

**Te Hunga Roia Maori o Aotearoa  
(Maori Law Society Inc.)**



**SUBMISSION**

**PRINCIPLES OF TREATY OF WAITANGI  
DELETION BILL**

**19 OCTOBER 2006**

# **Te Hunga Roia Maori o Aotearoa, Submission regarding Principles of Treaty of Waitangi Deletion Bill**

## **1 Te Hunga Roia Maori o Aotearoa**

- 1.1 This submission is made for and on behalf of Te Hunga Roia Maori o Aotearoa (THRMOA).
- 1.2 The THRMOA has a membership totalling more than 350 members of Maori lawyers. In addition to these members THRMOA also incorporates students who are studying towards a Bachelor of Laws (LLB).
- 1.3 THRMOA ensures the effective networking of members, holds a mandate to make submissions on a range of policies and proposed legislation, ensures representation of its membership on selected committees and organises regular national hui which provides an annual opportunity for Maori lawyers to discuss and debate issues relevant to Maori.

## **2 Principles of the Treaty of Waitangi Deletion Bill**

- 2.1 As outlined in the explanatory note this Bill eliminates all references to the expressions “the principles of the Treaty”, “the principles of the Treaty of Waitangi”, and the “Treaty of Waitangi and its principles” from all New Zealand statutes including all preambles, interpretation schedules, regulations and other provisos included in or arising from each and every such statute.
- 2.2 THRMOA **strongly opposes** this Bill or any Bill that seeks to eliminate these references as suggested.
- 2.3 A central plank of the argument in favour of the Bill is that the Bill seeks to correct an anomaly which has harmed race relations in New Zealand since 1986 when the term “the principles of the Treaty of Waitangi” was included in legislation.
- 2.4 The member who has submitted this Bill in no way particularises how the insertion of such terms into legislation has harmed race relations in New Zealand.
- 2.5 As the member should be aware the central relationship which underpins the Treaty of Waitangi is one between the Crown and Māori, not between Maori and rest of New Zealand. What, in simple terms, the inclusion of the expressions involving the principles of the Treaty of Waitangi has done, is for the Treaty partners to confront and address in their relationship in the modern context.
- 2.6 It is difficult to accept (without specific examples and evidence) the member’s comment that Parliament must address the “*damage and harm these ‘principles’ have inflicted on both Māori and non-Māori*”.

- 2.7 THRMoa is of the clear view that race relations have in no way been affected by the inclusion of such clauses in legislation.
- 2.8 In fact, the inclusion of Treaty principle clauses in legislation has in many instances been for the betterment of New Zealand as a whole, particularly in the context of the Treaty partners addressing and settling historical Treaty breaches by the Crown, and also in clarifying contemporary Crown duties under the Treaty in regards to inter alia, education and health assisting to bridge and shorten the social gap between Maori who statistically underachieve in education and feature negatively in health statistics..
- 2.9 Various iwi and hapu have had the benefit of a Waitangi Tribunal hearing and report and/or a settlement whereby the Crown have acknowledged certain breaches of Treaty principles. This has led to financial and cultural redress which in some way attempts to restore the mana and wellbeing of Maori economically, socially and culturally. Maori have also benefited from assessments of Crown Treaty duties in the modern context. The Waitangi Tribunal's findings in the **Mokai School Report** address in a comprehensive way the Crown's obligations to Māori in respect to education.
- 2.10 It is noted that one of the pieces of legislation which the member seeks to have amended by way of deletion of reference to the principles of the Treaty is s6 (1) (d) of the Treaty of Waitangi Act 1975. In short the Bill if enacted may bring an end to the Waitangi Tribunal process. THRMoa strongly opposes any attempt to remove the jurisdiction of the Waitangi Tribunal.
- 2.11 The member rightly says that the task of defining the principles has fallen in **some instances** to Judges *who have taken an increasingly activist, liberal and broad licence in providing a form of definition*. What the member fails to acknowledge is that the Waitangi Tribunal (which continually defines Treaty principles, and probably more frequently than other Courts today) is made up of a broad range of people including Judges, kaumātua and experts in Māori lore, historians and other professional and community people who are of both Māori and non-Māori heritage. Therefore it is both Maori and non-Maori who are defining and shaping Treaty principles together. That in our view is positive for race relations.
- 2.12 It is correct that as indicated by the member that defining the Treaty principles was a source of litigation when they were first implemented in 1986, but we do not accept that there has been no tangible benefit for Māori as a consequence of the existence of the Treaty principle clauses for the reasons set out above.
- 2.13 THRMoa do not accept that these principles have become a diversion away from the true pathway to success for both Māori and non-Māori as outlined by the member. The real hurdle still seems to be the Crown, who have for far too long rejected the Treaty, failed to acknowledge its importance and fails to educate the New Zealand public about the Treaty and its importance to our countries past and future. To now put the Treaty back to where it once was in the eyes of the law, a nullity, would be unacceptable to Maori, and have serious implications for Maori-Crown relations and race relations generally.
- 2.14 THRMoa do not agree that the principles have allowed Māori to continue to *portray themselves as victims, constantly in grievance mode, a mentality which leads down a dead end path from which no true progress can come* as advocated by the member. It is clear that those Māori groups who have obtained Treaty settlements and/or have received positive findings from the Waitangi Tribunal have benefited in some way in

achieving economic and cultural stability and advancement. Whilst it is generally accepted that more can be done, the benefits in our view outweigh the negatives.

- 2.15 THRMOA do not accept that these principles are a divisive mechanism, which has set one group of New Zealanders against another. Many of key Treaty principles such as **Partnership** involve concepts such as; acting reasonably, actively protecting, equal opportunities and consultation. These concepts are a far cry from promoting divisiveness as alleged by the member.
- 2.17 THRMOA is available to be heard on this submission if required.

## **CONTACT PERSON REGARDING THIS SUBMISSION**

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