

Toi Mata Hauora ASMS submission on the Principles of the Treaty of Waitangi Bill

About Toi Mata Hauora

Toi Mata Hauora (the Association of Salaried Medical Specialists) is the union of senior salaried doctors and dentists. We promote, protect and support all aspects of the working lives of doctors and dentists. Under our constitution, we advocate for an equitable, accessible public health care system that meets the needs of all New Zealanders. Toi Mata Hauora's constitution also includes a commitment to Te Tiriti o Waitangi and its principles, and to the values and practices of Mātauranga Māori. Toi Mata Hauora represents over 6,000 salaried senior doctors and dentists.

Toi Mata Hauora's position on the Principles of the Treaty of Waitangi Bill

Toi Mata Hauora opposes the Principles of the Treaty of Waitangi Bill as an incorrect and deliberately misleading interpretation of Te Tiriti o Waitangi designed to undermine New Zealand's constitution and to deepen prejudice against Māori. The Bill is an act of bad faith, designed to break down social cohesion.

We call on the Justice Committee to recommend that the Bill is not referred to a second reading, and to acknowledge the Bill is a breach of human rights and has already done damage to the social fabric of Aotearoa.

The government must take action to correct misinformation about Te Tiriti o Waitangi, monitor and mitigate disinformation about Te Tiriti o Waitangi, and promote earnest and expert supported historical narratives (as recommended by the Waitangi Tribunal (Waitangi Tribunal, 2024)). Steps must be taken to rebuild trust, and work across political parties to build social cohesion.

The rationale for Toi Mata Hauora's position is outlined below.

1. Te Tiriti o Waitangi is Aotearoa's founding document and part of its constitution

Te Tiriti o Waitangi is the founding document of Aotearoa New Zealand and a binding agreement between Māori and the Crown. Te Tiriti and its principles have long been recognised in legislation, and as a major source of Aotearoa New Zealand's constitution (Cabinet Office, 2023).

The Bill has been put forward under the guise of allowing public debate on Te Tiriti o Waitangi. However, as described in the Cabinet Manual:

"a balance has to be struck between majority power and minority right, between the sovereignty of the people exercised through Parliament and the rule of the law, and between the right of elected governments to have their policies enacted into law and protection of fundamental social and constitutional values. The answer cannot always lie with simple majority decision-making. Indeed, those with the authority to make majority decisions often themselves recognise that their authority is limited by understandings of what is basic in our society, by

convention, by the Treaty of Waitangi, by international obligations and by ideas of fairness and justice.” (Cabinet Office, 2023)

The current process subverts that balance and undermines Aotearoa New Zealand’s social and constitutional values. This destabilises the fabric of New Zealand society and is damaging for Māori, Pākehā, and everyone living in Aotearoa New Zealand.

As identified by the Waitangi Tribunal, the Crown has an obligation to promote earnest and expert supported historical narratives and translations of Te Tiriti o Waitangi, and to undertake policy, legislation, and constitutional processes that impact Māori, in partnership with Māori (Waitangi Tribunal, 2024). The Treaty Principles Bill and the process it has followed falls well short of these expectations. The Crown must act to rebuild trust from what has already been a damaging process.

2. Te Tiriti o Waitangi and its principles benefit the health of all New Zealanders

Inequitable health outcomes between Māori and non-Māori in Aotearoa New Zealand are well-documented and irrefutable (Health New Zealand Te Whatu Ora, 2023). These inequities arise from colonisation, and are entrenched by choices made in service provision including systemic underfunding of Kaupapa Māori health services; screening programmes that don’t account for differences in models of health and wellbeing between Māori and non-Māori, cost-barriers to accessing primary care, oral health and prescriptions, institutional racism, and poor compliance with Te Tiriti and its principles (Waitangi Tribunal, 2021). Inequitable health outcomes are a significant quality and safety issue in the health sector (Te Tāhū Hauora Health Quality and Safety Commission, 2023) and are unethical, unjust and unacceptable.

Te Tiriti o Waitangi and its principles provide a foundation to address such inequities and build systems and structures where everyone in Aotearoa New Zealand can thrive – including healthcare. Affirming rangatiratanga is integral to meeting Māori healthcare needs, creating an equitable healthcare system, and shaping a system that benefits everyone who lives in Aotearoa. When we get healthcare right for Māori, others will also benefit.

