

To: Members of the Justice Committee.
From: Gary Connolly

Requirement.

To establish and to ensure the principles of modern western liberal democracies are applied to create equality of rights and duties for all New Zealand citizens.

Background.

The Treaty of Waitangi was signed in 1840. It was initiated and written by representatives of a monarchy-headed empire for the benefit of that empire. Its main purpose was to allow smoother absorption of the new territory into the empire and to bring the existing population under the rule of the empire. As a treaty it was never intended to be a constitution and so, as to be expected, the Treaty is not fit to be used as a constitution defining rights and duties of New Zealand citizens.

Within a decade or two after signing, the Treaty of Waitangi was broken by both parties (the Crown and the Maori people) as evidenced by the decades of wars between the two. From the time war broke out neither party to the Treaty of Waitangi was obliged to comply with the terms of the Treaty and so the document lay mostly in obscurity for well over 100 years, nothing more than an historical artefact.

It was only the actions of the minority (48% of votes) Norman Kirk/Bill Rowling Labour government (1972-75) which resurrected the Treaty of Waitangi to force its relevance to all current and future New Zealanders. There was little or no mandate for such change, no referendum in 1975 to establish support for this legislation that has over time been repeatedly, manipulatively and falsely put forward as the founding document of New Zealand and amended by later governments to become a piece of legislation with wide ranging, powerful impacts on the rights and duties of New Zealand citizens.

Current State.

No principles are mentioned in the 1840 Treaty document.

The Waitangi Tribunal created by the 1975 Treaty of Waitangi Act is currently the sole decider and creator of Treaty of Waitangi principles.

As specified in the 1975 act

*"WHEREAS on the 6th day of February 1840 a Treaty was entered into at Waitangi between Her late Majesty Queen Victoria and the Maori people of New Zealand: And whereas the text of the Treaty in the English language differs from the text of the Treaty in the Maori language: And whereas it is desirable that a Tribunal be established to make recommendations on **claims relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect** and whether certain matters are inconsistent with those principles."*

The 1975 Act is seriously flawed. It is clear all the power in defining "principles" that effect all New Zealanders lies solely in the Tribunal. To have such power in an unelected tribunal is poor legislation which becomes disastrous when coupled with the fact there is nothing in the legislation to ensure consistency of terms and independence of the Tribunal.

From the 1975 Act

"The Tribunal shall consist of—(a) a Judge or retired Judge of the High Court or the Chief Judge of the Maori Land Court; and the Judge is both a member of the Tribunal and its Chairperson, and is appointed by the Governor-General on the recommendation of the Minister of Maori Affairs made after consultation with the Minister of Justice b) not less than 2 other members and not more than 20 other members to be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs made after consultation with the Minister of Justice"

The 1975 Act in its current form is an invitation to bias, corruption and inconsistent interpretation and application of “principles”. Potentially any group could, with sufficient lobbying and fostering of relationships with the Governor General and the Minister of Maori Affairs (or equivalent role), influence selection and load the Tribunal with members to reflect their beliefs and ideologies.

In essence we, the people of New Zealand, now find ourselves in a country where an unelected, potentially biased group, that is the Waitangi Tribunal, has become an un-voted-for legislature and executive arm of the New Zealand government defining what is acceptable behaviour for the government and thereby influencing government decisions on what are the rights and duties of all New Zealanders: this breaks New Zealand’s democracy and it must be rectified.

New Zealanders are confronted with a decision: whether they want each new citizen to have rights and duties equal to all other citizens or whether they want each new citizen to have their rights decided according to racial, ethnic and tribal "apartness" and determined by an unelected, potentially biased tribunal.

Solution.

I fully support the Principles of the Treaty of Waitangi Bill and I believe the Principles of the Treaty of Waitangi Bill is a necessary first step away from the thin edge of an apartheid wedge confronting New Zealand

The very least a modern liberal democracy should demand is the cultural, racial and political independence of a powerful and influential group like the Waitangi Tribunal. Furthermore, such a Tribunal must have limits around its judgements to ensure fairness and consistency as governments and Tribunal members change over time.

I strongly urge Parliament to pass the Principles of the Treaty of Waitangi Bill into law and look into further ways to ensure the independence and consistency of the operation of the Waitangi Tribunal and future applications of the Treaty of Waitangi Act 1975.