JUSTICE SELECT COMMITTEE
PARLIAMENT BUILDINGS
WELLINGTON

13 DECEMBER 2024

Tēnā koutou katoa

Te Uru Kahika (Regional and Unitary Councils Aotearoa) thanks the Justice Select Committee for the opportunity to submit on the Principles of the Treaty of Waitangi Bill (the Bill).

Te Uru Kahika is the Regional and Unitary Councils' collective voice, representing New Zealand's 16 regional and unitary councils. This sector submission is based upon input from experts and practitioners within Te Uru Kahika.

Te Uru Kahika provides regional and unitary council CEOs with tactical advice and expertise on a range of issues and works with Central Government with the aim of achieving beneficial outcomes for our communities. Our Te Uru Kahika network also plays a vital role in championing best practice, good governance, information-sharing, and cross-council collaboration. Our councils are very committed to our relationships with iwi and hapū, which are integral to our work and essential to achieving our legislative responsibilities and community-articulated outcomes.

Te Uru Kahika opposes this Bill and recommends that it be abandoned. Our submission identifies concerns about the process and Treaty interpretation used for developing this Bill, some likely adverse impacts of the Bill on our councils' operational relationships with iwi and hapū, and the anticipated practical cost of this Bill to our communities.

Our joint submission is supported by a majority of our councils. It does not override the position taken by individual regional and unitary council submissions. Where an individual member council's submission is not aligned with this submission, the view of the member council on a particular point is confirmed as their position on that matter. This submission has been approved by the Regional Chief Executive Officers.

The primary point of contact for any matters arising from this submission is:

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We wish to be heard in support of our submission.

Nāku iti noa, nā

MICHAEL MCCARTNEY
ON BEHALF OF REGIONAL CHIEF EXECUTIVE OFFICERS
TE URU KAHIKA | REGIONAL AND UNITARY COUNCILS AOTEAROA

1. INTRODUCTION

1.1. Te Uru Kahika thanks the Justice Select Committee for the opportunity to submit on the Principles of the Treaty of Waitangi Bill. We are a key part of government in Aotearoa, and we understand the importance of providing feedback on new law within our overall system. We play a role in ensuring that policies are workable, ethical and achievable.

1.2. Our submission is made in the interests of sustainable management of our natural and physical resources and the wellbeing of people and communities.

1.3. Te Uru Kahika opposes this Bill and recommends that it is abandoned. We recommend that amendments to existing constitutional arrangements can only occur based on meaningful discussion and agreement between both willing Treaty partners.

1.4. The focus of this Te Uru Kahika submission is:

- The importance of upholding Te Tiriti, and of evidence-based policy and good process,
- The effect of this Bill (if enacted) on our council operations and working arrangements with tāngata whenua, and
- Costs of this Bill to our communities.

2. EXECUTIVE SUMMARY

Te Uru Kahika recommends abandoning this Bill and undertaking meaningful engagement with iwi and hapū on any future amendments to constitutional arrangements.

The key focus areas of this submission are:
Upholding Te Tiriti, and the importance of good policy and process: Central and Local Government, including Te Uru Kahika, must collaborate to uphold Te Tiriti, to form evidence-based policy and to exercise good governance. We share the Ministry of Justice's concerns about the lack of Treaty partner consultation and inconsistency with Te Tiriti. The new principles create legal uncertainty and undermine democratic principles by ignoring iwi and hapū input, contradicting the intended partnership of Te Tiriti.

Operational impact on councils: The Bill potentially undermines and strains our partnerships with iwi and hapū, creating barriers that detrimentally impact our current and future work programmes. The Bill excludes unsettled iwi, limits protections, and complicates decision-making. The economic, environmental and social benefits we see from working in partnership with iwi and hapū will be impacted.

Community cost: The Bill's uncertainty increases costs for councils, diverting funds from essential services and straining communities. Administrative and compliance costs will rise, affecting service delivery. Division may erode social cohesion in our communities with local, regional and national impacts, all of which affect Te Uru Kahika councils ability to meet legislative and community outcomes.

3. SUBMISSION

3.1. IMPORTANCE OF UPHOLDING TE TIRITI, AND OF GOOD POLICY AND PROCESS

3.1.1. Central and Local Government need to, and do, work together to make progress towards delivering value to our communities. Te Uru Kahika aims to provide practical submissions that help ensure new policy and law is workable, ethical and achievable. We focus on ensuring evidence-based policy making to support practical delivery and enable good governance.