The need to address inequitable health outcomes is well accepted by a range of organisations representing the medical and dental professions in Aotearoa New Zealand, including education and standard setting bodies, regulatory authorities, and unions (Council of Medical Colleges, 2021) (Royal Australasian College of Surgeons, 2020) (Royal Australasian College of Physicians, 2024). (Royal Australian and New Zealand College of Psychiatrists, 2022) (Australian and New Zealand College of Anaesthetists, 2024) (Medical Council of New Zealand, 2019) (Royal Australasian College of Dental Surgeons, 2024).

Stage one of the Waitangi Tribunal’s Health Services and Outcomes Kaupapa Inquiry assessed whether the legislative and policy framework of the primary healthcare system contributed to inequitable health outcomes for Māori. The Tribunal found a lack of Te Tiriti compliance in the primary health system, institutional racism including perpetuating a pattern of differential access and failure to address negative social determinants, and that Māori have been unable to exercise tino rangatiratanga in the design and delivery of health services. It recommended the health system recognise and provide for Te Tiriti and its principles, and the Crown commit to equitable health outcomes for Māori (Waitangi Tribunal, 2021).

These recommendations informed the establishment of Te Aka Whai Ora during the Pae Ora reforms. However, Te Aka Whai Ora was disestablished before it had a chance to make meaningful ground. The Waitangi Tribunal has released its report into claims about the disestablishment of Te Aka Whai Ora, finding that the Crown prejudiced Māori in several ways throughout the process, including by failing to engage with Māori on the decision; failing to conduct a robust policy process or follow its own regulatory impact analysis guidelines, and failing to inform Māori about what Te Aka Whai Ora would be replaced with, “creating uncertainty in addressing longstanding and well-documented Māori health inequities.” (Waitangi Tribunal, 2024)

Since Te Aka Whai Ora’s disestablishment, policy directives have been issued that further undermine progress towards equitable health outcomes for Māori, including a directive to the health sector that public services be prioritised based on need, not ethnicity. This directive ignores that ethnicity is an evidence-based marker of need, and that targeting services is part of good medical practice (Loring, et al., 2024).

To address inequitable health outcomes for Māori and build on Aotearoa’s strong public health system for Māori and non-Māori-alike, Toi Mata Hauora ASMS considers a Te Tiriti based healthcare system is urgently needed.

3. The Principles of the Treaty of Waitangi Bill poses a threat to social cohesion in Aotearoa New Zealand

In its Regulatory Impact Statement (RIS), the Ministry of Justice identifies the Bill poses a threat to social cohesion. Toi Mata Hauora ASMS considers any threat to social cohesion would negatively impact the health and wellbeing of both Māori and non-Māori in Aotearoa New Zealand. This risk must be taken seriously, and steps must be taken to repair relationships between Māori and the Crown.

The RIS also highlights that the Bill and the process followed:

- Is discriminatory and does not accurately reflect the Articles of Te Tiriti o Waitangi
- Will not support a consensus-building national conversation about Te Tiriti o Waitangi
- Alienates and excludes Māori from policy development and input into the direction of Aotearoa New Zealand’s constitutional arrangements
- Has not been developed with Māori as the Crown’s Tiriti partner.

Further, the RIS highlights that if the Bill was put to the wider public through a referendum, this “brings a significant risk that the will of a non-Māori majority will impose on the minority partners (who are most likely to be affected by the policy).” The risks identified in the RIS, were also reinforced the letter from 42 King’s Counsel, urging the Prime Minister and Attorney General to abandon the Bill (Hampton, et al., 2024).

Toi Mata Hauora ASMS considers this would be an unacceptable breach of the United Nations Declaration on the Rights of Indigenous People (United Nations, 2007), would be damaging to both Māori and non-Māori, and would drive further inequitable health outcomes for Māori.

Toi Mata Hauora also has significant concerns that the Bill, and the process it has followed, will continue to stoke disinformation and hate speech targeted at Māori. Research demonstrates that disinformation and hate speech spikes in response to particular events, for example the

disestablishment of Te Aka Whai Ora (Hate & Extremism Insights Aotearoa, 2024). This has potential to cause significant harm. We urge all members of the Justice Committee to be aware of this harm, and to recommend that relevant government agencies monitor patterns in race-based disinformation and hate speech in relation to the Bill and take steps to build Aotearoa New Zealand's resilience to misinformation and disinformation.

