

Submission on the Proposed Removal and Amendment of Te Tiriti o Waitangi / The Treaty of Waitangi References in Legislation

20 July 2026

Submission of
Te Kāhui Tika Tangata
Human Rights Commission



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**Te Kāhui Tika Tangata
Human Rights Commission**

Introduction

1. Te Tiriti o Waitangi (Te Tiriti) is Aotearoa New Zealand's core constitutional agreement. It is "the promise of two peoples to take the best possible care of each other,"¹ reflecting and reinforcing human rights norms, including the collective rights of Māori as tangata whenua, and affirming a place for everyone to belong in Aotearoa.
2. Te Kāhui Tika Tangata Human Rights Commission (Commission) opposes the Government's recently announced programme of work to repeal or dilute references to the principles of Te Tiriti (Treaty clauses) across 19 statutes.² The programme, agreed to by Cabinet in February 2026, is framed as promoting clarity and certainty around Te Tiriti. However, by undermining established jurisprudence and human rights standards, it risks achieving the opposite – leading to more uncertainty and fragmentation, increasing litigation risks and deepening racial divides.
3. This submission draws on the Waitangi Tribunal's findings on the recent education reforms, as well the Commission's previous submissions on the Treaty Principles Bill and the Regulatory Standards Bill which raise similar concerns about weakening the status and legal force of Te Tiriti.³ This submission refers to "Treaty clauses," "Treaty standards" and "Treaty jurisprudence" in relation to relevant case law, statute and government materials. Otherwise, it refers to "Te Tiriti" as the constitutional agreement itself.
4. In advancing these proposals, the Crown is once again proceeding in the absence of a coherent policy rationale, without meaningful engagement with its Te Tiriti partners and disregarding clear and widespread opposition. The likely effect is to further entrench and exacerbate discriminatory impacts on Māori and to weaken the constitutional framework that gives effect to the human rights we all enjoy.

¹ Waitangi Tribunal Te Roroa Report (Wai 38, 1992) citing Bishop Manuhua Bennett at p 30.

² Cabinet Office. (2026, 23 February). *CAB-26-MIN-0048.01: Review of references to the principles of the Treaty of Waitangi in legislation: next steps* [Cabinet Minute]. Retrieved 23 June 2026 from <https://www.justice.govt.nz/assets/Documents/Publications/Providing-certainty-on-legislative-references-to-the-Treaty-of-Waitangi.pdf>.

Cabinet Office. (2025, 9 December). *CAB.001.0134: Review of references to the principles of the Treaty of Waitangi in legislation: next steps* [Cabinet Paper]. Ministry of Justice. Retrieved 23 June 2026 from <https://www.justice.govt.nz/assets/Documents/Publications/Providing-certainty-on-legislative-references-to-the-Treaty-of-Waitangi.pdf>. Hon Paul Goldsmith. (15 May 2026). *Ensuring Treaty references are consistent*. New Zealand Government. <https://www.beehive.govt.nz/release/ensuring-treaty-references-are-consistent>.

See also: Ministry of Justice, "Review of legislation including reference to the principles of the Treaty of Waitangi", <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/review-of-legislation-including-reference-to-the-principles-of-the-treaty-of-waitangi/>.

³ Te Kāhui Tika Tangata Human Rights Commission. (2025). *Submission on the Principles of the Treaty of Waitangi Bill*. Te Kāhui Tika Tangata Human Rights Commission. (2025) *Submission on Regulatory Standards Bill*. Te Kāhui Tika Tangata Human Rights Commission *Te Mana i Waitangi*. <https://tikatangata.org.nz/human-rights-in-aotearoa/human-rights-and-te-tiriti-o-waitangi>. Te Kāhui Tika Tangata Human Rights Commission (2025) *Statement of Intent 2025-2029*.

Commission's position and recommendations

5. The Commission's position is that the proposals:

- a. Downgrade rather than clarify statutory Te Tiriti obligations, and are likely to increase, not reduce, uncertainty and litigation risk;
- b. Have been determined without adequate, good faith engagement with Māori – despite the heightened obligations arising from their constitutional significance; and
- c. Risk discriminatory outcomes, harming Crown-Māori relationships and intensifying racial tension.

