

19 December 2024

Submission on the Principles of the Treaty of Waitangi Bill

To the Justice Committee,

Te Hiringa Mahara, the Mental Health and Wellbeing Commission (the Commission) is making this submission on the Principles of the Treaty of Waitangi Bill (the Bill), in recognition of the importance of the issues it raises for mental health and wellbeing outcomes for Māori.

The Commission was established as an independent Crown entity by the Mental Health and Wellbeing Act 2020 (the Act), following the *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*. We acknowledge Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and an agreement between two parties, the Crown and Māori. Our legislated role is to:

- assess and report on the mental health and wellbeing of people in New Zealand, and the factors and approaches that affect them
- make recommendations to improve the effectiveness, efficiency, and adequacy of approaches to mental health and wellbeing
- monitor mental health and addiction services and to advocate improvements to those services
- promote alignment, collaboration, and communication between entities involved in mental health and wellbeing
- advocate for the collective interests of people who experience mental distress or addiction (or both), and the persons (including family and whānau) who support them.

We have specific obligations in the Act to have particular regard to the experience of, and outcomes for Māori when we perform these functions, and to have regard to the cultural, economic, educational, spiritual, societal, environmental, and other factors that affect people's mental health and wellbeing.

It is because of these mandated roles and responsibilities that the Commission is putting forward a submission on this Bill. We would also appreciate the opportunity to share our views with the committee in person.

Passing the Bill risks ongoing negative mental health and wellbeing outcomes for Māori

The Commission does not support the passing of the Bill due to the negative impact on mental health and wellbeing outcomes for Māori. Our submission focuses on two key points that relate to Māori mental health and wellbeing, including:

1. Māori self-determination (tino rangatiratanga) contributes to better mental health and wellbeing for Māori [1]. Passing the Bill and in particular weakening the status of Māori in Aotearoa would have a negative impact on the wellbeing of Māori.
2. Protection for Māori and responsibility for the Crown to address well established inequities in mental health and wellbeing outcomes would be impacted. This Bill limits

how Māori wellbeing outcomes are protected under legislation including involvement of Māori in policy and decisions that affect them. This protection is one of the best available tools to ensure the public sector supports Māori wellbeing outcomes across a range of portfolios and services.

Māori self-determination (tino rangatiratanga) is a driver of better mental health and wellbeing for Māori

It is widely evidenced that respect, hope, self-determination, and connection to culture and the wider community are protective factors of mental health and wellbeing for all people [2]. Given the unique historical context for Māori, self-determination (tino rangatiratanga) is a particular driver of Māori wellbeing [1] [3] [4] [5] and should be protected. We saw Māori self-determination in action during the Covid-19 response, where the cultural values and practices, as well as the capacity of Māori people, contributed to the enacting of tino rangatiratanga, which in turn, protected and promoted wellbeing for all New Zealanders [3].

Evidence has consistently shown that undermining Māori capacity for self-determination, language, connections with land, iwi, hapū, and whānau has had a cumulative inter-generational impact on the health and wellbeing of Māori [6, p. 80]. This impact is visible in a range of persistent and negative mental health and wellbeing outcomes. For example, the suicide rate for young Māori is almost double that of the wider population [7]; the prevalence of psychological distress among Māori is more than 50 percent higher than non-Māori [8]; and Māori are more likely to be hospitalised for intentional self-harm and more likely to use substances than non-Māori [9].

More needs to be done to address these inequities and support Māori wellbeing. If the Bill is passed it would remove indigenous rights and be unfair, discriminatory, and inconsistent with the principles established through the Waitangi Tribunal e.g., partnership and reciprocity, active protection, good government, equity, and redress [10]. It is also contrary to the guarantee of rangatiratanga under Article 2 [10]. This in turn would have a detrimental impact on hope, self-determination, connection to culture, mental health and wellbeing for Māori.

Māori mental health and wellbeing outcomes can be achieved through upholding existing Treaty Principles through legislation

Te Tiriti o Waitangi in its current form supports factors that contribute to, or are protective of, good mental health and wellbeing for Māori: factors such as education, physical health, and safety. We have previously called for more effort to uphold Te Tiriti o Waitangi in policy and legislation [1] [11].

Te Tiriti o Waitangi is currently enabled through Treaty Principles clauses in legislation, such as the Pae Ora (Healthy Futures) Act 2022 and the Education and Training Act 2020, which place obligations on public sector bodies to uphold te Tiriti o Waitangi. Enabling Treaty Principles clauses are the hook on which approaches that directly benefit Māori (such as involvement in decisions, consultation, and reporting of outcomes, as well as specific by-Māori for-Māori services like kaupapa Māori health services and kura kaupapa) are hung. Through these approaches, a range of positive Māori wellbeing outcomes, and improvements in equity, have been achieved, for example:

- By drawing on iwi, Māori communities, and kaupapa Māori service providers during the COVID-19 pandemic, government ensured “some of the highest vaccination levels

were achieved (for both Māori and non-Māori) and that critical resources were able to be distributed in a timely manner to those most in need” [12, p. 3].

- Māori learners in Kaupapa Māori and Māori Medium education have better outcomes across a range of key indicators compared to Māori learners in mainstream schooling. This includes length of time in schooling, lower levels of truancy, absenteeism and stand-down rates, and higher levels of meeting literacy and numeracy requirements, and going on to tertiary study [13] [14].
- Evidence provided for consideration of the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill showed the value that legislated requirements to build relationships and partnerships has had on improving services, and this was reflected in Parliament’s Social Services and Community Committee’s report on that Bill [15].

We support some of the current approaches that draw on and empower Māori decision-making. For example, the Mental Health Bill includes efforts to ensure that understanding of tikanga and mātauranga Māori in the review and complaints processes; and Hon Shane Reti (Minister of Health) has described that iwi Māori Partnership Boards (IMPBs) created under the Pae Ora (Healthy Futures) Act 2022 to give effect to the Treaty Principles “have an important role in the achievement of health targets, priority areas in the [Government Policy Statement on Health] and realising the aspiration of Pae Ora – healthy futures for whānau today and in generations to come”, and “have critical roles to play in holding the system to account” [16]. However, as the inequities highlighted above show, more is needed.

By fundamentally changing how Treaty Principles are interpreted (through the proposed Principles 2 and 3), the Bill reduces the legal responsibilities government has to Māori. Without this explicit focus on Māori outcomes and partnership we expect more inequitable outcomes (as explored further by public health experts [17]) through a reduction over time in Māori involvement in policy, planning, and services that best meet the needs of Māori. For example, the roles of IMPBs described above, and their role under the Pae Ora Act to “strengthen the overall health system [...] significantly contributing to better health outcomes for Māori” [18] would likely be lost under the Bill.

An argument could be made that nothing in the Bill prevents government from working with and supporting iwi, hapū, and whānau. However, the current interpretation of the Treaty Principles clauses provides a minimum expected standard of public sector bodies. When competing priorities and limited resources are a reality, organisations revert to their core business. Upholding Te Tiriti o Waitangi should continue to be part of that core business, to support Māori mental health and wellbeing outcomes.

Recommendation

The Commission recommends that the Committee make it clear that this Bill should not be progressed further through the House. We recognise that many other groups and organisations will make a strong argument not to progress the Bill based on constitutional, rights-based, and procedural grounds, but we would also make it clear that the Bill would have a negative impact on the mental health and wellbeing of Māori in Aotearoa.

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