Peace Movement Aotearoa

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NGO information for the Human Rights Committee, 143rd session: Compilation of the List of Issues Prior to Reporting on New Zealand

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Introduction

1. This report provides an outline of some issues of concern with regard to the state party's compliance with the provisions of the International Covenant on Civil and Political Rights (the Covenant). Its purpose is to assist the Human Rights Committee (the Committee) with drawing up the List of Issues Prior to Reporting in advance of New Zealand's Seventh Periodic Report.

2. There are four main sections below:

- **A**. Information about Peace Movement Aotearoa
- **B**. Overview of our concerns
- **C.** The constitutional and legal framework (Article 2)
- **D.** Indigenous Peoples' Rights (Articles 1, 26 and 27)
  - **i.** Principles of the Treaty of Waitangi Bill
  - **ii.** Removal of references to the Treaty of Waitangi in legislation
  - **iii.** Marine and Coastal Area (Takutai Moana) Act 2011
  - **iv.** Local government and Māori representation
  - **v.** Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

3. Thank you for this opportunity to provide information to assist with compiling the List of Issues Prior to Reporting on New Zealand.

A. Information about Peace Movement Aotearoa

4. Peace Movement Aotearoa is the national networking peace organisation, established in 1981 and registered as an Incorporated Society in 1982. Our purpose is networking and providing information and resources on peace, disarmament, justice and human rights issues. We have extensive national networks which include more than one hundred and fifty contacts for national and local peace, disarmament, human rights, social justice, faith-based and community organisations.

5. Promoting the realisation of human rights is an essential aspect of our work because of the crucial role this has in sustaining peaceful and just societies. We regularly provide information to United Nations human rights treaty monitoring bodies, including this Committee, and to Special Procedures and mechanisms of the Human Rights Council[1], on a range of peace, human rights, disarmament and justice issues here in Aotearoa New Zealand.

B. Overview of our concerns

6. Since the Committee's consideration of the state party's performance in 2016, and evaluation of its follow-up report to the 2016 Concluding Observations[2] in 2021[3], there has been little progress on many of the issues raised - for example: New Zealand's reservations to the Covenant remain; the New Zealand Bill of Rights Act 1990 has not been amended to include all of the rights enshrined in the Covenant (and still does not include any of the core rights enshrined in the International Covenant on Economic, Social and Cultural Rights); there is still no National Plan of Action for Human Rights, and so on.

7. There were some steps forward with regard to the collective and individual rights of Māori, such as the establishment of a Māori Health Authority (Te Aka Whai Ora) to achieve equity in healthcare for Māori, an increase in the number of Māori wards in local authorities following the removal of existing discriminatory provisions by way of the Local Electoral (Māori wards and Māori constituencies) Amendment Act 2021[4], and the establishment of a Working Group to develop a National Action Plan for New Zealand to implement the UN Declaration on the Rights of Indigenous Peoples (although that work was subsequently put on hold[5]).

8. However, such progress as had made been made came to an abrupt halt following the general election in October 2023 with the establishment of a coalition government comprising the National party (38% of the overall vote), ACT New Zealand (8.6%) and New Zealand First (6%) in late November 2023.

9. The coalition agreements with the minor parties in particular have led to attacks on te Tiriti of Waitangi (Treaty of Waitangi, hereafter referred to as te Tiriti), on the collective and individual rights of Māori, and on democratic and judicial processes that are unprecedented in modern times. While the content of the two coalition agreements[6] gave some indication of what was to come, the severity and speed with which positive initiatives have been dismantled, and democratic and judicial processes have been ignored or undermined is shocking.

10. As one example, both coalition agreements include "Abolish [in one, "Dismantle" in the other] the Māori Health Authority", and on the 10th day after parliament reconvened in 2024[7], the Pae Ora (Disestablishment of Māori Health Authority) Amendment Bill was introduced, had its first, second and third readings and was enacted on 27 February 2024, and received Royal Assent one week later[8] - all done with no consultation with Māori whatsoever, and no opportunity for public scrutiny.

11. The Waitangi Tribunal summarised this in its media release on *Hautupua: Te Aka Whai Ora (Māori Health Authority) Priority Report, Part 1* as follows:

> *"The Tribunal found that the policy process the Crown followed to disestablish Te Aka Whai Ora was a departure from conventional and responsible policymaking in several concerning ways. The Crown did not act in good faith when disestablishing Te Aka Whai Ora as it did not consult or engage with Māori, nor did it gather substantive advice from officials. Consequently, the Crown made the ill-informed decision that Te Aka Whai Ora was not required, despite knowledge of grave Māori health inequities. The Tribunal found that Māori did not agree with the Crown's decisions but were denied the right to self-determine what is best for them and hauora Māori. Instead, the Crown implemented its own agenda – one that was based on political ideology, rather than evidence, and one that fell well short of a Tiriti/Treaty consistent process. It did so without following its own process for the development and implementation of legislative reform."*[9]

12. The issues identified in that statement have been repeated over and over since November 2023 as the current government implements its ideological agenda - a situation made possible by the complete lack of protection for te Tiriti and human rights in New Zealand's constitutional and legal framework as outlined below.