6. **The Commission recommends that the proposed repeal and dilution programme be abandoned.** If a review proceeds, it must be grounded in a Tiriti- and human rights-consistent framework, and subject to the following minimum conditions:

- The repeal of Treaty clauses must be removed from scope.⁴
- Statutory Treaty standards should be set according to context, purpose, not capped at “take into account”.
- Māori must participate as Te Tiriti partners in the design, methodology, and decision-making of the review, not merely be consulted after preferred options are formed.⁵
- Sector-specific analysis must assess impacts on Māori rights, equity, settlements, and access to justice before any amendment is proposed.
- The review must align with international human rights standards and the broader obligation to recognise, respect, and give effect to Te Tiriti through constitutional development undertaken with Māori.
- Any amendment must be evidence-based, demonstrating that it preserves or strengthens protection of Māori rights and does not diminish rangatiratanga, participation, redress, or substantive equality.

⁴ As previously recommended by the Waitangi Tribunal:

Waitangi Tribunal *Ngā Mātāpono – The Principles: Part III of the 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* (Wai 3300, Waitangi Tribunal Report, 2025) [[Ngā Mātāpono The Principles – Part III](#)]

⁵ As previously recommended by the Waitangi Tribunal. Ibid. and: Waitangi Tribunal *Ngā Mātāpono – The Principles: 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* (Wai 3300, Waitangi Tribunal Report, 2024) [[Ngā Mātāpono – The Principles, Interim Report](#)] Waitangi Tribunal *Hūtia te Rito o te Harakeke, Kei Hea te Kōmako e kō? Interim Stage One Report of the Education and Training Amendment Act and te Mātaiaho Urgent Inquiry* (Wai 3553, Waitangi Tribunal Report, 2026) [[Hūtia te Rito o te Harakeke](#)]

- The Commission should be formally consulted on the human-rights implications of any proposals.

Te Tiriti, Human Rights and the Constitutional Framework

7. Te Tiriti is an enduring constitutional framework that governs the relationship between the Crown and Māori.⁶ Te Tiriti can be understood as Aotearoa New Zealand's own unique statement of human rights, embedding principles of dignity, equality, participation, and accountability within a relational, partnership-based constitutional order.⁷
8. Te Tiriti requires the Crown to act in partnership with Māori (article 1), actively protect tino rangatiratanga (article 2), advance equity for Māori (article 3) and recognise Māori customary practices and beliefs (oral article 4). Te Tiriti established an ongoing relationship between the Crown and Māori, which must be “conducted honestly, fairly, and in good faith in the spirit of cooperation and partnership”.⁸
9. These obligations are substantive. Te Tiriti requires genuine partnership, not consultation after decisions are made. It demands active protection of Māori rights and interests in matters directly affecting them. Meaningful engagement is not merely a discretionary political courtesy but a constitutional requirement through which governmental decisions gain legitimacy.

International Indigenous rights standards

10. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) reflects a global consensus on the application of universal human rights in the context of Indigenous peoples,⁹ including rights to self-determination, participation, and free, prior and informed consent. As already highlighted by the Tribunal, these rights are directly engaged by a state-driven legislative programme that reduces Te Tiriti protections across sectors.¹⁰
11. Although not a treaty, UNDRIP carries significant normative weight¹¹ and informs the interpretation of the Crown’s obligations under Te Tiriti.¹² It is routinely used as a

⁶ Committee on the Elimination of Racial Discrimination (2025) [Concluding observations on the twenty-third and twenty-fourth periodic reports of New Zealand](#), CERD/C/NZL/CO/23-24 (5 December 2025) at [35]-[36].

⁷ For further information on the relationship between human rights and Te Tiriti, see for example: Te Kāhui Tika Tangata Human Rights Commission. *Te Mana i Waitangi*. <https://tikatangata.org.nz/human-rights-in-aotearoa/human-rights-and-te-tiriti-o-waitangi>.

⁸ Waitangi Tribunal (2021) [He Pāharakeke, He Rito Whakakīkinga Whāruarua Oranga Tamariki Urgent Inquiry](#) (Wai 2195, 2021) at 17.

⁹ UN Expert Mechanism on the Rights of Indigenous Peoples. (2024). [Constitutions, laws, legislation, policies, judicial decisions and other mechanisms through which States have taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with article 38 of the Declaration](#). A/HRC/57/62 (2 August 2024) at [3].

¹⁰ [Ngā Mātāpono The Principles – Interim Report](#) above n 5.

