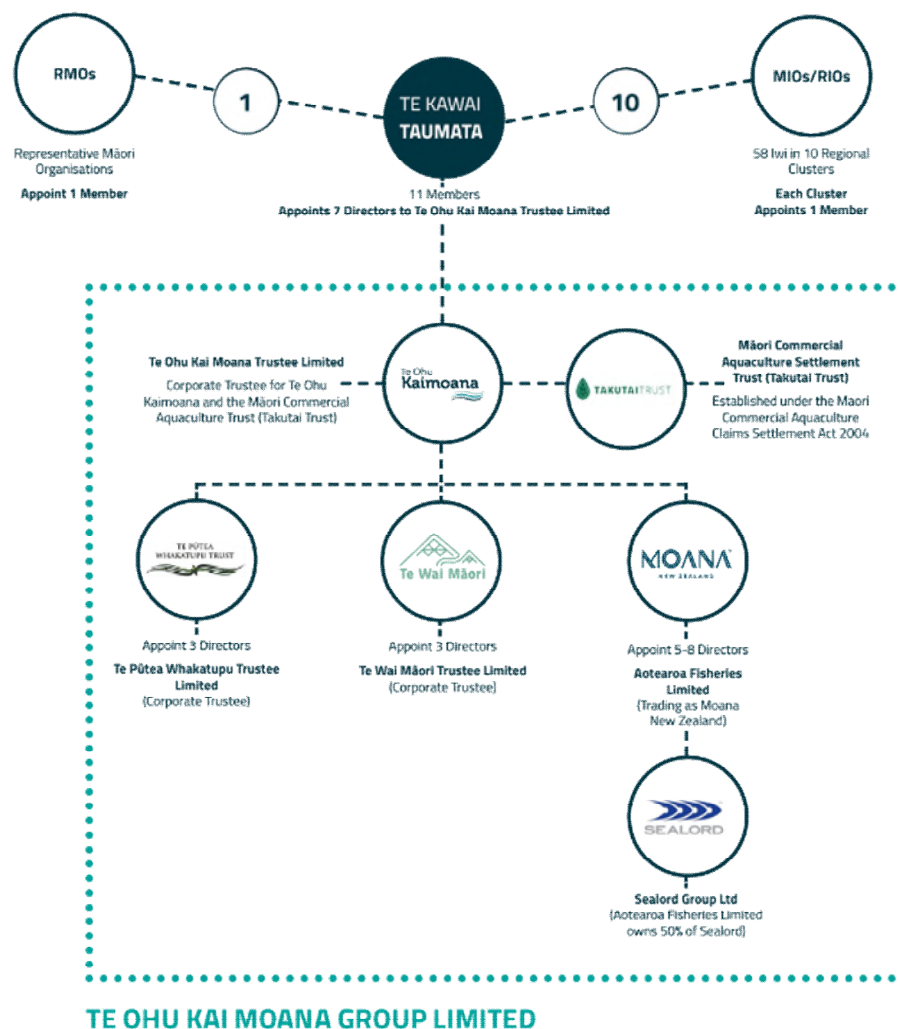


Figure 1: Te Ohu Kaimoana Kāhui structure

¹ The full framework of deeds and settlement legislation to give effect to the agreements between the Crown and Māori in the Fisheries Settlement involves: the (now repealed) Maori Fisheries Act 1989, the 1992 Fisheries Deed of Settlement, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (which also includes the customary fisheries management regulations given effect through Part 9 of the Fisheries Act 1996), the Māori Fisheries Act 2004, and the Māori Commercial Aquaculture Claims Settlement Act 2004.