3.1.2. We note the matters identified in the Ministry of Justice's Regulatory Impact Statement (RIS). These include:

- **Lack of adequate Treaty partner consultation -** the proposed changes to constitutional arrangements and the significance of Māori as the Treaty partner were not appropriately considered during the drafting of the Bill. Specific and appropriate consultation with the Treaty partner did not occur.
- **Inconsistency with Te Tiriti -** The proposed principles in the Bill are inconsistent with Te Tiriti o Waitangi, including Article 2. Limitation of Māori rights and interests to those set out in Treaty settlements ignores article 2 where comprehensive Māori rights and interests were guaranteed under the Treaty.
- **Undermining of established jurisprudence -** the existing principles and case law have been developed over years of jurisprudence and would need to be re-evaluated, leading to a period of uncertainty about the application of the new principles.

3.1.3. We note the concerns of multiple parties, including a large group of King's Counsels, the Waitangi Tribunal, licensed Māori Translators, many of our own contacts within local government, and iwi and hapū, that the proposed principles misrepresent and misinterpret Te Tiriti o Waitangi, are based on a flawed translation, and sanction a process that will take away indigenous rights. We leave others to articulate these concerns in detail, including the potential legal repercussions for both central and local government.

3.1.4. We cannot support a Bill that attempts to change the constitutional arrangements established by Te Tiriti o Waitangi (as recognised by all branches of government over the past five decades) without discussion and agreement with the other party to the Treaty, and with such short timeframes for engagement.

3.1.5. There are far better ways to have a national conversation with Treaty partners and communities about the place of the principles in legislation, particularly when the objectives of this Bill are stated as "*creating greater certainty and clarity to the meaning of the treaty principles*" , "*promoting a national conversation about the place of the principles in our constitutional arrangements*"; and "*creating a robust and more widely understood conception of New Zealand's arrangements*". We do not agree that this Bill will "*promote greater legitimacy and social cohesion*". The introduction of the Bill has already stimulated division and anti-Māori sentiment. If

the Bill is passed or a referendum enacted, this will continue to oversimplify the issue and promote polarisation of views.

3.2. THE EFFECT OF THIS BILL ON OUR OPERATIONAL RELATIONSHIPS WITH TĀNGATA WHENUA WITHIN OUR REGIONS

3.2.1. Te Uru Kahika councils are at the coalface of communities and have ongoing commitments to long-term partnerships and working relationships with iwi and hapū. We play a key role in upholding Te Tiriti in Aotearoa, and we have collectively experienced numerous economic, environmental and social benefits from working in partnership with iwi and hapū who are vital participants in many of our council work programmes and Long-Term Plans.

3.2.2. Ensuring equity while simultaneously protecting the specific rights of Aotearoa New Zealand's indigenous people (tāngata whenua / iwi Māori) is something councils are well practiced at; it requires a balanced and nuanced approach that respects both universal human rights and the unique culture, history, tikanga, and specific needs and aspirations of Māori.

3.2.3. Legal recognition of indigenous and customary rights are affirmed by Te Tiriti o Waitangi. The principles that have been defined over time by the courts and the Waitangi tribunal have provided invaluable guidance to local government to interpret Te Tiriti, alongside other efforts that all of government can assist with, including education systems, language revitalisation, adequate decision-making opportunities, collaboration and dialogue, and addressing historical and structural inequality.

3.2.4. As regional and unitary councils, we have committed to and are obligated to work with iwi and hapū under multiple legislative instruments including specific settlement legislation and a range of legislation not least including the Resource Management and Local Government Acts.

3.2.5. We are concerned that this Bill, if enacted, could adversely impact on our working relationships and work programmes in the following ways:

- undermine or create tension for our existing commitments and practical projects in partnership with iwi and hapū, some of whom do not have completed Treaty settlements
- undermine statutory requirements for Māori engagement and co-management which are currently clear and easy to follow
- marginalise Māori participation in council decision-making, provided for in the Local Government Act
- strain relationships and erode social cohesion within communities locally and nationally
- lead to inequitable outcomes that perpetuate existing disparities for Māori - contrary to our responsibilities for ensuring fair and equitable treatment of all communities

- Impact on relationships that councils have with iwi and hapū through current (over 100 nationwide) and future treaty settlements

3.2.6. As noted in 3.2.5, some iwi and hapū have yet to conclude a Treaty settlement with the Crown to address their rights and provide redress. The Bill's focus on only protecting rights and interests as set out in Treaty settlements eliminates all other pre-existing rights and interests of iwi and hapū outside of a settlement process and unjustly disadvantages those who are yet to settle with the Crown. This will likely mean that the rights and interests of settled iwi / hapū groups in natural resources managed by councils will have legislative standing, while there will be no legislative standing for the rights and interests of unsettled iwi / hapū groups with interests in the same natural resources in a region. Councils will be in the very difficult position of trying to achieve equity amongst iwi and hapū without any legislative mechanism on which to rely.