C. The constitutional and legal framework (Article 2)

13. As the Committee will be aware, New Zealand has unusual constitutional arrangements arising from the notion of parliamentary supremacy whereby the government of the day can enact whatever it wishes by a simple majority, regardless of its obligations under te Tiriti, the international human rights instruments which it is a state party to, the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. Te Tiriti is only given legal effect if it is specifically referenced in domestic legislation, and New Zealand is currently intent on attempting to change the actual meaning of Te Tiriti and removing all references to it from law as illustrated in Section D below.

14. While parliamentary processes, such as Select Committee hearings, provide a veneer of democratic involvement in decision making, and judicial review processes may give the impression of judicial oversight, neither can prevent legislation that breaches te Tiriti or New Zealand's human rights obligations being enacted nor can such legislation be overturned. The state party is currently going about removing even that veneer of democratic involvement and judicial oversight by bypassing parliamentary processes and removing access to the courts as outlined in this section and in Section D below.

15. **Fast-track Approvals Bill 2024**: This omnibus legislation[10] put in place a fast-track approvals regime for "projects of national and regional significance" to prioritise "economic progress" and by-pass existing processes in a range of legislation designed to ensure protection of the environment, biodiversity, places of historical significance, Te Tiriti (unless a project will impact already agreed Treaty settlements), human rights, community interests and so on.

16. Applications for fast-tracked projects will be referred to government Ministers who will draw up a priority list of projects to go to a panel of government appointed "experts" for approval. If the Panel is planning to decline an approval, it must supply a draft decision to the applicant before it is issued to enable the applicant to make amendments to the proposal so it can be approved. There will be no public notification of any application and no right to lodge a submission on it; appeals on any decision are limited only to points of law.[11] The Bill did not include any mechanism for accountability for any temporary or irreversible harm caused to the environment or human health and well-being by fast-tracked projects.

17. Aside from the reckless disregard for existing protections in law, there are several key features of this legislation that characterise the current government's approach to democratic involvement and judicial oversight.[12]

18. Firstly, while there was a one-month period for public written submissions which ended in April, followed by a two-month oral submissions process in May and June, it was clear that more weight was given to what those representing corporate interests were saying and that negotiations were already underway behind the scene to decide which projects would be prioritised. Although from the outset it was stated that the list of projects for fast-tracking would be included in a schedule to the Bill, no list was released during the public submissions process - indeed, the first list was not released until 6 October[13], a longer list was released on 11 October[14], and the Select Committee report was released a week later[15]. There was no opportunity for hapū or iwi Māori opposed to the Bill to provide input on the proposed projects to be included in the legislation, nor for any public submissions.

19. Secondly, the Bill highlights the unfortunate habit of the state party to legislate to remove effective judicial oversight and recourse to the courts (as mentioned above) by shifting these to a government appointed panel, and also to override existing court decisions.

20. One example of this is one of the highest priority projects: a seabed mining proposal by Trans-Tasman Resources Limited (TTR), an Australian-owned mining company which seeks to extract up to 50 million tonnes of seabed material every year for 30 years off the coast of Taranaki[16]. This project has been opposed for many years by Taranaki hapū and iwi Māori[17], the regional local authority[18], the local community[19], and more recently by an offshore wind energy company in the area[20].

21. TTR initially received approval for this project from the Environmental Protection Agency in 2107, but this was successfully challenged in the High Court, Court of Appeal, and finally the Supreme Court in 2021 where it failed to overturn the decisions of the two lower courts[21]. Now in a travesty of justice overriding these court rulings, TTR's seabed mining is very likely to proceed under the new fast-track regime.

22. The Fast-track Approvals Bill is not the only legislation to remove decisions from the courts and place those decisions in the hands of a government-appointed panel. A proposal for a **Regulatory Standards Bill** - *"to improve the quality of regulation in New Zealand so*

regulatory decisions are based on principles of good law-making and economic efficiency" - is currently being considered.

