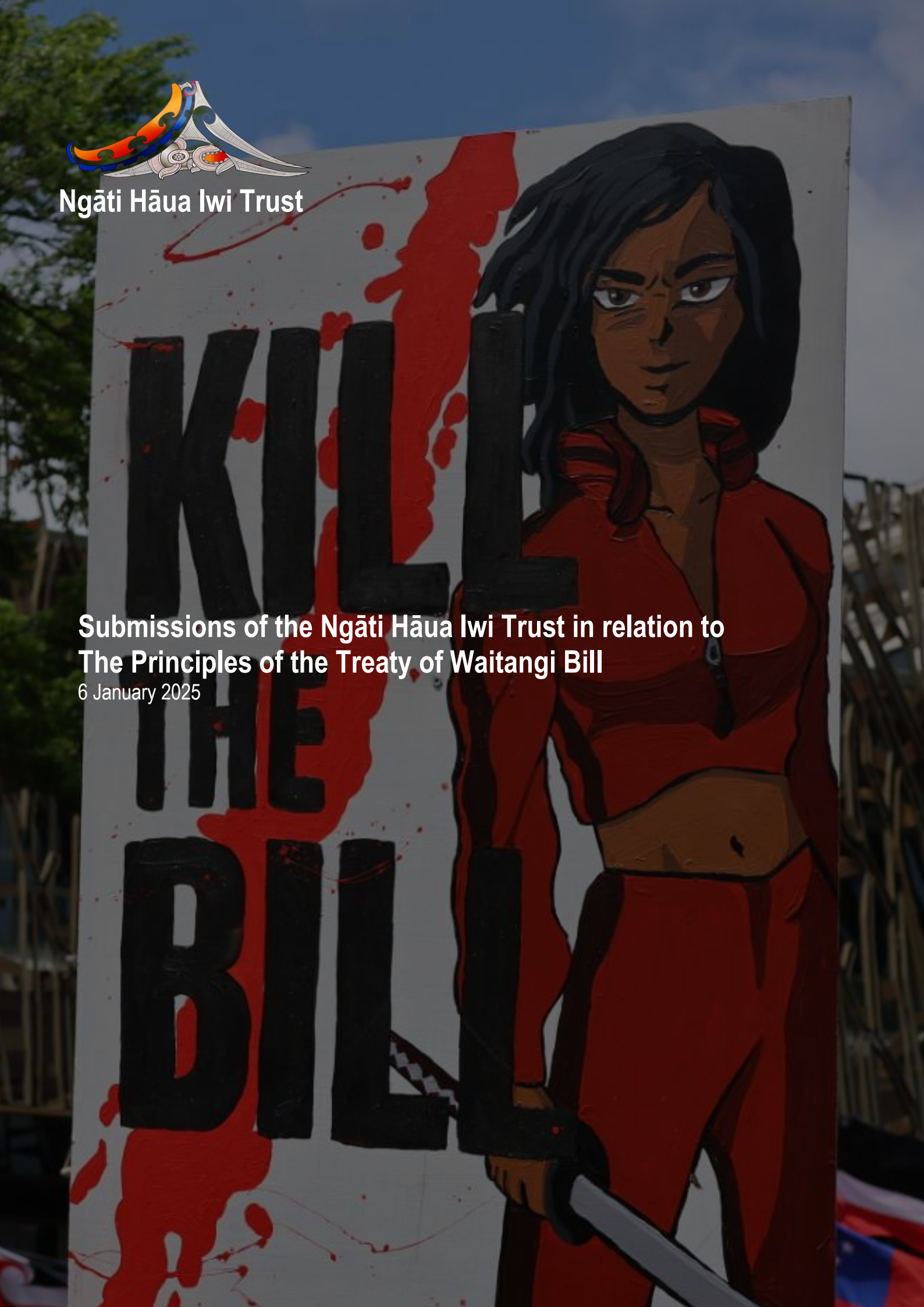
Ngāti Hāua Iwi Trust



Submissions of the Ngāti Hāua Iwi Trust in relation to The Principles of the Treaty of Waitangi Bill

6 January 2025

“**Unuunu te puru o Tūhua mā ringirngi te wai o puta**”

‘If you withdraw the plug of Tūhua, you will be overwhelmed by the flooding hordes of the North’
‘If you withdraw the plug of Tūhua, you empty the Whanganui River’