3. The purpose of Te Ohu Kaimoana is to “advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:²
 - a. ultimately benefit the members of Iwi and Māori generally;
 - b. further the agreements made in the Fisheries Deed of Settlement;
 - c. assist the Crown to discharge its obligations under the Fisheries Deed of Settlement and Te Tiriti o Waitangi/ Treaty of Waitangi; and
 - d. Contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Fisheries Deed of Settlement”.
4. The purpose of the Māori Aquaculture Settlement Trust (**Takutai Trust**) is to:³
 - a. receive settlement assets from the Crown or regional councils;
 - b. hold and maintain settlement assets on trust until they are transferred to an iwi aquaculture organization;
 - c. allocate settlement assets to iwi on the basis of a model set out in this Act;
 - d. facilitate steps by iwi to meet the requirements for the allocation of settlement assets; and
 - e. perform any functions that are necessary or desirable to facilitate consultation between the Crown and iwi aquaculture organisations, mandated iwi organisations, and recognised iwi organisations for the purposes of MCACSA.
5. We work on behalf of 58 Mandated Iwi Organisations (**MIO**), Recognised Iwi Organisations () and Iwi Aquaculture Organisations (**IAO**) who in turn represent iwi throughout Aotearoa. We work to protect their rights and interests and enable them to progress their aspirations within the moana.

Te Ohu Kaimoana’s interest

6. Our interest in the Principles of the Treaty of Waitangi Bill (the **Bill**) arises from our responsibility to protect the rights and interests of iwi in fisheries and aquaculture, in a manner that furthers the agreements in the Fisheries Deed of Settlement (the **Deed**) and assists the Crown to discharge its obligations under the Deed, Te Tiriti o Waitangi (**Te Tiriti**) and the Treaty of Waitangi (the **Treaty**).
7. Te Tiriti guaranteed Māori tino rangatiratanga over their taonga, including fisheries. Tino rangatiratanga is Māori acting with authority and independence over their own affairs. It is

² Māori Fisheries Act 2004, section 32.

³ Māori Commercial Aquaculture Claims Settlement Act 2004, section 35.

practiced through living according to tikanga and mātauranga Māori, and striving wherever possible to ensure that the homes, land, and resources (including fisheries) guaranteed to Māori under Te Tiriti are protected for the use and enjoyment of future generations.

8. There is a special relationship that iwi, hapū and whānau have with the moana, including speaking to the interdependent relationship with Tangaroa to ensure the health and well-being of Tangaroa. This expression underpins our purpose, policy principles and leads our kōrero to ensure the sustainability of Tangaroa's kete for today and our mokopuna yet to come. It is important that the Government understands the continuing importance of Tangaroa and recognises the tuhonotanga that Māori hold as his uri. In a contemporary context, the Māori Fisheries Settlements are expressions of this interdependent relationship.
9. Iwi/ hapū rights are an extension of their kaitiaki responsibility, a responsibility to use the resources in a way that provides for social, cultural and economic well-being, and in a way that is not to the detriment of Tangaroa or other children of Tangaroa. It speaks to striking an appropriate balance between people and those we share the environment with. Management and protection of fisheries, freshwater and marine aquaculture resources are some elements of this reciprocal relationship.
10. For Te Ohu Kaimoana, our key concern with the Bill is to ensure that it protects and upholds the commitments made by the Crown to Iwi in the Māori Fisheries Settlements, as well as the overarching commitments set out in both Te Tiriti and the Treaty.

This is our response to the Bill

11. Thank you for providing us with the opportunity to comment on the Bill.
12. This document provides Te Ohu Kaimoana's response to the Bill.
13. Our approach to this response is derived from the context of Te Ohu Kaimoana's role in the Māori Fisheries Settlements.¹
14. To support this response, we also wish to present our views kanohi ki te kanohi to the Justice Select Committee.
 - a. Our response is structured in the following way:
 - Te Ohu Kaimoana's position on the Principles of the Treaty of Waitangi Bill
 - The impact of the Bill
 - Overarching impacts of the Bill
 - Proposed principles analysis
 - Article 1 and principle 1
 - Article 2 and principle 2
 - Article 3 and principle 3

- Impacts to the Māori Fisheries Settlements– the Crown has a duty to uphold the Māori Fisheries Settlements
- Wider impacts to all Treaty Settlements

15. We do not intend for our response to conflict with, or override, any response provided independently by Iwi. Our responsibilities as the trustee of the two settlements referred to above are separate and distinct but complementary to those of iwi and hapū who hold mana whenua and mana moana and are beneficiaries of the Māori Fisheries Settlements through their MIO, RIO and IAO.



