

Who we are and our connection to te Tiriti

Atawhai ki uta, atawhai ki tai, kia horahorahia ki te rito o te Ao Marama – *May mercy be felt inland, may mercy be felt on the shore, may mercy be widespread living in the heart of our world today.*

I write on behalf of Whānau Mercy Ministries. Our statement of purpose asserts that: “We are committed to the Gospel of Jesus Christ, the tradition of Catherine McAuley (*who founded the Sisters of Mercy*), Te Tiriti o Waitangi and the sacredness of all creation”.

We are a Catholic charitable organisation, formed to sustain and expand the ministries set up by the Sisters of Mercy, with the intention that they continue beyond the time when there are Sisters available to govern them. The ministries sponsored by Whānau Mercy Ministries comprise five state-integrated secondary colleges for girls, two healthcare providers, two independent living villages offering subsidised rental housing for senior citizens and a community services provider.

The origins of the Sisters of Mercy in New Zealand trace back to Bishop Pompallier. He was asked by wāhine Māori to invite religious women to New Zealand to minister to their health and education needs. The first sisters arrived in Auckland from Ireland in 1850. Through that invitation and the connection with Bishop Pompallier, who played an important role in the drafting of te Tiriti (advocating the ‘fourth article’ on freedom of religion) and in the debate by rangatira Māori about it, we claim a strong connection to New Zealand’s founding document. This connection has been fostered in the years since, through an on-going commitment to honouring the spirit and intent of te Tiriti.

Our submission in brief

We feel obligated to comment on the *Principles of the Treaty of Waitangi Bill* (the Bill), even though the Prime Minister has indicated it will not proceed past the select committee stage. Partly, that obligation stems from our historical connections to the place, time and people who brought te Tiriti into existence. Partly, it reflects our understanding of the principles of Catholic social teaching, especially those of solidarity, subsidiarity, participation and the common good. Finally, it reflects our commitment to honour te Tiriti as a living document, recognising it as a covenant between Crown and Tangata Whenua, that neither can unilaterally abrogate, repudiate or fundamentally alter.

In our view, the Bill is deeply flawed. It misrepresents te Tiriti in both an historical sense and in its subsequent evolution in both law and practice. It seeks to override jurisprudence on te Tiriti over the past fifty years, which has shaped a widely accepted (although imperfect) set of principles applicable to the ongoing and ever-developing Crown/Māori relationship. It

seeks to freeze in time a concept of that relationship to the detriment of Māori, while the Crown receives a free pass. The process followed in developing the Bill and imposing it on the public contradicts the stated objectives of the Bill, particularly those relating to a robust understanding of New Zealand's constitutional arrangements and building consensus about those arrangements to promote greater legitimacy and social cohesion. Finally, there is no evidence of any consultation with representative Māori in the development of the Bill, which clearly breaches the Crown's duty to act in good faith and follow due process. The confusion and error at the heart of the Bill are amply illustrated by its use of the English title of the 'Treaty' (for the most part), even though there is a strong argument that the te reo Māori title and version take precedence, since that is the version that rangatira Māori signed.

Moreover, while the policy statement for the Bill claims that it helps reconcile differences between the two texts and gives effect to the spirit and intent of the Treaty when applied to contemporary issues, there is nothing in the Bill that addresses the differences between kawanatanga and te tino rangatiratanga (which is the main point of contention) and it recognises Māori interests and rights only in the context of settling historical claims, thereby effectively extinguishing te tino rangatiratanga as a contemporary reality.

Te Tiriti as a covenant and its obligations of trust and good faith

As mentioned earlier, we recognise te Tiriti as a covenant between Crown and Māori. A covenant is more than a contract or a binding statement of rights and responsibilities, although it includes elements of both. A covenant has a sacred dimension that implies blessing and permanence. Te Tiriti has mana and wairua and it lives forever.

