Archdiocese of Wellington

PO Box 1937, Wellington 6140, New Zealand

5 January 2025

SUBMISSION OF THE ARCHDIOCESAN COMMISSION FOR ECOLOGY, JUSTICE AND PEACE TO THE JUSTICE SELECT COMMITTEE ON THE TREATY OF WAITANGI PRINCIPLES BILL 2024

Introduction

1. The (Catholic) Archdiocese of WellingtonCommission for Ecology, Justice and Peace is established to:

> *contribute to and participate in work for justice and peace inspired and informed by Catholic Social Teaching. The Commission's key responsibilities are:*
> *Supporting the communities of the Archdiocese and wider community to hear and actively respond to the cry of the earth and the cry of the poor;*
> *Scrutinising all issues and institutions in society and in the Archdiocese in the light of Catholic social teaching [1].*

Position on the Treaty of Waitangi Principles Bill

2. In our view, the Bill is fundamentally flawed and should not proceed.

3. The General Policy Statement for the Bill says that:

> The overarching objective of the Bill is to define what the principles of the Treaty of Waitangi are in statute to —
> - create greater certainty and clarity to (sic) the meaning of the principles in legislation:
> - promote a national conversation about the place of the principles in our constitutional arrangements:
> - create a more robust and widely understood conception of New Zealand's constitutional arrangements, and each person's rights within them:
> - build consensus about the Treaty/te Tiriti and our constitutional arrangements
> - that will promote greater legitimacy and social cohesion.

4. The Bill does nothing to promote those objectives.

5. The ‘principles’ in the Bill have very little to do with either text, the Treaty or te Tiriti. A justification for the Bill appears to be a view that interpretation of Treaty principles, by courts, the Waitangi Tribunal, and elsewhere in the last 40 years has been flawed. We do not agree with that premise. We see little that is negative, and much that is very positive, in the way that the courts and the Waitangi Tribunal have addressed the principles over the last 40 years. While there is evidence of development, there is also evidence of continuity in the exposition of principles.

Catholic Social Teaching

6. Catholic social teaching offers a framework and a set of principles, rather than a detailed prescription for every circumstance. The framework of general themes includes: participation, the common good, distributive justice, a preferential option for the poor and vulnerable, human dignity, stewardship, solidarity, promotion of peace, and subsidiarity.[1]

7. In 2023 the Vatican issued a repudiation of the Doctrine of Discovery.[2] The statement observes that with the help of indigenous peoples themselves,

> the Church has acquired a greater awareness of their sufferings, past and present, due to the expropriation of their lands, which they consider a sacred gift from God and their ancestors, as well as the policies of forced assimilation, promoted by the governmental authorities of the time, intended to eliminate their indigenous cultures.

It is necessary to

> abandon the colonizing mentality and to walk with them side by side, in mutual respect and dialogue, recognizing the rights and cultural values of all individuals and peoples. In this regard, the Church is committed to accompany indigenous peoples and to foster efforts aimed at promoting reconciliation and healing.

8. In Canada in July 2022, Pope Francis meeting with First Nations peoples said:

> When the European colonists first arrived here, there was a great opportunity to bring about a fruitful encounter between cultures, traditions and forms of spirituality. Yet for the most part that did not

[1] A convenient summary is at https://www.caritas.org.nz/catholic-social-teaching
[2] https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/03/30/230330b.html

> happen… the policies of assimilation ended up systematically marginalizing the indigenous peoples.[3]

9. He was specifically talking about the catastrophic experience of residential schools, but his remarks about the importance of memory, repentance, and reconciliation apply in Aotearoa, as does the point about an opportunity for fruitful encounter.

10. Pope John Paul II said in 1989 for the World Day of Peace:

> Certain peoples, especially those identified as native or indigenous, have always maintained a special relationship to their land, a relationship connected with the group's very identity as a people having their own tribal, cultural and religious traditions. When such indigenous peoples are deprived of their land they lose a vital element of their way of life and actually run the risk of disappearing as a people.[4]

The Principles of the Treaty of Waitangi Bill

11. Before we discuss the Bill itself we express our dismay at the way in which the Bill has been developed and progressed.

12. The Bill proposes far-reaching changes, which strike at the heart of the wording and the meaning of te Tiriti o Waitangi/the Treaty of Waitangi. The legislation has been drafted and introduced into Parliament, so far as we are aware, with a complete lack of discussion and consultation with iwi or hapū or with any representative Māori organisations. So far as we are aware, iwi and hapū have through their leadership repeatedly called for the Bill to be abandoned. This unilateral action is not how a responsible party in any sort of relationship proceeds. In the context of te Tiriti/the Treaty, it is deeply regrettable.