3.2.7. Further to the point in 3.2.6, the proposed Bill (if enacted) could still adversely affect completed settlements because some iwi have expiry dates on their statutory acknowledgements. Once expired, the rights and interests of those iwi will revert to the rules for everyone, meaning they will no longer receive and be able to comment on resource consent applications in their rohe, which will thus undermine the durability of Treaty settlements themselves. This will have the effect of the points in paragraph 3.2.5.

3.2.8. In summary, the proposed Bill may detrimentally impact many of our current and future relationship agreements and ways of working. We highlight the improvement of environmental and community outcomes that results from settlement arrangements negotiated between iwi and the Crown as well as other high trust working arrangements under which our councils work with tāngata whenua. We are also aware that the Government intends to review and possibly remove references to the Treaty of Waitangi in 28 pieces of legislation. While a separate issue, we are concerned that this will further exacerbate the issues outlined in 3.2.5.

3.2.9. These likely disruptions to ongoing settlement negotiations and reconciliation efforts will overshadow and hinder the spirit of partnership in which regional and unitary councils operate. This will inevitably lead to costs on our communities (discussed in 3.3).

3.3. COST OF THIS BILL ON OUR COMMUNITIES

3.3.1. Regional and Unitary councils are striving for efficiency and cost savings, aiming to work alongside central government to reduce the burden of debt on our local communities. We also strive for effectiveness and to ensure relevance of relationships that are right within our communities. We are apprehensive that this Bill, if enacted, may impose costs on our communities at local, regional and national levels in two main ways:

- **Costs related to legal and operational uncertainties and change to legislation**. Existing laws, such as the Resource Management Act 1991 and Local Government Act 2002, require councils to uphold Treaty principles. Changed and narrow definitions of the principles will create increasing legal uncertainty and operational complexity, as well as the need to amend and change some of our councils' plans, policies and procedures. Over 25 years of Treaty settlements, principles and legislation are intertwined – unravelling this will likely create legal and fiscal risks for all levels of government, leading to increased costs at a time when many are already struggling with the cost of living.

- **This Bill brings a high risk of creating or exacerbating community tension and negative social impacts that play out in local government arenas**. For Te Uru Kahika councils, these tensions will impact directly on our resource and environmental management functions which are all implemented in accordance with Treaty obligations. Together we and iwi and hapū have mutual and connected interests in a healthy environment and healthy communities. These tensions will play out within our existing informal and formal relationships, so integral to our council business-as-usual work programmes. These relationships, both formal and informal, include joint decision-making, consultation, collaboration, service contracts, joint forums and committees, Mana Whakahono ā Rohe agreements, and joint management agreements.

3.3.2. At the coalface of Te Taiao related decision making (as discussed in section 3.2.1), councils will bear much of the cost of this debate and litigation. These impacts are likely to require, within our councils, administrative, procedural, legal and compliance expenditure to ensure that the trickle-down effects of such change are understood and implemented, and to deal with ill-informed opposition to partnering and collaborating with iwi and hapū – money that would otherwise be spent on core council business.

4. RECOMMENDATIONS

4.1. Te Uru Kahika recommends that:

- The Principles of the Treaty of Waitangi Bill be abandoned.
- The Crown should engage meaningfully with iwi and hapū before proposing any changes to constitutional arrangements, and only at such time as iwi and hapū are ready and willing.

5. CONCLUSION

This Bill fails to adequately consult iwi and hapū, undermining democratic principles and contradicting its goal of promoting fairness. The Bill could weaken our existing and future partnerships, harming social cohesion and marginalising Māori. The Bill excludes unsettled iwi, limiting protections and complicating decisions. It also threatens current settlements by eroding partnership, undermining their legitimacy and benefits. The proposed principles will likely lead to increased disputes and legal costs. Higher administrative costs will strain councils and divert funds from essential services. Te Uru Kahika recommends that the Bill be abandoned.