¹¹ Waitangi Tribunal [Whaia te Mana Motuhake - In Pursuit of Mana Motuhake: Report on the Maori Community Development Act Claim](#) (Wai 2417, 2015) at 34.

¹² At 39.

standard of reference by UN committees monitoring States' compliance with binding human rights treaty obligations.¹³

12. Noting the constitutional status of Te Tiriti, its important role in upholding human rights, and vulnerability to erosion, international bodies have consistently urged successive governments to strengthen legal and constitutional protections for Te Tiriti in partnership with Māori, in accordance with the UNDRIP.¹⁴

Commission's key concerns

Reducing (not clarifying) Te Tiriti protections

13. Although framed as improving clarity to reduce uncertainty and support compliance¹⁵, the review gives effect to a fundamentally different objective: repealing provisions, replacing others, and capping the 'Treaty standard'—that is, the strength of the Crown's obligation—at no higher than "take into account".¹⁶
14. Replacing stronger Treaty clauses with weaker, generic formulations does not clarify obligations.¹⁷ Rather it narrows or dilutes them to diminish rights protections and constitutional accountability, contrary to the State's human rights obligations which require adequate recognition and enforcement of treaty rights, including through legislative measures.¹⁸ Existing Treaty clauses that use wording such as "honour", "uphold" or "give effect to", more closely reflect these international standards. Replacing stronger standards, such as "give effect to" with ones that are capped at "take into account" falls well short of these minimum standards. In practice, this will weaken existing protections and reduce the substantive force of Te Tiriti obligations across the statute book.
15. The Waitangi Tribunal found that attempts to downgrade or remove Te Tiriti obligations risked undermining the Crown's obligations to "actively protect taonga Māori, including te reo Māori and mātauranga Māori".¹⁹ Similarly, the Tribunal has

¹³ For example, the CERD Committee has urged States, regardless of their position on the Declaration, to use it "as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples". CERD, (2008), [Concluding Observations: USA](#), CERD/C/USA/CO/6, at [29].

¹⁴ For example, Committee on the Elimination of Racial Discrimination, [Concluding observations on New Zealand 23rd and 24th periodic reports](#), 2025. At [36]. Committee on the Elimination of All Forms of Discrimination Against Women (2024) [Concluding observations on the ninth periodic report of New Zealand](#), (29 October 2024) at 42-43. Committee on Economic, Social and Cultural Rights (2018) [Concluding observations from the fourth periodic review of New Zealand](#), E/C.12/NZL/CO/4 (1 May 2018) at 6, 8 and 9. Human Rights Council (2024) [Report of the Working Group on the Universal Periodic Review – New Zealand](#) A/HRC/57/4 (11 June 2024) at [132.27] - [132.33].

¹⁵ Cabinet Office. (2025, 9 December). CAB.001.0134: *Review of references to the principles of the Treaty of Waitangi in legislation: next steps* [Cabinet Paper]. Ministry of Justice. Retrieved 23 June 2026 from <https://www.justice.govt.nz/assets/Documents/Publications/Providing-certainty-on-legislative-references-to-the-Treaty-of-Waitangi.pdf>. Hon Paul Goldsmith. (15 May 2026). *Ensuring Treaty references are consistent*. New Zealand Government. <https://www.beehive.govt.nz/release/ensuring-treaty-references-are-consistent>

¹⁶ Ministry of Justice, above n 2.

¹⁷ Te Kāhui Tika Tangata Human Rights Commission (2025) [Submission on the Principles of the Treaty of Waitangi Bill](#).

¹⁸ Under UNDRIP, Indigenous peoples have the right to the "recognition, observance and enforcement" of Indigenous Peoples' treaties with States, and States' corresponding obligations to "honour and respect such treaties". States also have obligations to operationalise Indigenous peoples' rights, including through legislative measures: Articles 37 and 38.

