

## Who are we?

Christchurch Methodist Mission (CMM) is a social service organisation of Te Haahi Weteriana o Aotearoa/the Methodist Church of New Zealand. CMM operates in Canterbury, Nelson, Marlborough and the West Coast.

CMM exercises practical care and concern for people by:

- a. Providing social services in response to personal and community needs
- b. Working for social justice and the eradication of poverty in the region and country
- c. Providing social and affordable housing for low-income households
- d. Providing residential and nursing care for older people and those nearing the end of their life
- e. Offering support to families including through the provision of early childhood education
- f. Encouraging the development of new ways to meet the needs of people who require support.

## Why do we have an interest in this Bill?

The early Wesleyan Church actively supported and promoted Te Tiriti o Waitangi. In 1840, the Methodist Mission at Māngungu in the Hokianga hosted a signing event at which sixty-four Rangatira added their signatures to Te Tiriti. This was the largest number to sign at a single event. The involvement of John Hobbs, the Wesleyan missionary, as interpreter was influential and, while many Māori had considerable reservations about signing, some were persuaded when they sought the view of the missionaries.

The Methodist Church therefore has a responsibility to honour the faith these signatories placed in its missionary forebears and today continues to honour Te Tiriti o Waitangi as the founding document of our nation. In 1984, the Church committed itself to a bi-cultural journey.

As a Methodist organisation, the Christchurch Methodist Mission has a strong commitment to ensuring that the promises made in Te Tiriti o Waitangi are upheld and given the fullest effect possible to support a just, inclusive and vibrant Aotearoa New Zealand.

CMM has a stated commitment to the bicultural journey of Te Haahi Weteriana o Aotearoa/the Methodist Church of New Zealand. Our Strategic Plan states:

“As citizens of Aotearoa New Zealand we are guided in our mission by Te Tiriti o Waitangi, the covenant which laid the foundations of our life together.”

## Our stance on the Treaty Principles Bill

CMM opposes the Treaty Principles Bill for the following reasons:

1. **The process:** This Bill has been drafted and brought to the Select Committee without engaging with Māori. Since Te Tiriti was signed as an agreement between the Crown and Rangatira Māori, and since this Bill, if passed into legislation, would profoundly affect and disadvantage Māori through its reinterpretation of the principles of Te Tiriti o Waitangi, this complete lack of engagement with Māori is reason enough to proceed no further with it.

This lack of engagement is also in breach of Article 18 of the UN Declaration on the Rights of Indigenous People:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves

in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

2. **Proposed Principle 1:** this states that ‘full power’ (absolute sovereignty) is held by the Government. This ignores the fact that in Te Tiriti (and also in the English version of the text) kawanatanga (‘sovereignty’) is not absolute. Te Tiriti does not grant ‘full power’ to the Government.

On the contrary, kawanatanga, granted to the Queen in Article 1, is clearly constrained by Article 2, which confirms and guarantees the authority of Māori to exercise tino rangatiratanga. ‘Confirms and guarantees’ means that the Queen, through Te Tiriti, did not create tino rangatiratanga but recognised that it already existed, and promised to honour and defend it.

Proposed Principle 1 cannot, therefore, be derived from Te Tiriti because it contradicts the text of Te Tiriti.

3. **Proposed Principle 2:** The first half of this proposed principle is undermined by the second half. If ‘the Crown recognises the rights that hapū and iwi had when they signed The Treaty/Te Tiriti’ it must recognise the right to exercise tino rangatiratanga. And if ‘the Crown will respect and protect those rights’ it must do so with respect to tino rangatiratanga. However, the second part of the principle confines these rights to those recognised in Treaty settlements or those ‘enjoyed by everyone’.

But the exercise of tino rangatiratanga, as guaranteed in Te Tiriti, is not confined to Treaty settlements, nor is it enjoyed by everyone. Thus, this proposed principle is self-contradictory, the first sentence nullified by the second.

4. **Proposed Principle 3:** this adds nothing to what already exists within the Aotearoa/New Zealand legal system. Moreover, it is problematic in its assumption that universal human rights, which everyone enjoys, are the only rights relevant to Te Tiriti. This is not the case.

While universal human rights can be claimed by everyone, other rights cannot. For example, an individual does not have the right to claim their neighbour’s house as their own. Thus, the individual and their neighbour have different rights when it comes to occupying the neighbour’s house.