23. Among other alarming changes, the discussion document proposes *"establishment of a Regulatory Standards Board rather than giving a role to the courts in finding legislation inconsistent"* with *"principles"* to be decided by the newly-established Minister for Regulation, David Seymour, leader of the minority ACT party[22] (also instigator of the Principles of the Treaty of Waitangi Bill, see Section D below) - bypassing established judicial processes *"to offer a relatively low-cost, agile way to consider and respond to complaints quickly"*.[23]

24. Given the origins of this proposal, unsurprisingly the *"proposals do not include a principle related to the Treaty / te Tiriti and its role as part of good law-making, meaning that the Bill is effectively silent about how the Crown will meet its duties under the Treaty / te Tiriti in this space"* [24]. As a side note, given the Minister's proposals to write his own principles for te Tiriti (see section below), Ministry officials helpfully provided a list of the existing Treaty principles in law and three more they feel should be included in any Regulatory Standards Bill in their Preliminary Treaty Impact Analysis[25].

25. Thirdly, another feature of the political agenda currently being pushed through by the state party regardless of te Tiriti and human rights obligations, official advice (which has opposed most, if not all, of the legislative and policy proposals since November 2023), existing legislation and court decisions, is an unfortunate approach towards conflicts of interest.

26. In relation to the Fast-track Approvals Bill, at least $500,000 in political donations has been identified as being given to the three parties forming the current coalition government by the corporate entities involved in 12 fast-track projects[26]; and it took some time for Ministers to remove themselves from the decision-making process on projects, and then only for specific projects with which they had a personal conflict of interest, which has raised questions about how rigorous the conflicts of interest process has been[27].

27. The Clerk of the House was so concerned about the listing of projects under the Fast-Track Bill appearing to benefit specific people that they advised parliament that the Bill be re-classified from a government Bill to private legislation; advice supported by the Assistant-Speaker of the House, which was subsequently overruled by the Speaker[28].

28. Another example of personal interests over-riding democratic processes - and public health and safety - has been around the **firearms reform programme** underway as a consequence of the coalition agreement between National and ACT. This is being pushed through by the Associate Minister of Justice (Firearms) Nicole McKee, former gun lobbyist and spokesperson for the Council of Licenced Firearms Owners, who she told parliament she *"has sworn to represent"* in her maiden speech in 2020.

29. The Arms (Shooting Clubs, Shooting Ranges, and Other Matters) Amendment Bill[29] was introduced to parliament in September 2024 following a *"targeted consultation"* in June 2024 (mainly with firearms owners or those associated with the firearms community

who comprised 91% of submissions received[30]) as part of a six-phase proposal to weaken and in some cases reverse the positive long-overdue changes to the Arms Act 1983 made following the mass murders of worshippers at Friday prayer in two mosques in Christchurch in March 2019.

30. A particular concern around these reforms is that lobbying in 2017 by the now Associate Minister pushing through this agenda[31], resulted in the majority of recommendations in a Law and Order Select Committee report on issues around the illegal possession of firearms being rejected by the government of the day[32] - including the recommendation to restrict high-capacity magazines, the very loophole the Christchurch mass murderer exploited in such a tragically deadly way.

31. We further note that even as the Ministry of Justice was running its *"targeted consultation"* in June on the proposals now in this Bill, Associate Minister McKee made changes to the regulations around gun clubs and shooting ranges by way of Order in Council[33] - bypassing the usual parliamentary processes entirely.

32. Another concern, which has also become rather a feature of legislation introduced since November 2023, was the lack of any factual evidence whatsoever for the Arms (Shooting Clubs, Shooting Ranges, and Other Matters) Amendment Bill: rather, the only reason given for the proposed changes was that Associate Minister McKee had heard *"that the ongoing requirements are raising concerns amongst the volunteers running non-pistol clubs across the country"*[34] - unsubstantiated rumour, which is clearly absurd as a basis for any legislative change.

D. Indigenous Peoples' Rights (Articles 1, 26 and 27)

33. While the above gives some indication of the unfortunate path the state party is now going down with regard to civil and political rights, by far the most harmful impact of the coalition government's policy and practice has been on the collective and individual rights of Māori.

34. Within days of assuming office, an edict was issued to public servants to minimise the use of te reo Māori (Māori language) in the public service[35]; as mentioned above, on the 10th day after parliament reconvened in 2024, the Māori Health Authority (Te Aka Whai Ora) was disestablished by legislation enacted in only one day[36]; and a raft of other rights-denying policy and legislative changes was announced.

i. Principles of the Treaty of Waitangi Bill

35. In November 2024, the Principles of the Treaty of Waitangi Bill 2024[37] - which essentially seeks to rewrite te Tiriti and extinguish Māori collective rights, except in limited cases where they have already been recognised in domestic law - was introduced. The Bill seeks to define "the principles of the Treaty of Waitangi" in legislation, but the principles described have no resemblance to the Treaty or te Tiriti and are a fictional construct based

on what its instigator - ACT leader David Seymour - has decided the Treaty *"**should mean**"*[38] [our emphasis].