The Christian scriptures contain many references to covenant between God and humanity, the best-known being the Ten Commandments. Within the Catholic tradition, sacraments are used to denote profound moments of covenant, such as baptism, marriage and ordination to the priesthood. Those who drafted the te reo Māori version of te Tiriti and who advised rangatira Māori about its meaning and significance were religious leaders - notably Samuel Marsden and Bishop Pompallier. They used the language of covenant to express its purpose and intent. Māori chiefs clearly understood that language and it reassured them.

As the expression of a covenanted relationship, te Tiriti creates enduring obligations of trust and good faith on both Crown and Māori. The Treaty settlements process was created in recognition that the Crown had serially breached those obligations almost from the moment that the ink had dried. The settlements themselves represent a tiny fraction of compensation for what was lost, but even so were an attempt to restore trust and good faith. This Bill sets out to destroy trust and good faith, both in its language of repudiation and in the process followed. It would more honestly be titled the Anti-Principles of the Treaty of Waitangi Bill.

Principles that are faithful to te Tiriti

A Bill that was more faithful to te Tiriti would recognise and promote an equal and respectful partnership of people and authority systems.

Credible historians and commentators recognise that the British authorities at the time wanted to better regulate British subjects, not to impose a British authority system on Māori. Hence kawanatanga for the British and tino rangatiratanga for Māori, each sovereign within their own domain.

Tino rangatiratanga - Māori authority and self-determination - is not limited to the resources listed in te Tiriti or to the subsequent settlements relating to the loss of those resources. Much as the Crown is an enduring construct that constantly changes (colony to dominion to sovereign realm), so are hapu and iwi Māori, whose collective institutions, tikanga and te reo continue to evolve.

It is telling that the institution to which the Bill is addressed, the New Zealand Parliament, was not formed until 1854, 14 years after te Tiriti was signed. Women could not vote for that parliament for a further 39 years, waiting 40 years more for the first female MP. Imagine the uproar if, in the interests of being even-handed, the Bill sought to define the Crown in the terms of its existence in 1840, as it seeks to do to Māori! There could be no referendum, since there was no popular franchise in 1840.

The principles of Catholic social teaching are salient here. *Subsidiarity* is the principle that authority should be exercised and decisions made as close as possible to those affected. In the case of Māori, that means iwi and hapu exercising their tino rangatiratanga to the greatest extent possible. There is abundant evidence of the benefits of that in education, health, housing, commerce, conservation and the arts, to name a few. Little of that is contingent on treaty settlements, but it can be significantly affected by careless or ill-intentioned action by the Crown. Here, the Bill is one more sorry entry in the canon of Crown disregard for Māori.

Another principle is *common good*, meaning that the measure of any decision or action by those in authority is the extent to which it promotes the good of the community and human dignity, especially for the most vulnerable. It poses a direct challenge to partisan considerations and actions intended to create division.

To achieve the objectives of the Bill, especially those related to legitimacy and social cohesion, requires a mechanism that encourages dialogue that is faithful to te Tiriti, well-informed about history and the contemporary expression of tino rangatiratanga and explicitly oriented towards Māori flourishing as Māori in their own country. The Bill falls well short of its objectives on each count.

Our recommendation

We respectfully request that the select committee recommends to the House that the Bill not proceed on the grounds that it is deeply flawed in intent, construction and process and manifestly fails to achieve its objectives.

In deliberating on this and other submissions, plus other advice it receives, the select committee could usefully include in its report to the House its reflections on alternative ways to achieve the objectives of the Bill relating to te Tiriti and New Zealand's constitutional arrangements that would be more respectful, better informed, fully participative and promoting of the common good.

The more that all New Zealanders engage with te Tiriti the better, not to relitigate or expunge but with a view to learn, collaborate and thrive. Then, perhaps, we can with integrity claim Governor Grey's words as our own "He iwi ko tahi tatou".

Gerald Scanlan
Chair, Whānau Mercy Ministries Trust

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