1.0 EXECUTIVE SUMMARY

1.1 The Principles of the Treaty of Waitangi Bill (**Bill**) is hyper-colonisation at its peak, and we oppose it completely. The Bill makes waste to years of progressive policy that has tried to grapple with modern day Aotearoa by upholding Te Tiriti o Waitangi (**Te Tiriti**) and accepting that Tangata Whenua are of this land, while at the same time providing for Tangata Tiriti in the pursuit of equity as opposed to just equality. To this, the nation has generally accepted that Tangata Whenua have pre-existing rights that flow from tikanga and the cultural practices and traditions that underpin Te Ao Māori. This acknowledgment does not mean Tangata Whenua have better or more rights, but that we have different rights because we have a different set of cultural norms that make us unique, not only within Aotearoa but internationally.

1.2 By protecting and preserving those rights and their ability to evolve in their contextual way, the nation benefits from an ever evolving yet strongly rooted culture that enhances every aspect of New Zealand society. Take that away, as the Bill seeks to do, and you take away the very core of our ability to develop economically, socially, culturally and democratically as a nation. The constitutional and more importantly the societal ramifications will be severe, and we fear that once that line is crossed, the journey back will take generations (as is the case with the current Treaty Settlement process).

1.3 The principles set out in the Bill go against the basic concept of basic human rights, because all notion of humanity has been removed. Basic or fundamental human rights are founded on the understanding that humanity at its core is different. Context dictates those differences and is always important when understanding and discussing "rights". This Bill creates fallacies about the context of Aotearoa and the "rights" that exist and have existed outside the confines of the law created by Government. We say that, for the past 184 years (since Te Tiriti was signed) Ngati Hāua have exercised our culture and traditions to no detriment to Tangata Tiriti. In fact, the opposite is true. That somehow the exercise of our culture is a privilege (or bestows extra rights) that affords us more than the rest of New Zealand, reinforces the infant state of our society and fascist manipulation of this Government who take advantage of that reality. We make this submission is absolute defiance to that.

2.0 KO WAI MĀTOU

Ko Ruapehu te maunga
Ko Whanganui te awa
E rere kau mai te awanui
Mai te Kahui Maunga ki Tangaroa
Ko te Awa, ko au
Ko au, te Awa

2.1 Ngā hapū o Ngāti Hāua all share common whakapapa descent from Ngā Tūpuna – Paerangi, Ruatupua Nui and Hāua. Ngāti Hāua have 26 affiliated hapū within our area of interest:[1]

[1] We acknowledge hapū that have shared interests with other iwi as marked with an asterisk.

Ngāti Hāua	Ngāti Whati	Ngāti Tama-o-Ngāti Hāua	Ngai Turi
Ngāti Hauaroa	Ngāti Onga	Ngāti Ruru	Ngāti Hinetakuao
Ngāti Reremai	Ngāti Te Awhitu	Ngāti Hira	Ngāti Pareuira*
Ngāti Tū	Ngāti Wera	Ngāti Rangitauwhata	Ngāti Pikikotuku
Ngāti Hekeāwai	Ngāti Hinewai*	Ngāti Te Huaki	Ngāti Tamakaitoa*
Ngāti Keu*	Ngāti Poutama*	Ngāti Whakairi	Ngāti Pareteho*
Ngāti Kura*	Ngāti Rangitengaue		

2.2 Ngāti Hāua Iwi Trust (**NHIT**) was established in 2001, to advance and advocate for the interests of Ngāti Hāua iwi, hapū and whānau within our customary rohe. Since its inception, NHIT has represented Ngāti Hāua iwi, hapū and whānau in Waitangi Tribunal processes, Treaty settlement negotiations, Local Council matters including as an iwi authority for Resource Management Act 1991 purposes, and with respect to Ngāti Hāua interests in the Whanganui River.

2.3 On 21 November 2024 NHIT initialled a Deed of Settlement with the Crown as a redress package for the many breaches of Te Tiriti by the Crown against Ngāti Hāua. That said, the Bill before us touches an important and central kaupapa that underpins Treaty Settlements, being Te Tiriti. Therefore, it is our responsibility to hold the Crown accountable. To this end we are guided by our Pou Tikanga, particularly *Rongo Niu: To hold the Crown to accoun*t, and submit this brief submission covering the following matters:

(a) Te Tiriti me ngā mātāpono o Te Tiriti; and

(b) Issues with the three principles set out in the Bill.