Māori have the right of first possession in Aotearoa by virtue of centuries of occupation here prior to the arrival of Europeans. The right of first possession is an internationally recognised right, but the proposed principles 2 and 3 seek to dispossess Māori of this right.

Māori have a distinct status as the Indigenous people of Aotearoa/New Zealand. This status is upheld by the UN Declaration on the Rights of Indigenous People. These principles seek to negate this status.

5. **Already existing principles:** A set of coherent, well established principles of Te Tiriti/The Treaty already exist. These have been developed over decades by people who, using their deep knowledge of the law and the history of Aotearoa/New Zealand, have sought to understand the meaning of Te Tiriti and its application. It is appropriate that these principles have been developed by the Waitangi Tribunal and the Court of Appeal and not by Parliament: it is

inappropriate for one partner to Te Tiriti to define the principles, particularly the partner that has consistently acted in breach of the original agreement, as the Crown has.

We are greatly concerned that the Bill actively excludes these established principles from inclusion in future enactments where Treaty principles would normally be considered relevant.

In contrast with the established principles, the principles proposed in this Bill are not coherent, have been defined by one partner to the agreement without engagement with the other partner, and would allow actions that are in breach of Te Tiriti.

6. **Future developments:** There appears to be a desire behind this Bill to 'start over' in Aotearoa as though Te Tiriti never existed or its time has 'passed'. This is wrong and unjust, especially to those who have suffered from Crown breaches of te Tiriti over nearly two centuries. The impact of these breaches does not disappear.

In our work at Christchurch Methodist Mission, we see daily the experience of intergenerational trauma that these breaches have created. For example, breaches of te Tiriti (through the refusal to honour Kemp's Purchase) deprived five generations of Ngāi Tahu of their livelihood by stealing and destroying their economic base. The consequences of this are still with us.

Across the motu, Māori are over-represented in poverty, housing and prison statistics and are more likely to experience poor health outcomes. This is also true of the Mission's services where Māori are over-represented in referrals made to the Social Services team (particularly from Oranga Tamariki) and Māori comprise almost 50% of individuals and whānau who are homeless and referred to either transitional housing or Housing First. For many Māori, the impact of colonisation has resulted in their alienation not only from mainstream society but also from their whakapapa. The only one of our services where Māori are underrepresented is at WesleyCare, in part because Māori have a lower life expectancy, by 6-7 years, than Pākehā.

We cannot wish these inequities away or pretend that they are not closely associated with land alienation and policy drives towards cultural assimilation.

We live with history and its consequences. In Te Tiriti, we have an opportunity to address these consequences. Principles that are true to Te Tiriti give us mechanisms to do this within our legal system. The proposed principles would not only deny us this opportunity but would actively undermine Māori property rights, reinvigorate moves towards assimilation and entrench the inequality that already exists in Aotearoa New Zealand.

7. **Conclusion:** In concluding, we return to our commitment and responsibility to honour the good faith that Rangatira Māori who signed Te Tiriti placed in the Methodist Church's missionary forebears.

The principle of good faith has a long and well established history in relation to Te Tiriti. It was explicitly present at the time of its drafting: Lord Normanby's Instructions of 14 August 1839 to Hobson stated that: "All dealings with the Aborigines for their Lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands."

Moreover, this principle was explored in great depth in the famous *Lands* case in the Court of Appeal (1987):

- Justice Somers found “each party ... owed to the other a duty of good faith”.
- Justice Richardson found the Treaty “rested on the premise that each party act reasonably and in good faith towards the other within their respective spheres”.
- President Cooke found the Crown has a duty of “acting towards the Māori partner with the utmost good faith”.

The principle of good faith is a fundamental principle of Te Tiriti, articulated by the Waitangi Tribunal, the Courts and many policy documents. And yet, according to Clause 7 of this Bill, it may not be used in future enactments where Treaty principles would normally be considered relevant.

It is extraordinary that the Crown should consider the principle of good faith no longer relevant as a principle of Te Tiriti/The Treaty, just as it is extraordinary that other long established principles such as redress are to be excluded from consideration should this Bill pass into legislation. This Bill is yet another act of bad faith by the Crown in a long history of bad faith betrayals of its Treaty partner.

## Recommendations

1. We recommend that this Bill proceed no further.
2. We recommend that Parliament consider ways to integrate the existing principles that have emerged over decades of work, into law as a way of honouring Te Tiriti.