¹⁹ [Hūtia te Rito o te Harakeke](#) above n 5 at xii.

found that the current proposals to reduce or remove Te Tiriti protections will also likely result in discriminatory outcomes for Māori.²⁰ Accordingly, weakening Treaty clauses in sector legislation reflects a substantive lessening of protection, not mere drafting simplification.²¹

Increasing uncertainty and litigation risk

16. Attempts to weaken or repeal Treaty clauses are likely to increase, not reduce, legal uncertainty, for the following reasons:

- First, overriding established jurisprudence invites litigation on the meaning and effect of these provisions across a vast range of areas, including Treaty settlements, legitimate expectation, administrative law reasonableness, discrimination, and international human rights obligations.²²
- Second, inconsistent downgrading across statutes creates fragmentation as agencies, Māori rights-holders, courts, and tribunals navigate an increasingly patchwork landscape of weakened, repealed, preserved, and separately negotiated protections.²³
- Third, as the Tribunal has already warned, weakening Te Tiriti protections risks undermining the durability of Treaty settlements, which creates litigation risk and threatens constitutional stability.²⁴

17. Treaty clauses are a key mechanism for promoting “ongoing constitutional dialogue” between the Crown and Māori.²⁵ Legal durability is not produced by unilateral state contraction of rights. Rather, it is produced by legitimate processes that engage Te Tiriti partners, respect existing legal understandings, and avoid creating preventable contest over the status of Indigenous rights in the statute book.²⁶

18. By seeking to lower Te Tiriti standards, the Crown again risks silencing that dialogue and replacing it with unilateral decision-making. The result is not clarity, but greater contestation and instability. These proposals are therefore not a neutral drafting exercise attempting to seek greater clarity or compliance. Rather, they are an attempt to reduce the legal force of Te Tiriti protections across multiple sectors including health, education, environment, local government, housing, data, climate, and child welfare.²⁷ The effect of these changes is not only to reduce rights

²⁰ *Ngā Mātāpono – Part III* above n 4 at 47-48. *Hūtia te Rito o te Harakeke* above n 5, at 71-78.

²¹ *Ibid.*, at 71-72.

²² Ministry of Justice *Regulatory Impact Statement: providing certainty on legislative references to the Treaty of Waitangi* (13 November 2025) at p 4. <https://www.justice.govt.nz/assets/Documents/Publications/Providing-certainty-on-legislative-references-to-the-Treaty-of-Waitangi.pdf>. *Ngā Mātāpono – Part III* above n 4 at 28. *Hūtia te Rito o te Harakeke* above n 5 at 24, 27, 73-75.

²³ *Ngā Mātāpono – Part III* above n 4 at 28, 43.

²⁴ *Ibid.*, at 44-48.

²⁵ *Ibid.*, at 47.

²⁶ Te Kāhui Tika Tangata Human Rights Commission (2025) *Submission on the Principles of the Treaty of Waitangi Bill*.

²⁷ *Ngā Mātāpono The Principles – Interim Report* above n 5 at [xviii]

protections but also to achieve the opposite of their stated aim: through increasing legal uncertainty and litigation risk across many areas of the law.

Inadequate engagement with Tangata Whenua

19. UNDRIP affirms the right of Indigenous peoples to participate in decisions affecting them and requires consultation in good faith before legislative measures are adopted.²⁸ This requires not only that their views heard but that they are able to influence the outcome of decision-making processes affecting them.²⁹ Good faith requires that such consultations are carried out in a climate of mutual trust and transparency.³⁰ In line with the principle of free, prior and informed consent,³¹ the objective of consultations should be to achieve agreement or consensus.³²
20. The UN Committee on the Elimination of Racial Discrimination (CERD) specifically expressed concern about recent initiatives to reinterpret Te Tiriti and its principles without the free, prior and informed consent or meaningful engagement of Māori.³³ The Committee noted Te Tiriti's constitutional status and called on New Zealand to preserve and strengthen existing co-governance and partnership arrangements, to continue implementation planning in relation to UNDRIP rather than retreating from it, and to ensure Māori political representatives, the Waitangi Tribunal, iwi, hapū, and whānau are engaged in accordance with free, prior and informed consent.³⁴
21. The Tribunal's education report links the Crown's consultation duty with the broader architecture of indigenous participation rights, noting that these obligations are heightened by the constitutional significance of the proposals as well as by their potentially negative impacts. The Tribunal held that "the Crown had a duty to engage meaningfully with Māori" on the reforms because of the "constitutional significance of amending treaty provisions", the fact that the change was not neutral, and because education engages acute active-protection duties owed in respect of taonga Māori.³⁵ The Tribunal has thus criticised the Crown for proceeding with the proposals without

²⁸ [United Nations Declaration on the Rights of Indigenous Peoples](#), articles 18 - 19. Expert Mechanism on the Rights of Indigenous Peoples (2011) [Expert Mechanism advice No. 2 \(2011\): Indigenous peoples and the right to participate in decision-making](#) A/HRC/18/42 Annex at [16].

