SUBJ: Submission on the Principles of the Treaty of Waitangi Bill.

Dear members of the Justice Committee,

[1] I thank you for the opportunity to comment on the Principles of the Treaty of Waitangi Bill ("the Bill"). The Treaty of Waitangi ("the Treaty") / Te Tiriti o Waitangi ("te Tiriti") is an important constitutional and founding document in New Zealand, so interpretation of the Treaty should be clear and consistent.

[2] Ko Sean Richards tōku ingoa, nō Ingarani me Hāmea ōku tīpuna, nō Tāmaki Makaurau me Ipipiri ahau.

[3] The lands on which I grew up on, that I am manuhiri to, belong to the iwi of Ngāpuhi and the hāpu of Ngāti Rēhia. I am palagi; I am not Māori myself.

[4] I am greatly concerned by the contents of this bill. The Bill proposes to redefine the interpretation of the Treaty in ways that will have undeniable and significant ramifications to the partnership between the Crown and Māori going forward.

[5] I will refer to the doctrine of *contra proferentum* (lit. "Against the offeror") throughout this submission. The doctrine of *contra proferentum* states that in instances of ambiguity in contract law, the preferred interpretation is the one that works against the interests of the party who offered the contract.

[6] I will also refer to the doctrine of *in dubio mitius* (lit. "more leniently in case of doubt"), which states that in instances where a treaty is unclear, the favoured interpretation is the one that places the minimum restrictions on the parties to the treaty.

[7] The Treaty was a treaty signed by representatives of Queen Victoria (for the British settlers) and Māori iwi. The Treaty was drafted by Governor William Hobson, James Freeman, and British Resident James Busby, and was signed on February 6, 1840, predominantly (but not exclusively) at Waitangi in the Bay of Islands.

[8] Not every rangatira signed te Tiriti, with notable exceptions being Pōtatau Te Wherowhero (the first Māori King), Taraia Ngakuti Te Tumuhuia of Ngāti Tamaterā, Tupaea of Ngāi Te Rangi, Te Wherowhero of Waikato-Tainui, and Mananui Te Heuheu of Ngāti Tūwharetoa.

[9] The English text of the Treaty states that the Chiefs of Confederation of the United Tribes of New Zealand "...cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty...".

[10] The Te Reo Māori text of te Tiriti states that "...ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua".

[11] The translation by Professor Sir Hugh Kāwharu, former member of the Waitangi Tribunal, translates this passage as "The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land."

[12] Professor Sir Kāwharu's translation aims to provide an English translation of how Māori chiefs understood what they were signing in Te Reo Māori.

[13] In the English text, Māori chiefs ceded "sovereignty". In the Māori text, they ceded "kāwanatanga", translated as "government". This creates ambiguity as to which text is to be considered the superior and authoritative text.

[14] Sovereignty can be defined as "The position, rank, or power of a supreme ruler or monarch; royal authority or dominion." per the Oxford English Dictionary. Conversely, Government can be defined as "The continuous exercise of authority over a person, group, etc.; guardianship, protection; control."

[15] By the doctrine of *contra proferentum*, the resolution of the ambiguity should be in favour of Māori chiefs, i.e., that "government" was ceded and not "sovereignty". The Waitangi Tribunal independently arrived at the same conclusion in 2014.[1]

[16] I will now address each individual principle stated in s 6 of the Bill.

[17] The first principle is:

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.

[18] The first principle, rather pointlessly, legislates that the Government is the Government.

[19] On a more substantive point, the statement that "the Parliament of New Zealand has full power to make laws […] in the best interests of everyone", whilst aspirational, is manifestly impossible. It is in the best interests of commuters for public transport options to be increased. However, it is not in the interest of a homeowner whose land is seized by eminent domain for this to occur. The Government is also constrained by resources, and may not have the capital to invest in legislation that would improve the lives of the many.

[20] It is thus the case that the first principle cannot ensure what it claims to.

[21] The second principle is:

(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.

[22] The second principle affirms the rights that hapū and iwi Māori had at the time of signing. There are two concerns:

1. Not all iwi and hapū signed te Tiriti,[2] which means that not all Māori iwi and hapū would be protected by this clause, creating two systems (which the Bill's author, Hon.

[1] He Whakaputanga me te Tiriti: The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry, s 10.4
[2] https://www.tepapa.govt.nz/discover-collections/read-watch-play/maori/treaty-waitangi/treaty-close/treaty-waitangi-trail

David Seymour has previously very publicly decried).

2. The rights that Māori iwi and hapū had under the Treaty/te Tiriti are unclear (cf. para 13), and in spite of the doctrine of *contra proferentum*.

[23] The third principle is:

(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.

[24] The third principle aims to equalise treatment of all persons irrespective of background. As per the argument advanced by Chlöe Swarbrick in the first reading:

[The bill's] architect tells us that this is about equality, but we do not have equality in this country. Pick almost any statistic that you like—housing, incarceration, health, life expectancy—Māori get unfair and unequal outcomes because of unfair and unequal treatment which started with the Crown's intentional violent actions to dishonour Te Tiriti o Waitangi.

Regardless of the reader's opinion on whether the Crown has dishonoured the Treaty/te Tiriti, and the *mens rea*[3] of the Crown with regards to upholding the Principles of the Treaty/te Tiriti, the statistic is true; Māori are adversely represented in virtually any statistic in this country. Were they pākehā, the Crown would bend over backwards to rectify this, in the same way that the Crown bought out Air New Zealand in 2003, recurperated assets following the collapse of Hanover Finance in 2008, or created the Wage Subsidy in 2020. Simply, New Zealand has never treated all persons equally; it has always afforded preferential treatment to disadvantaged (pākehā) people.

[25] In the first reading of this bill, Rawiri Waititi stated:

Te Tiriti o Waitangi is superior to any person and any law ever created in this House. It is the constitutional document by which this House and democracy is established here in Aotearoa. This Parliament means nothing in Aotearoa without Te Tiriti o Waitangi. The only reason this Parliament exists in Aotearoa is because our tīpuna consented to it. The only people who can make changes in an agreement are the parties who signed it. The King of England, mē ngā rangatira o te hāpu Aotearoa.

[26] Legislating to create the principles of Te Tiriti – irrespective as to the content of the perceived principles – creates additional meaning, lopsided, against the doctrine of *contra proferentum*, and *in dubio mitius* originating from the colonial institution where the only guaranteed form of Māori representation are the seven Māori seats. Moreover, I note that of the Māori MPs who occupy the seven Māori electorate seats, not a single one supports the bill.

[27] This bill does not originate in mana mōtuhake. The bill does not originate from Māori voices calling for principles.

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[3] lit. "guilty mind", the knowledge of wrongdoing that constitutes part of a crime, and that along with *actus reus* ("guilty act") forms the two pillars of criminal intent.

[28] I recommend the following.

[29] I recommend that the Bill **do not advance to second reading.** This Bill is not salvagable. There is no material in this bill that could be saved, and frankly the Bill should not have been introduced to first reading.

[30] The Hon. Scott Simpson spoke in the first reading that

> *National has made a commitment to our coalition partner that we will support this bill to select committee, and we will honour that commitment today by voting as such.*

[31] There was a commitment to cogovernance signed 184 years ago at Waitangi. Honour that. Toitū te Tiriti.

[32] I would appreciate the opportunity to speak to this bill kanohi ki te kanohi.