13. The General Policy Statement says that

> The Treaty principles, as defined at this time, help reconcile differences between the te reo Māori and English texts and give effect to the spirit and intent of the Treaty when applied to contemporary issues.

14. The principles as laid out in the Bill do no such thing. This Bill does nothing to reconcile differences between te Tiriti in Māori and the Treaty in English. There

[3] https://www.vatican.va/content/francesco/en/speeches/2022/july/documents/20220725-popolazioniindigene-canada.html
[4] https://www.vatican.va/content/john-paul-ii/en/messages/peace/documents/hf_jp-ii_mes_19881208_xxii-world-day-for-peace.html.

is a substantial body of material, notably in Waitangi Tribunal reports as far back as 1983, which make clear the differences and yet suggest ways forward.

15. It is well established that there is, to say the least, a very significant difference between the ‘sovereignty’ of article 1 in English and the ‘kawanatanga’ of article 1 in Māori. It is equally well established that there is a very significant difference between the English article 2 ‘full, exclusive, and undisturbed possession’ and the Māori ‘tino rangatiratanga’.

16. As long ago as 1985 the Waitangi Tribunal was expressing the difference like this:

17. Kawanatanga was ‘something less than the sovereignty (or absolute authority) ceded in the English text. As used in the Treaty it means the authority to make laws for the good order and security of the country but subject to an undertaking to protect particular Maori interests’.[5]

18. Rangatiratanga was ‘something more than the "full exclusive and undisturbed possession" guaranteed in the English text. As used in the Treaty we think 'te tino rangatiratanga' (literally 'the highest chieftainship') meant 'full authority status and prestige with regard to their possessions and interests'.[6]

19. More recently, in 2014 the Tribunal observed that:

> the rangatira who signed te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor. They agreed to a relationship : one in which they and Hobson were to be equal – equal while having different roles and different spheres of influence. In essence, rangatira retained their authority over their hapū and territories, while Hobson was given authority to control Pākehā.[7]

20. It is essential to remember the wording of the Treaty of Waitangi Act 1975. Its preamble refers to three points and for the avoidance of misunderstanding we quote the preamble in full:

> Whereas on the 6th day of February 1840 a Treaty was entered into at Waitangi between Her late Majesty Queen Victoria and the Maori people of New Zealand:

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[5] Report of the Waitangi Tribunal on the Manukau Harbour Claim (1985), p. 66.
[6] Report of the Waitangi Tribunal on the Manukau Harbour Claim (1985), p. 67.
[7] He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry (2014), p. xxii.

> And whereas the text of the Treaty in the English language differs from the text of the Treaty in the Maori language:
>
> And whereas it is desirable that a Tribunal be established to make recommendations on claims relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles.

21. A particularly important point is that 'the principles' are referred to in the context of their 'practical application'. Necessarily, therefore, meaning is elucidated by reference to specific circumstances. Clearly, however, the principles emerge from the texts of the Treaty and te Tiriti, and the Act's preamble requires the Tribunal to 'determine [the] meaning and effect' of the Treaty. Indeed, s 5(2) of the Act provides that in exercising its functions the Tribunal

> for the purposes of this Act, shall have exclusive authority to determine the meaning and effect of the Treaty as embodied in the two texts and to decide issues raised by the differences between them.

22. The inescapable conclusion is that this is to be done by reference to the words in the texts, along with other standard approaches to the interpretation of treaties.

23. It would, perhaps, have been strange if the 'principles' of the Treaty had been specified in the 1975 Act or the 1985 amending legislation. The approach taken by the Waitangi Tribunal and the Courts has been to develop principles case by case. This is often how the interpretation of legislation works (in fact it is difficult to see how else it could work).

24. We do not therefore agree with the observation in the General Policy Statement that there is uncertainty or a lack of clarity around the principles. There has been, as we observed, over forty years of development in the courts and the Waitangi Tribunal. The principles may be unpalatable to some people. But that does not mean they are uncertain or unclear.

25. It is not clear if the 'principles' laid out in the Bill are intended to refer to each of the three articles of te Tiriti/the Treaty. In their plain wording, they have very little to do with those three articles.

26. Section 6 of the Bill states that:

> The principles of the Treaty of Waitangi are as follows:

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.

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.

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.

27. So far as Principle 1 is concerned, although on their own the words are unexceptionable as a statement of liberal democratic principle, we cannot see how they relate to anything said or agreed in 1840.

28. The wording of Principle 2 likewise has very little to do with what was said or agreed in 1840. At a most generous interpretation Principle 2 (1) is a poorly expressed attempt to confirm something vaguely like article 2 in the English version. Yet that is completely undermined by Principle 2 (2) which provides that such rights, if differing from the rights of ‘everyone’, only apply if they are agreed in the settlement of a historical treaty claim.