3.0 TE TIRITI ME NGĀ MĀTĀPONO O TE TIRITI

3.1 Te Tiriti is the founding document of Aotearoa and is the constitutional foundation for how we continue to be a nation. It is always important to remind the Crown that this is a bicultural state which Te Tiriti provides for. Ngā Mātāpono o Te Tiriti or the Principles of the Treaty as established by the Crown in the 1970's and then the Courts and Tribunals since, are in fact departures from the context of Te Tiriti and overly simplifies that text to the benefit of the Government and their convenient retention of power. That said, these developed principles are positive elements of the jurisprudence created with respect of Te Tiriti and as they currently stand, do much in the way of directing the nation towards unification.

3.2 Unification or kotahitanga is arguably the key element that flows from Te Tiriti. However, unification does not require the erasure of one people to make way for the other's values and traditions through an absorbative exercise. Rather, unification requires acceptance of the uniqueness of each people and the equitable provision for the same through a continued practice of collective responsibility. Te Tiriti is the blueprint for this very idea, and the principles as we have come to know them (best described by the Waitangi Tribunal in its WAI 1040 report in the Te Paparahi o Te Raki inquiry) are the human attempts to reconcile Te Tiriti into legislative policy. The

latter is imperfect, but the Bill does not rectify that imperfection, it makes it look like the exemplar for Māori-Crown relations. The creation of a new set of principles as set out in the Bill will have the effect of implicitly rewriting Te Tiriti. Its practical effect will ignore the existence of Te Tiriti and give the Government enhanced jurisdiction over the essence of Te Ao Māori and the constitutional place of Tangata Whenua in Aotearoa.

3.3 The Bill is drafted based on an extremely limited interpretation of the three Articles of the English text of Te Tiriti. Its important context to remember that:

(a) The English text is not a translation of the Te Reo Māori text, it is a complete rewrite; and

(b) Māori did not sign the English text. This means the terms of the treaty agreed to between Māori and the Crown are based on the Te Reo Māori text and weight should rightfully be afforded to the meaning of that text as described and understood by Māori. In short this is to say that Māori did not cede sovereignty nor the power of self-determination.

3.4 It is that context, which makes the Bill inconceivable, as the Crown has no legitimate power to determine and change the meaning of Te Tiriti through its law making function – something the Crown implicitly acknowledges in Principles 1 of the Bill, by trying to provide for this exact power. In fact, the principles of the Bill highlight the current limitations on the Crowns power, and the checks and balance Te Tiriti has always provided on the exercise of the Crown's perceived power. This check in balance has always benefited the nation.

3.5 We address this in turn, specifically the three principles set out in the Bill.

4.0 ISSUES WITH THE PRINCIPLES SET OUT IN THE BILL

Principles 1

The executive government of New Zealand has full power to govern, and the Parliament of New Zealand has full power to make law –

(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.

4.2 Principle 1 of the Bill takes Article 1 of Te Tiriti and interprets it to be a statement of legitimate sovereignty and governance held by the Government / Parliament. There are two core issues with this:

(a) The word kawanatanga in article 1 of Te Tiriti means governance not sovereignty, however the English text translates kawanatanga to mean sovereignty. Māori did not sign the English text and so it is right to conclude that it was never intended that the Crown through its Government would be sovereign over Māori or in this land.

(b) Both the English and Māori texts of Te Tiriti provide the ability for the Government to exist and govern over non-Māori. However, this was intended to be limited by the exercise of Tino Rangatiratanga,

meaning the Government could not extend its power/reach to those that lived under the collective system of rangatiratanga. To do so is to stray away from the constitutional function of the Government.

4.3 This is to say that there is a place for Government in New Zealand but as history has shown us, Government should not and legitimately cannot interfere in the realities of Te Ao Māori.

4.4 Principles 1 also raises other issues. Firstly, the statement declaring that the Government has the full power to govern, and Parliament has the full power to make laws, acknowledges that currently this is not the case and has never been the case for 184 years because of the effect of Te Tiriti. Principle 1 reinforces that the Government has limited authority and power. If that was not true, then the Bill in this respect would be pointless. This acknowledgment raises a question as to why such a declaration of authoritarianism is required. Simply, Te Tiriti, and by extension Māori as the guardians of it, function as a final defense against exploitative policy and the potential radical agenda of any one executive government. To the benefit of New Zealand, this has played a significant role in environmental and social justice by deterring and in many cases striking down the advancement of capitalism.