²⁹ Expert Mechanism on the Rights of Indigenous Peoples. (2011). [Final report of the study on indigenous peoples and the right to participate in decision making: Report of the Expert Mechanism on the Rights of Indigenous people](#), A/HRC/18/42 at [13] Expert Mechanism on the Rights of Indigenous Peoples (2018) [Free, prior and informed consent: a human rights-based approach – Study of the Expert Mechanism on the Rights of Indigenous Peoples](#), A/HRC/39/62, (10 August 2018) at [15]-[18].

³⁰ Expert Mechanism on the Rights of Indigenous Peoples (2011) [Expert Mechanism advice No. 2 \(2011\): Indigenous peoples and the right to participate in decision-making](#) A/HRC/18/42 Annex at [9].

³¹ Committee on Economic, Social and Cultural Rights, [General Comment No. 21: Right of everyone to take part in cultural life \(art. 15, para. 1 \(a\), of the International Covenant on Economic, Social and Cultural Rights\)](#), UN Doc E/C.12/GC/21, (21 December 2009) at [37].

³² Expert Mechanism on the Rights of Indigenous Peoples (2011) [Expert Mechanism advice No. 2 \(2011\): Indigenous peoples and the right to participate in decision-making](#) A/HRC/18/42 Annex at [9].

³³ Committee on the Elimination of Racial Discrimination (2025) above n 6 at [9]-[10], [35]-[36].

³⁴ *Ibid.*, at [35]-[36].

³⁵ [Hūtia te Rito o te Harakeke](#) above n 5, at xii, 72.

adequate Māori engagement, despite knowing that they could lead to discriminatory outcomes for Māori.³⁶

22. Despite prior guidance from the *Ngā Mātāpono* Tribunal on how to conduct a Te Tiriti-compliant clause review, the Crown engaged only with "a singular national Māori body, the National Iwi Chairs Forum, and only after substantive decisions had been made".³⁷ The Tribunal also found that the Minister of Justice's suggestion that select committee process would be sufficient was "inadequate and was an insult to Māori", and that the Crown showed "a reckless disregard for the (likely and advised) harm to the Māori–Crown relationship".³⁸
23. Alongside other recent law reform initiatives including the Treaty Principles Bill, these findings expose a pattern of unilateral Crown action in which engagement is deferred until after political decisions are effectively locked in, contrary to both partnership and free, prior and informed consent norms.³⁹ Unilateral decision-making by the Crown over the content and force of Treaty clauses thus reproduces the very asymmetry that Te Tiriti was meant to constrain: the use of state power to displace Māori authority, voice, and rights in decisions that profoundly affect them.⁴⁰ Further, it sends the message that Māori opposition, official advice, Tribunal findings, and international concern will be bypassed until a preferred anti-Te Tititi outcome is achieved.⁴¹

Equality, equity, and the risk of discrimination

24. While the stated rationale for the review has changed several times, it stems from the coalition agreement where it is one of several commitments to reverse measures claimed to have "eroded the principle of equal citizenship".⁴² The review's apparent organising idea is that statutory recognition of Tiriti rights and obligations is inherently at odds with the human right to equality. As noted in our earlier submission on the Principles of the Treaty of Waitangi Bill, a human-rights framework cannot be used selectively to negate the rights of Indigenous peoples or to subordinate collective Indigenous rights guarantees to an abstract majoritarian conception of sameness.⁴³ In human rights law, equality does not require identical treatment regardless of history, power, or need.⁴⁴ Rather, substantive equality often requires differentiated arrangements, participation rights, and targeted protections so that Indigenous peoples can adequately enjoy their rights.⁴⁵ The Government's equality

³⁶ Ibid., at 76-77.

³⁷ Ibid. at xii, 72.

³⁸ Ibid.

³⁹ Ibid., at 76-77. [Ngā Mātāpono The Principles – Interim Report](#) above n 5 at 188.

⁴⁰ Ibid.

⁴¹ [Ngā Mātāpono The Principles – Interim Report](#) above n 5 at 185-188

⁴² New Zealand National Party and New Zealand First (2023) [Coalition Agreement](#) at p 10.

⁴³ Te Kāhui Tika Tangata Human Rights Commission (2025) [Submission on the Principles of the Treaty of Waitangi Bill](#).