29. In simple terms that means the rights of iwi and hapū under te Tiriti/the Treaty are in many circumstances only guaranteed if the Crown agrees subsequently to guarantee them. That cannot be accepted. Those rights existed as a fact before and after the signing of te Tiriti/the Treaty.

30. We note, too that the language - ‘if those rights differ from the rights of everyone’ – is so vague and nebulous as to be meaningless. In other places, too, Section 6 is vague. This Bill, the professed intention of which is to bring clarity and avoid the need for interpretation, leaves much open for interpretation in particular contexts. What, for example, does it mean to govern ‘in the best interests of everyone’? And what were ‘the rights that hapū and iwi Māori had under the Treaty of Waitangi/te Tiriti o Waitangi at the time they signed it’?

31. Principle 3 is equally problematic. It ignores the context, and indeed the plain wording, of article 3 which refers to the Crown's commitment to protect the Māori people. In itself, the wording of principle 3 is unexceptionable, but in the context of te Tiriti/the Treaty it doesn't get us very far. The promises, as the Waitangi Tribunal recently observed, were not made to 'everyone', but to Māori.

32. Section 7 provides that the principles as specified 'must be used to interpret an enactment if principles of the Treaty of Waitangi are relevant to interpreting that enactment (whether by express reference or by implication)'. As we have said, the principles bear very little relationship to te Tiriti/the Treaty.

33. Section 7 also provides that '[p]rinciples of the Treaty of Waitangi other than those set out in section 6 must not be used to interpret an enactment'.

34. That cannot be accepted. It implies that there are other principles but they shall be ignored. The real intention of the legislation, we fear, is thus made clear. It is to render almost meaningless te Tiriti/the Treaty.

Other Issues

35. We refer to the First Reading speech of the minister responsible for the Bill:

> The bill does something else, and that's the answer: it democratises the principles of the Treaty. It gives everyone a say. The commencement clause says the principles of this bill only come into force if a majority vote for it to do so in a referendum. And, as I mentioned, the principles we know today have been created by a small number of New Zealanders, even though we all have to live within them. But, if democracy means anything, it means each and every person has a say in how the rules we all live under are made. It is that democratisation of the Treaty that is so important. The big change here is the idea that each person has a say on the rules they live under. Even people who are convinced this bill will not become law are determined to stop it being discussed. And that's why you hear so much outspoken criticism of it. They know that whether or not this bill becomes law in this term of Parliament, it's only a matter of time before its logic prevails. That's why they say, "Kill the bill", because they can't kill the idea behind the bill, especially not the idea of each person who lives legally in this country having equal rights.[8]

[8] https://www.parliament.nz/en/pb/hansard-debates/rhr/document/HansS_20241114_051600000/seymour-david

36. We think that these words misunderstand representative, parliamentary democracy. It is by election of members of parliament that 'each and every person has a say'. It is common for a democratically elected parliament to legislate without putting legislation to a referendum. It is, for example, not often suggested that 'each and every person' should be involved in setting monetary policy. A democratically elected parliament has delegated that responsibility to the Reserve Bank of New Zealand. The ratification of international agreements – for example, free trade agreements – is not the subject of a parliamentary vote.

37. For these reasons, and because of the inherent flaws in the wording of the 'principles', it is inappropriate that the Bill, if passed, be the subject of a referendum. As we recommend that the Bill not proceed to a second reading, this point is in a sense moot, but we fail to understand how the solemn promises made by the Crown to iwi and hapū in 1840 can be the subject of a referendum nearly two centuries later.

38. We also note the Summary of Key Features. Where the summary refers to equal rights and equal protection, we suspect that many iwi and hapū would regard that as a bad joke. It is well within living memory that the state could compulsorily acquire Māori land if that was thought expedient.

39. There was no evidence of equal rights and equal protection at Parihaka, as the Crown has acknowledged.[9]

40. There was no evidence of equal rights and equal protection in the raupatu or confiscation of millions of acres of North Island land in the 1860s. The Crown acknowledged this so far as Waikato-Tainui were concerned, in 1996, in an apology signed by Queen Elizabeth II.[10]

41. There was no evidence of equal rights in 1848-49 when the Crown's commissioner confined Ngāi Tahu hapū to small reserves – as that commissioner reported, to an average of ten acres each, 'in the belief that the ownership of such an amount of land, though ample for their support, would not enable the Natives, in the capacity of large landed proprietors, to continue to live in their old barbarism on the rents of an uselessly extensive domain'.[11] As that commissioner later said the explicit intention was that it be 'enough to furnish bare subsistence by their own labour'.[12]

[9] Te Ture Haeata ki Parihaka 2019 Parihaka Reconciliation Act 2019.
[10] Waikato Raupatu Claims Settlement Act 1995, clause 6.
[11] Walter Mantell, quoted in Waitangi Tribunal, The Ngāi Tahu Land Report, vol. 2, p. 592.
[12] Walter Mantell, quoted in Waitangi Tribunal, The Ngāi Tahu Land Report, vol. 2, p. 482.