4.5 Principle 1 is naïve in that it assumes that the Government can act in the best interests of everyone and in accordance with the rule of law. This denies our own history (including just this year) which shows that the government deliberately attacks Māori. That is why we have a Treaty Settlement process and Waitangi Tribunal. The Governments actions have only ever caused Māori significant intergenerational harm. An extension of this is the Governments active exercise of an exemption to the concept of the rule of law for its own benefit. Parliamentary Sovereignty has always allowed the Government to attempt to do what it likes, but Te Tiriti and Māori have always functioned as a limitation on that, and as an avenue for a tika approach to social policy. That aside, Principle 1 reinforces that the concept of the rule of law is subject to change dependent on the Government of the day, meaning it is the Government who decides morality and correctness before the law, not the concept of the rule of law in the New Zealand context itself. This unfettered interpretation (i.e parliamentary sovereignty) has been opposed by Māori since 1840.

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.

4.6 Principle 2 of the Bill is a rewrite of Article 2 of the Māori and English texts of Te Tiriti. Although the two texts of Te Tiriti say different things they both reaffirm the pre-existing rights of Māori and state that those pre-existing rights would be protected and able to evolve, with Māori retaining tino rangatiratanga over our lands, waters, kainga and taonga in a contextual way.

4.7 Principle 2 suggests that:

(a) The rights of Māori should be locked in as of 1840, meaning that their natural evolution and development cannot occur to take account of the modern context within which they operate; and

(b) Despite a statement that those limited time bound rights are to be respected and protected by the Crown, subclause (2) removes those rights if they differ from the rights of "everyone" and if they have not been codified in Treaty Settlement legislation. If they are in Treaty Settlement legislation, then those rights will benefit from subclause (1).

4.8 Principle 2 is undoubtably the most grievous and malicious provision in the Bill. The notion that Māori rights and interests are to be locked in as at 1840 attempts to move Māori backwards and treat us as an unevolved group. Rights and interests have always developed with the modernisation of any society, for example the right of women to vote. To suggest that the rights of Māori as an Indigenous and ancient civilization should be rewound back to the 1840 context, stymies those rights natural progression. This would also be at odds with and create uncertainty within every layer of the current system particularly with respect of Māori Land, Local and Central Government representation, common law rights and importantly in the current application of Te Tiriti.

4.9 The additional (and equally concerning) issue with Principle 2 is the assertion that the rights of Māori are rights that non-Māori need or should have to have equality in New Zealand. What is not detailed by the Bill is what the rights of Māori are that non-Māori should also have or vice-versa. The lack of clarification in this regard is a purposeful manipulation of the truth and a divisive agenda to create the perception of inequality within the non-Māori communities of Aotearoa. To be clear, the pre-existing and current rights of Māori are rights that flow from the culture, traditions and tikanga of each whānau, hapū and iwi. These rights are not general rights available to all Māori, they are context specific and dependent on the relative polity to which they relate. An example of this is the rights of Ngāti Hāua to speak for and protect Te Awa Tupua (which includes the Whanganui River) within our direct takiwa/rohe. That right, founded on whakapapa and the exercise of tangata tiaki, is not available to other iwi or hapū outside the whakapapa descent lines and rohe of Ngāti Hāua. Equally, Ngāti Hāua do not exercise those rights in isolation of our rohe.

4.10 When rights are exercised by whānau, hapū and iwi, they are done so based on kawa and tikanga (meaning the very traditions, customs and culture of those groups) that has been developed over thousands of years. Tikanga also regulates these rights and their exercise, both internally and from iwi to iwi/hapū to hapū. Other examples of the types of rights that whānau, hapū and iwi have are the harvesting of specific resources for customary practices (weaving, preparation and provision of traditional kai, ceremonial crafting). As above, Principle 2 suggest that everyone (non-Māori and Māori alike) should be able to exercise those rights **or** that those rights should be stopped unless they are codified in Treaty Settlementl. It is not entirely clear which of these consequences will occur if Principle 2 is enforced. Regardless, both consequences highlight that the idea that we should have equal rights in New Zealand is counter to having equitable rights that flow from context. Non-Māori do not have these rights simply because they are not Māori, and that fact does not change anything about

the benefits and rights they currently have. In most cases, non-Māori can take advantage of similar rights in many countries across the globe, whereas the specific rights of Māori cannot be found or exercised in any other place except Aotearoa. This uniqueness of Māori rights as derived from custom, is what makes New Zealand unique as well. Their exercise has and continues to benefit everyone across a range of sectors, and access to their benefits is widely common. The environmental and tourism sectors are two of the most prolific and advanced areas in the New Zealand economy that draw significant benefit from the rights of Māori. Principle 2 if enforced will destroy all of that.