References

- Australian and New Zealand College of Anaesthetists. (2024). *Te Tiriti o Waitangi Roadmap*. Retrieved from Australian and New Zealand College of Anaesthetists: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.anzca.edu.au/getattachment/69645053-4034-419d-84b1-465d05c1f888/ANZCA-Te-Tiriti-o-Waitangi-Roadmap>
- Cabinet Office. (2023). *Cabinet Manual*. Retrieved from Department of Prime Minister and Cabinet: <https://www.dPMC.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual>
- Council of Medical Colleges. (2021). *Statement on Te Tiriti o Waitangi and equitable health outcomes for Māori*. Retrieved from Council of Medical Colleges: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.cmc.org.nz/media/w4amalr4/20211202-cmc-statement-on-te-tiriti-o-waitangi-and-equitable-health-outcomes-for-m%C4%81ori.pdf>
- Hampton, N., Rennie, H., Armstrong, S., Beaton, K., Billington, J., Carruthers, B., . . . Chisnall, N. (2024, November 20). *Scoop*. Retrieved from Grave concerns: 42 KCs tell PM to abandon Treaty Principles Bill: <https://wellington.scoop.co.nz/?p=165818>
- Hate & Extremism Insights Aotearoa. (2024, June). *Harmful Inaccurate Information and Māori*. Retrieved from Hate & Extremism Insights Aotearoa : <https://www.heiaglobal.com/post/harmful-inaccurate-information-and-m%C4%81ori>
- Health New Zealand Te Whatu Ora. (2023). *Aotearoa New Zealand Health Status Report: Executive Summary*. Wellington: Health New Zealand Te Whatu Ora.
- Loring, B., Reid, P., Curtis, E., McLeod, M., Harris, R., & Jones, R. (2024). Ethnicity is an evidence-based marker of need (and targeting services is good medical practice). *New Zealand Medical Journal*.
- Medical Council of New Zealand. (2019). *He Ara Hauora Māori: A Pathway to Māori Health Equity*. Retrieved from Medical Council of New Zealand: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.mcnz.org.nz/assets/standards/6c2ece58e8/He-Ara-Hauora-Maori-A-Pathway-to-Maori-Health-Equity.pdf>
- Royal Australasian College of Physicians. (2024). *Māori Health*. Retrieved from Royal Australasian College of Physicians: <https://www.racp.edu.au/about/indigenous-equity-and-cultural-safety/m%C4%81ori-health>
- Royal Australasian College of Surgeons. (2020, June). *Indigenous Health Position Paper*. Retrieved from Royal Australasian College of Surgeons: <https://www.surgeons.org/about-racs/indigenous-health/racs-indigenous-health-position>

Royal Australian and New Zealand College of Psychiatrists. (2022). *Recognising the significance of Te Tiriti o Waitangi*. Retrieved from Royal Australian and New Zealand College of Psychiatrists: <https://www.ranzcp.org/clinical-guidelines-publications/clinical-guidelines-publications-library/recognising-the-significance-of-te-tiriti-o-waitangi>

Te Tāhū Hauora Health Quality and Safety Commission. (2023, August 11). *A window on the quality of Aotearoa New Zealand's health care 2019 - a view on Māori health equity*. Retrieved from Te Tāhū Hauora: <https://www.hqsc.govt.nz/resources/resource-library/a-window-on-the-quality-of-aotearoa-new-zealands-health-care-2019-a-view-on-maori-health-equity-2/>

United Nations. (2007). *Declaration on the Rights of Indigenous People*. Retrieved from www.un.org: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Waitangi Tribunal. (2021). *Hauora: Report on Stage one of the Health Services and Outcomes Kaupapa Inquiry*. Wellington: Waitangi Tribunal.

Waitangi Tribunal. (2024, November). *Hautupua Te Aka Whai Ora (Māori Health Authority) Priority Report Part 1*. Retrieved from Waitangi Tribunal: <https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-disestablishment-of-te-aka-whai-ora>

Waitangi Tribunal. (2024). *Ngā Mātāpono / The Principles*. Wellington: Waitangi Tribunal.