⁴⁴ [Ngā Mātāpono The Principles – Interim Report](#) above n 5.

⁴⁵ [Hūtia te Rito o te Harakeke](#) above n 5. [Ngā Mātāpono The Principles – Interim Report](#) above n 5.

framing is conceptually flawed and legally tenuous because it treats the recognition of Te Tiriti-guaranteed Māori rights as if it were a departure from equality, when in fact it is often the minimum condition for equality.⁴⁶

25. Te Tiriti incorporates both universal human rights and Māori collective rights. Both must be protected together rather than placed in false opposition to each other. In its recent recommendations, the CERD Committee noted the role of Te Tiriti in advancing substantive equality. It therefore signalled that weakening Treaty provisions could risk entrenching systemic discrimination against Māori.⁴⁷ It also specifically urged New Zealand to counter misinformation and divisive narratives regarding Te Tiriti and to promote public understanding of its role in advancing harmony and equality.⁴⁸
26. Treaty jurisprudence has consistently affirmed that treating everyone the same is insufficient when historical and structural disadvantage persists.⁴⁹ Rather, rights to substantive equality engage the Crown's corresponding duties of active protection and equity. Accordingly, the Tribunal rejected the Crown's approach to "equality" in this sense as this requirement is already supplied by domestic and international law, is not itself a Treaty principle, lacks proper policy analysis, and breaches the Crown's duty of active protection.⁵⁰
27. The review's attempt to propagate a flattened idea of equality against Māori-specific Te Tiriti protections reproduces a familiar pattern of systemic racism: treating measures designed to honour guaranteed Indigenous rights as if they were departures from equality, while ignoring the entrenched inequalities those measures are designed to address.⁵¹ The proposed reforms must therefore be analysed not only as isolated drafting changes but as part of a wider policy trajectory that has repeatedly targeted Māori-specific institutions, Te Tiriti-derived governance arrangements, and legal protections for rangatiratanga.⁵²

Legislation-specific analysis

28. The legislation in scope spans 19 laws across transport, health, justice, child welfare, environment, local government, data, education, and other fields.⁵³ The precise text of all proposed amendments has not yet been released, but the statutes listed by the

⁴⁶ As also noted in Te Kāhui Tika Tangata Human Rights Commission, [Submission on the Principles of the Treaty of Waitangi Bill](#), 2025.

⁴⁷ Committee on the Elimination of Racial Discrimination (2025) above n 6 at [35]-[36]

⁴⁸ Ibid.

⁴⁹ [Ngā Mātāpono The Principles – Interim Report](#) above n 5.

⁵⁰ [Ngā Mātāpono The Principles – Part III](#) above n 4.

⁵¹ [Ngā Mātāpono The Principles – Interim Report](#) above n 5 at 180-188. Waitangi Tribunal, (2026) [Hūtia te Rito o te Harakeke](#) above n 5 at 76-78.

⁵² IWGIA, "[The Indigenous World 2025: Aotearoa \(New Zealand\)](#)", 24 April 2025. [Ngā Mātāpono The Principles – Interim Report](#) above n 5.

⁵³ Ministry of Justice, above n 2.

Ministry of Justice are sufficient to identify likely areas of Te Tiriti and human rights breach.⁵⁴

A. Health legislation

29. The health statutes in scope are the Pae Ora (Healthy Futures) Act 2022, Smokefree Environments and Regulated Products Act 1990, and Mental Health and Wellbeing Commission Act 2020.⁵⁵ Any downgrading of Treaty obligations in these enactments would be particularly grave because Māori experience well-documented health inequities and because statutory recognition of Treaty obligations in health governance is one mechanism for giving effect to the duties of active protection and equity.⁵⁶
30. A broader human-rights framing supports that analysis because Te Tiriti protections in health are not peripheral; they are one of the means by which substantive equality and equal enjoyment of rights can be realised for Māori.⁵⁷ From a human rights standpoint, weakening Treaty clauses in health would likely conflict with the right to the highest attainable standard of health, substantive equality, and Indigenous participation in decisions affecting service design and delivery.⁵⁸ The effect would be to reduce duties on decision-makers precisely where tailored and Te Tiriti-grounded responses are most necessary to address entrenched inequity, making the reform both discriminatory in impact and irrational in policy terms.⁵⁹