20 December 2024

Graeme Hastilow
Te Mātārae, Te Ohu Kaimoana

Date

Te Ohu Kaimoana's position on the Bill

16. Our position is that the Bill needs to be abandoned immediately. Our rationale for our position is provided throughout the sections below.

The impact of the Bill

Overarching impacts of the Bill

17. As of 2024, the New Zealand Government has still not fully embraced Te Tiriti as the primary constitutional text, continuing to reference both versions in a way that maintains the Crown's authority over the interpretation of both the Te Reo Māori and English versions.
18. Our role as kaitiaki of the Māori Fisheries Settlements is to work in partnership with the Crown to enable and protect these settlements which is increasingly difficult to do in environments that are questioning the validity of them.
19. The purpose of the Bill is to set out the principles of the Treaty in legislation, deviating from what has been developed by the courts over the last 50 years. The main problem with the proposed principles in the Bill is that they do not reflect the agreement made in Te Tiriti. Te Tiriti is an agreement between Māori and the Crown.
20. The Bill does not alter the texts of the English or Te Reo Māori documents themselves. The Bill seeks to fundamentally change the legal meaning and effect of Te Tiriti by defining in statute, the principles of the Treaty that must be used to interpret an enactment, if principles of the Treaty are relevant to interpreting that enactment (whether by express reference or by implication).
21. If the Bill becomes law, the newly created principles would replace the established principles that the courts and Government have been working with for decades. It would narrow the scope of the Crown's Te Tiriti responsibilities by imposing specific principles to guide the Crown's actions in relevant legislation.
22. This means that the Crown's interpretation and application of their Treaty obligations in relation to relevant legislation, could become more limited, reducing flexibility in how Māori rights and interests are recognised and addressed in different contexts. This is of relevance to the Māori Fisheries Settlements and the way in which we work with the Crown as a priority partner.
23. Te Tiriti is a living document, that has application in different contexts. Similarly, all Treaty settlements, including the Māori Fisheries Settlements, are living agreements, and it is the obligation of the Crown to continue to uphold these. Te Ohu Kaimoana is concerned that the Bill will impact the application of the Māori Fisheries Settlements and will hold the Crown accountable to their duty as a party to Te Tiriti.

Proposed principles analysis

24. This section offers an analysis of all three articles of Te Tiriti and the Treaty, alongside the principles outlined in the Bill. It compares the articles of Te Tiriti and the Treaty with the principles presented in the Bill.

Article 1 and Principle 1

Te Tiriti o Waitangi ko te Tuatahi

Ko ngā Rangatira o te wakaminenga me Ngā Rangatira katoa hoki ki hai i uri ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu - te Kawanatanga katoa o ratou wenua."

The Treaty of Waitangi Article 1

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Treaty Principles Bill 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, —

(a) in the best interests of everyone; and

(b) in accordance with the rule of law and the maintenance of a free and democratic society.