4.11 The last point to make about Principle 2 is this idea that the redress provided in Treaty Settlement legislation is the codification of the rights of a particular whānau, hapū, iwi and/or iwi collective. It is no surprise that the ACT Party has no understanding of the Treaty Settlement process to know this is wildly wrong, and we make the following comments in that regard:

(a) Treaty Settlements are a negotiated set of redress mechanisms between a whānau, hapū, iwi and/or iwi collective for Crown breaches of Te Tiriti. Because the nature of those negotiations is always targeted at achieving redress for breaches of Te Tiriti, they do not touch on the codification of rights. Rather it is the breach of those rights that Te Tiriti protects that creates the need for the settlement process. No one grouping has ever entered the Treaty Settlement process with the intention of codifying their rights. However, where rights are codified, they are done so to address a historical breach, and they provide provision so that that breach never happens again. What this means is that the Crown has already accepted in every Treaty Settlement that particular Māori have rights that are different to other non-Māori and other Māori generally. This then dictates the bespoke settlement package agreed to.

(b) Treaty Settlements are negotiated redress packages, meaning that the Crown has an overriding role in that process to determine what is included and what is not. This arbitrary process is admittingly imperfect, and the Crown has always accepted that that is the case. In addition, the settlement process has only ever related to historical breaches and contemporary breaches remain unaddressed. In our view, Principle 2 removes the ability for contemporary breaches to be addressed as it removes the existence of the rights that underpin those breaches, voiding any need for settlement.

(c) Treaty Settlements become the law established by Government. The law is not the point from which Māori derive our rights, nor is the Crown the birth mother of our culture (now or into the future). The concept that the rights of Māori only exist if they are in law, misinterprets the common law related to Indigenous rights, but more importantly the system of Māori law (tikanga) that has operated for thousands of years and will continue to do so. Tikanga does not require the "law" and naively Principle 2 attempts to suggest it does. All that will occur if enforced, is large scale detest for the Crown, and subsequent distrust of Parliament.

4.12 As an aside, the Bill implies that Māori receive special treatment, and that this treatment is the set of extra rights referred to by the ACT Party. What is important to remember is that specific treatment Māori are afforded within

the system has always been related to breaches of Te Tiriti. The addressing of those breaches is not the provision of privilege but the necessary provision of equity in order for the most disadvantaged to succeed at the same rate and level as those with actual privilege – largely being non-Māori. To suggest otherwise is to misinterpret our history.

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.

4.13 Principle 3 is a rewrite of Article 3 of the Māori and English texts of Te Tiriti. This is because Article 3 gives Māori the same rights and privileges as non-Māori as additional to the pre-existing rights protected by Article 2. Article 3 does this in consideration/reciprocation for Māori allowing the British to establish a government here for its people and for the right of first refusal to purchase land, should Māori wish to sell. Like any agreement, Article 3 sets out what one party (the British) could bring to the arrangement. The Government now seek to change that arrangement and take complete control over the Treaty arrangements agreed to in 1840.

4.14 Further, Māori are not currently equal before the law. Our way of life continues to be attacked by the Government by the very laws it suggests can protect us (take the Marine and Coastal Area Takutai Moana Act 2011 for example). What Principle 3 does is attempts to erase Māori and make us all non-Māori in the eyes of the law.

4.15 The uncertainty of Principle 3 is also concerning. Fundamental human rights are context dependent and for Māori this means and includes customary rights. Suggesting otherwise removes the meaning of Te Tiriti, alters years of jurisprudence with respect of Te Tiriti and is at odd with both international law and conventions that New Zealand are party to.

5.0 Recommendations

5.1 Given the above, we seek to speak to our submission and present this orally to the select committee. We also recommend that:

(a) The Government reject the Bill; and

(b) The Government commit to upholding and honouring Te Tiriti.

Dated 6 January 2025