B. Education legislation

31. Multiple provisions of the Education and Training Act 2020 would be amended through the proposals. This is in addition to the removal of Treaty references (section 127(1)(d)) through the Education and Training Amendment Act 2025. This singling out is constitutionally concerning because education is a key site for the transmission of language, culture, identity, and civic belonging, all of which are protected dimensions of Indigenous rights.⁶⁰
32. Reducing Te Tiriti obligations in education risks undermining Māori educational success as Māori, weakening support for te reo Māori and mātauranga Māori, and marginalising Te Tiriti-informed governance obligations in the schooling system.⁶¹ It would also signal that the Crown can retreat from commitments to bicultural

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Waitangi Tribunal (2023) [Hauora – Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry](#) (Wai 2575) at p 23-25, 161-162.

⁵⁷ Committee on the Elimination of Racial Discrimination (2025), above n 6 at [33]-[34].

⁵⁸ Expert Mechanism on the Rights of Indigenous Peoples (2016) [Right to health and indigenous peoples with a focus on children and youth](#) A/HRC/33/57 (10 August 2016) at [18]-[21], Annex at [5]. Expert Mechanism on the Rights of Indigenous Peoples (2024) [Advice No. 15 on treaties, agreements and other constructive arrangements, including peace accords and reconciliation initiatives, and their constitutional recognition](#) A/HRC/51/50 Annex at [3], [8], [13]-[14]. [Ngā Mātāpono The Principles – Interim Report](#) above n 5.

⁵⁹ Ibid., at 180, 184.

⁶⁰ [Hūtia te Rito o te Harakeke](#) above n 5 at xii, 44-45.

⁶¹ Ibid., at xii-xiii, 52-59, 71-76.

constitutional literacy and Māori participation in education governance by legislative fiat, heightening inconsistency with both Te Tiriti and international human rights standards on Indigenous culture and education.⁶²

C. Child welfare

33. Section 4 (1) (f) of the Oranga Tamariki Act 1989 is listed in scope.⁶³ Any retreat from Te Tiriti commitments in child welfare is especially troubling given the overrepresentation of Māori children and whānau in state intervention systems and the long-standing concern that mainstream systems fail to recognise whakapapa, whānau integrity, and Māori decision-making authority.⁶⁴
34. Both universal and collective dimensions of rights are directly relevant in this context. A weaker Treaty clause in this area would increase the risk of decisions that treat Māori children through a generic welfare lens while sidelining collective identity, cultural continuity, and whānau-based solutions. That would be inconsistent with the active protection of rangatiratanga and with international Indigenous rights principles requiring Indigenous peoples' participation in matters affecting their children and communities.⁶⁵
35. The education report shows how an apparently sector-specific downgrade can operate as a precursor to wider rollback. The Tribunal agreed with warnings contained in official advice that downgrading Treaty standards in the Education and Training Act would signal a shift in the Crown's commitment to Te Tiriti as it applies to education".⁶⁶ That warning applies with equal or greater force to the present multi-statute programme: if the Crown normalises a lowest-common-denominator Treaty standard in education, it becomes easier to replicate the same regression elsewhere across the statute book.

D. Environment, climate, and natural resources

36. The review includes the Hazardous Substances and New Organisms Act 1996, Climate Change Response Act 2002, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, Environment Act 1986, Crown Pastoral Land Act 1998, and other enactments that regulate lands, waters, taonga species, and environmental governance.⁶⁷

⁶² Ibid. [Ngā Mātāpono The Principles – Interim Report](#) above n 5.

⁶³ Ministry of Justice, above n 2.

⁶⁴ [Ngā Mātāpono The Principles – Interim Report](#) above n 5. Waitangi Tribunal (2024) [He Pā Harakeke, He Rito Whakakīkīngā Whāruarua](#) (Wai 2915) at p178-191, Waitangi Tribunal (2024) [The Oranga Tamariki \(Section 7AA\) Urgent Inquiry 10 May 2024 Report – Pre-publication version](#) (Wai 3350) at 27-35. Committee on the Elimination of Racial Discrimination (2025), above n 6 at [19]-[20]. Committee on the Rights of the Child (2023) [Concluding Observations on the sixth periodic report of New Zealand](#) CRC/C/NZL/CO/6 (28 February 2023) at [27]-[28].

⁶⁵ [Hūtia te Rito o te Harakeke](#) above n 5.

⁶⁶ Ibid.