25. Article 1 of Te Tiriti granted kāwanatanga to the Crown, enabling it to govern its own citizens in Aotearoa under its laws. However, this governance was explicitly limited by the pre-existing tino rangatiratanga of Tangata Whenua. The agreement to retain tino rangatiratanga ensured that Māori retained sovereignty over their whenua, kāinga, and taonga, preserving their authority within their own domains. Kāwanatanga and tino rangatiratanga were intended to coexist, with distinct roles and a balance of power based on partnership and mutual respect.
26. The Bill's proposed Principle 1 is not consistent with the words, meaning, or intent of article 1 of Te Tiriti or the Treaty. It overstates the kāwanatanga of the Crown and completely ignores the guarantee of tino rangatiratanga. It prioritises unilateral Crown authority, eroding the balance intended in Te Tiriti

between kāwanatanga and tino rangatiratanga. Moreover, the proposed Principle 1 misrepresents kāwanatanga by portraying kāwanatanga as unrestricted authority, disconnected from the responsibilities and protections guaranteed to Māori under Te Tiriti. This undermines the partnership established in 1840 and effectively removes Māori as Treaty partners. It dismisses Te Tiriti's foundational concept that the Crown's power is subject to the guarantees of tino rangatiratanga.

27. Principle 1 also excludes any reference to Māori rights or the Crown's obligations under Te Tiriti, fundamentally misinterpreting its intent. By emphasizing Crown power without corresponding protections for Māori, as written in Te Tiriti, the principle contradicts the spirit and intent of Te Tiriti. It diminishes Māori self-determination and undermines the partnership model central to the Treaty relationship.
28. Interpreting Article 1 of Te Tiriti in isolation, disregards Article 2's guarantees of tino rangatiratanga, which explicitly limits Crown authority. The connection of Articles 1 and 2 demonstrates that kāwanatanga was never intended as an absolute or unilateral power but as a governance mechanism that operated in balance with Māori sovereignty. This ensured a balanced relationship between kāwanatanga and tino rangatiratanga, respecting Māori self-determination while allowing the Crown to meet its obligations under Te Tiriti.

Article 2 and Principle 2

Te Tiriti o Waitangi ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki Ngā Rangatira ki nga hapu - ki Ngā tangata katoa o Nu Tirani te tino rangatiratanga o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko Ngā Rangatira o te wakaminenga me Ngā Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua - ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona

The Treaty of Waitangi Article 2

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs, yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Treaty Principles Bill Principle 2

(1) The Crown recognises, and will respect and protect, the rights that hapū and iwi Māori had under the Treaty of Waitangi/te Tiriti o Waitangi at the time they signed it.

(2) However, if those rights differ from the rights of everyone, subclause (1) applies only if those rights are agreed in the settlement of a historical treaty claim under the Treaty of Waitangi Act 1975.

29. Article 2 of Te Tiriti upholds Māori tino rangatiratanga over their lands, forests, fisheries and taonga. These rights were known to be collective rights and grounded in Māori worldviews that emphasize holistic concepts like kāinga and taonga katoa. Different to western notions of individual sovereignty, tino rangatiratanga operates within a tikanga-based framework that centres on collective authority, primarily at a hapū level. This provision guaranteed Māori self-determination, extending beyond property rights to encompass a broader recognition of Māori tribal structures.
30. Principle 2 of the Bill is “the complete antithesis of article 2” of Te Tiriti and “would formally revoke in statute the promises and guarantees the Queen made to Māori in 1840”. It also ignores the guarantee of tino rangatiratanga. It conflicts with Article 2 of Te Tiriti by interpreting tino rangatiratanga through a Western lens, reducing it to concepts of individual sovereignty and private property rights. This misrepresentation links tino rangatiratanga to "chieftainship" and aligns it with the private property rights of all New Zealanders, distorting its true meaning. Additionally, the Bill presents tino rangatiratanga as something granted by the Crown, rather than a unique right guaranteed by Te Tiriti. This reinterpretation shifts Māori rights towards individualist principles, undermining the promises of Te Tiriti, limiting Māori autonomy, and weakening the Crown's obligation to uphold the guarantees made in 1840.
31. Moreover, Principle 2 also undermines tino rangatiratanga by restricting Māori rights to those explicitly defined by the Crown through settlement legislation, or recognition by some other instrument that applies to everyone. This approach effectively freezes Māori rights as they were recognized in 1840, implying that no new rights can be recognized beyond what was understood or established at the time of the signing of Te Tiriti in 1840, or through subsequent Crown actions unless captured in settlement legislation. By doing so, it prevents Māori from asserting rights that reflect our evolving needs and circumstances in a modern context. The bluntness of this principle ignores the dynamic nature of tino rangatiratanga, which encompasses the ability for iwi and hapū to adapt, grow, and govern in ways that align with Māori aspirations over time.