42. In Treaty settlements to date, the value of reparation has been a very small fraction of what iwi and hapū lost. For example, one estimate is that the 1.2 million acres of land confiscated from Waikato Tainui was worth $12 billion in 1995, the year of the settlement. The monetary compensation paid was $170 million.[13]

Concluding remarks

43. We return to the General Policy Statement.

44. The Bill will do nothing to 'create greater certainty and clarity to (sic) the meaning of the principles in legislation' because the Bill has very little to do with the principles of te Tiriti/the Treaty.

45. It might, if the November 2019 Hīkoi mō te Tiriti and other discussions are anything to go by, 'promote a national conversation about the place of the principles in our constitutional arrangements' but that conversation is certainly not endorsing this Bill.

46. It will hardly 'create a more robust and widely understood conception of New Zealand's constitutional arrangements, and each person's rights within them' because it displays a regrettable lack of understanding of the founding document of the nation.

47. It will not 'build consensus about the Treaty/te Tiriti and our constitutional arrangements that will promote greater legitimacy and social cohesion' because of the same regrettable lack of understanding. Indeed the Bill, if enacted in any form, will do vast damage to the social, political, and constitutional fabric of this country.

48. The Waitangi Tribunal recently said, 'if this Bill were to be enacted, it would be the worst, most comprehensive breach of the Treaty / te Tiriti in modern times. If the Bill remained on the statute book for a considerable time or was never repealed, it could mean the end of the Treaty / te Tiriti'.[14] We do not think this is an exaggeration.

[13] Tim Giles, 'Why "equal rights for all" should extend to fair Treaty settlements'. The Post, 29 November 2024, p. 30.
[14] Waitangi Tribunal, Ngā Mātāpono/The Principles: Part II of the Interim Report of the Tomokia Ngā Tatau o Matangireia – The Constitutional Kaupapa Inquiry Panel on The Crown's Treaty Principles Bill and Treaty Clause Review Policies (2014), p xiv.

49. By way of conclusion, we note that a justification for this Bill is that because of the Treaty/te Tiriti, some people are said to have more rights than others. We recall the words of Pope John Paul, in an address to indigenous Australians in November 1986:

> Let it not be said that the fair and equitable recognition of Aboriginal rights to land is discrimination. To call for the acknowledgment of the land rights of people who have never surrendered those rights is not discrimination. Certainly, what has been done cannot be undone. But what can now be done to remedy the deeds of yesterday must not be put off till tomorrow.[15]

50. We repeat: rectifying past injustice is not discrimination and it is not an affront to principles of equality. Rather, it is giving effect to principles of equality.

51. We recall that in 1995, in the context of the ill-fated 'fiscal envelope' proposal, the New Zealand Catholic bishops contrasted that proposal with the emerging Waikato-Tainui settlement. The envelope was flawed in process: it was, the bishops said, 'a process which appeared to place expediency before proper consultation and partnership. The spirit of the Treaty demands that the Government rectify this mistake'. Of the settlement, they noted that 'the reconciliation it has fostered, has been a bold and positive step forward, the result of goodwill and negotiation on both sides'.

52. To quote further from the bishops:

> The Church was present in 1840, and is still present in 1995. Through its social teachings, the Church seeks to ensure that the dignity of persons, and the common good of all, are reflected within the economic, social and political structures of society. Where there exist situations of conflict the Church seeks that social and economic life be directed toward just and peaceful solutions.
> Please, keep trying to address the grievances of the past with integrity and consultation. The indigenous people of our country, the Maori, deserve better than unilateral arrangements and imposed settlements for genuine, acknowledged wrongs. Treaty of Waitangi issues are not about party politics. They are about honouring with goodwill the covenant entered into by the Crown and Maori, on which this nation is founded. They are about the right of the first occupants to land, and a social and political organisation which would allow them to preserve their cultural identity. They are about a people still searching for the sovereignty guaranteed them 150 years ago.

[15] https://www.vatican.va/content/john-paul-ii/en/speeches/1986/november/documents/hf_jp-ii_spe_19861129_aborigeni-alice-springs-australia.html

> We ask then that you look boldly to a new process of consultation on the meaning and application of tino rangatiratanga and kawanatanga as encompassed in Te Tiriti.[16]

53. Those words are just as applicable today. We therefore urge that the Bill be withdrawn and not proceed to a second reading vote.

[16] https://www.catholic.org.nz/about-us/bishops-statements/a-statement-on-the-treaty-of-waitangi-in-todays-perspective/