⁶⁷ Ministry of Justice, above n 2.

37. Reducing Treaty standards in these contexts would strike at the heart of article 2 interests, because environmental legislation often mediates Māori relationships with lands, waters, biodiversity, wāhi tapu, and taonga held under tikanga and whakapapa-based obligations. International standards and commentary on Indigenous peoples' rights strengthens this point, because environmental control, resource relationships, and decision-making participation are core dimensions of Indigenous self-determination and cultural survival.⁶⁸ Weakening Treaty clauses in these statutes would also be inconsistent with CERD's emphasis on environmental safeguards, Māori land rights, and the preservation of Te Tiriti-based governance arrangements.⁶⁹

E. Local government and infrastructure

38. Legislation affected includes the Local Government Act 2002, Land Transport Act 2003 and Taumata Arowai – the Water Services Regulator Act 2020.⁷⁰ These statutes shape core decisions about infrastructure, planning, and local participation, including matters that directly affect whenua, wai, papakāinga, and Māori community wellbeing.
39. Reducing Te Tiriti obligations in these laws risks narrowing Māori participation to consultation without influence, undermining existing pathways for shared governance and Te Tiriti-responsive decision-making at local and regional levels.⁷¹ A human rights approach, which focuses on participation, accountability, non-discrimination and which recognises the constitutional place of Te Tiriti supports the conclusion that such a retreat would have both democratic and rights-based costs.⁷² That would move Aotearoa away from, rather than toward, the forms of partnership and power-sharing repeatedly identified by domestic and international bodies as necessary for substantive equality and self-determination.⁷³

F. Justice, data, and public administration

40. The Criminal Cases Review Commission Act 2019, Data and Statistics Act 2022, and Digital Identity Services Trust Framework Act 2023 are also in scope.⁷⁴ Although sometimes seen as administrative or technical domains, these areas directly affect representation, accountability, evidence, and access to remedies, all of which have distinct human rights implications for Māori.

⁶⁸ Expert Mechanism on the Rights of Indigenous Peoples (2021) [Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: indigenous peoples and the right to self determination](#) A/HRC/48/75. Expert Mechanism on the Rights of Indigenous Peoples (2020) [Right to land under the United Nations Declaration on the Rights of Indigenous Peoples: a human rights focus](#) A/HRC/45/38.

⁶⁹ Committee on the Elimination of Racial Discrimination (2025), above n 6 at [35]-[44].

⁷⁰ Ministry of Justice, above n 2.

⁷¹ [Ngā Mātāpono The Principles – Part III](#) above n 4 at 20, 48. [Ngā Mātāpono The Principles – Interim Report](#) above n 5 at 77, 176-188.

⁷² Committee on the Elimination of Racial Discrimination (2025), above n 6.

⁷³ [Hūtia te Rito o te Harakeke](#) above n 5 at 76-78. [Ngā Mātāpono The Principles – Interim Report](#) above n 5. Committee on the Elimination of Racial Discrimination (2025) above n 6 at [35]-[36].

⁷⁴ Ministry of Justice, above n 2.

41. In justice settings, weaker Te Tiriti obligations can reduce institutional attention to systemic bias and culturally unsafe processes; in data and digital settings, they can weaken recognition of Māori interests in governance, classification, access, and use of information affecting Māori communities.

Conclusion

42. These proposed reforms are not a benign legal housekeeping exercise aimed solely at achieving certainty and consistency. They represent a constitutionally significant attempt to reduce the enforceability of Te Tiriti across the statute book, despite Waitangi Tribunal findings of breaches of Tiriti, international concern about unilateral reinterpretation of Treaty commitments, and repeated warnings of the potential for creating uncertainty, discrimination and severely prejudicial impacts on Māori.
43. If advanced, they are likely to generate more litigation, less certainty, deeper social division, and further deterioration in Crown–Māori relations. A defensible and rights-consistent path is available, but only if the Crown abandons repeal, rejects blanket downgrading, and returns to a Tiriti-grounded, evidence-based, human-rights-consistent, and genuinely shared process.
44. The government should halt any further work on the proposed amendments, and show respect to the mana, dignity, and rights of all New Zealanders by continuing a constructive, respectful, and informed conversation about Te Tiriti and its legal recognition and protection.
45. Any future work to consider Treaty clauses should be co-designed with adequate time and resourcing to enable meaningful Māori participation.