Article 3 and Principle 3

Te Tiriti o Waitangi ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani

The Treaty of Waitangi Article 3

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Treaty Principles Bill Principle 3

(1) Everyone is equal before the law.

(2) Everyone is entitled, without discrimination, to—

(a) the equal protection and equal benefit of the law; and

(b) the equal enjoyment of the same fundamental human rights.

32. Article 3 was not intended to provide identical rights and duties to Māori and non-Māori; instead, it ensured that Māori retained tino rangatiratanga guaranteed under Article 2 while also receiving the same rights of British subjects. The Bill's interpretation further creates a misleading impression that Article 3 applies universally to all New Zealanders. However, the promises made in 1840 were specific to Māori, reflecting the need to address the unequal power dynamics and systemic barriers Māori faced.
33. The proposed Principle 3 seeks to erase Māori from Te Tiriti. The Crown's obligations under Article 3 were specific to Māori and extended beyond formal equality to include active protection of Māori interests and the removal of barriers that prevent equitable outcomes. By emphasising a universal right to equality, Principle 3 disregards the systemic inequities that the Crown itself created and fails to acknowledge the need for equitable treatment to achieve true equality. The concept of "same rights for all" promotes a framework of individual autonomy, undermining the Crown's duty to provide protections for Māori as guaranteed in Article 3.

Impacts to the Māori Fisheries Settlements – the Crown has a duty to uphold the Māori Fisheries Settlements

34. The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (which also includes the customary fisheries management regulations given effect through Part 9 of the Fisheries Act 1996), the MFA and the MCACSA are defined as a Treaty Settlement Act, therefore we would expect that the manner in which the Crown engages with iwi and Te Ohu Kaimoana, in relation to these settlements is maintained.
35. The concern for Te Ohu Kaimoana is that the Bill could influence Crown behaviour more broadly, which may extend to the way they engage with us as the kaitiaki of these settlements. It is Te Ohu Kaimoana's expectation that as these are defined as Treaty Settlement Act's and are therefore exempted from the Bill, that our partnership relationship with the Crown, and the partnership relationship between iwi and the Crown in relation to the settlements, will continue to be governed by the orthodox Treaty Principles we know today. This is of particular importance due to the unique and prospective nature and intent of the MCACSA.
36. Section 8 of the Bill provides that "This Act does not apply to the interpretation of a Treaty settlement Act, or the Treaty of Waitangi Act 1975 in relation to the settlement of a historical Treaty claim entered into after the commencement of this Act."⁴ On the face of it, this means the Deed would not be captured by this exemption. Nevertheless, we expect that the principles provided in this Bill do not apply when interpreting the Deed, because the principles provided in the Bill "must be used to interpret an enactment".⁵ The Deed is not an enactment so it will not apply to its interpretation.

Wider impacts to all Treaty Settlements

37. As the Bill would change the interpretation and application of every Treaty clause in legislation, the effectiveness of statutory acknowledgments and relationship agreements would be impacted. For example, if agencies like the Department of Conservation or local authorities were required to apply laws such as those within the Resource Management Act (**RMA**) according to the Bill, agencies would be required to change their processes, including the role that Māori play in statutory processes such as resource management consenting. The Bill effectively reduces Māori rights in Acts like the RMA, to the same level as those of any other citizen, diminishing the role of Māori in the consenting process.

⁴ Principles of the Treaty of Waitangi Bill (2024), Section 8

⁵ Principles of the Treaty of Waitangi Bill (2024), Explanatory note, Part 2



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