36. The absurdity of this Bill has been particularly evident in statements from David Seymour such as *"I believe all New Zealanders deserve tino rangatiratanga - the right to self-determination"*[39] and *"All New Zealanders have tino rangatiratanga, the right to self-determine, not only Māori."*[40].

37. This is nonsensical because tino rangatiratanga is clearly about Māori sovereignty, autonomy and power, which is somewhat analogous to the right of self-determination - a collective right that also applies to peoples, not to individuals, as elaborated in the shared Article 1 of the two international human rights covenants. The continuance of tino rangatiratanga was guaranteed in Article 2 of Te Tiriti, and even the English version of the Treaty generally used by the Crown:

> *"guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession"*[41]**.**

38. The Bill was part of the coalition agreement between National and ACT, and after its first reading in November 2024 was referred to the Justice Select Committee for a six-month period of consideration: this includes a seven-week period for written submissions, and a month of oral submissions.

39. The way the National-led government has handled this goes well beyond what was actually agreed in the coalition agreement, which states only that the Bill would be introduced and supported to a Select Committee[42] - not that this immensely misleading discussion would be allowed to drag on for months. There is no justification for the lengthy period allocated for public submissions and Committee consideration, especially when other legislation actively harmful to Māori rights and interests, such as the Māori Wards Bill (see below), was allocated only four working days for written submissions.

40. It has been introduced with no consultation whatsoever with hapū or iwi; and the mere fact of its introduction to parliament gives a false veneer of legitimacy to an obvious attempt to extinguish Te Tiriti and the collective rights of Māori, and to put long outdated offensive political ideology around cultural assimilation into legislation.

41. While National has said it will not support the Bill at second reading, it has already caused harmful division: well before the Bill was introduced to parliament it triggered a flood of misinformation and racist abuse against Māori in mainstream and social media which will no doubt heighten during the Committee's public hearings, which begin on the Monday after the annual celebrations at Rātana Pā (generally considered to mark the start of the political year in Aotearoa New Zealand) and continue over and beyond Waitangi Day (the anniversary of the signing of te Tiriti at Waitangi in 1840), already a time anti-Māori utterances by politicians and racist rhetoric on social media markedly increases.

42. The Waitangi Tribunal is so concerned about this Bill it has issued two reports on it, and stated:

> *"If this Bill were to be enacted, it would be the worst, most comprehensive breach of the Treaty/te Tiriti in modern times. The Crown would be turning the clock back to 1877 and the decision in Wi Parata that the Treaty/te Tiriti is a 'simple nullity'*."
>
> And [even] "*if this Bill is not enacted, it would still be an appalling breach of Treaty principles for the Crown to have developed these principles unilaterally and introduced them to Parliament, telling New Zealanders that these principles represent the meaning of the Treaty / te Tiriti"*. [43]

ii. Removal of references to the Treaty of Waitangi in legislation

43. At the same time as this has been going on, a review of Treaty of Waitangi clauses in 28 pieces of legislation has also been underway[44] as a consequence of the coalition agreement between National and New Zealand First[45] - if successful, this review is likely to remove all references to te Tiriti in domestic legislation (except where it specifically relates to an existing Treaty settlement) which will essentially extinguish Māori collective rights, and ensure their individual rights are not given the additional protection desperately needed in New Zealand law.

44. The Waitangi Tribunal considered this policy alongside the Principles of the Treaty of Waitangi Bill, and stated in the media release on its August 2024 Report:

> "*With respect to the Treaty Clause Review policy, the Tribunal found that the Crown breached the Treaty principles of partnership, active protection, equity, redress, good government, and the article 2 guarantee of rangatiratanga. It found that the policy was predetermined and would result in amendments to or repeals of Treaty clauses. This would reduce Treaty/te Tiriti protections for Māori, affecting the rights of Māori to access justice to have their Treaty/te Tiriti rights realised. The Crown further failed to engage with Māori on this policy*.
>
> *The Tribunal concluded that the two policies, considered jointly, were consistent with an alarming pattern of the Crown using the policy process and parliamentary sovereignty against Māori instead of meeting the Crown's Treaty / te Tiriti obligations. The combined impacts of the policies are or will be highly prejudicial to Māori."*[46]

iii. Marine and Coastal Area (Takutai Moana) Act 2011

45. We noted that the Committee expressed regret again that the state party has no plans to review and revise the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) in the evaluation of the information on follow-up to the Concluding Observations on New Zealand[47].

46. Regrettably, the state party is now revising the Act but in a negative direction - in keeping with its practice of legislating over decisions of the Courts, this time in response to a 2023 Court of Appeal ruling[48] - by way of the **Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill**[49], which will further restrict Māori rights and interests in foreshore and seabed areas.

47. The Bill is a consequence of the coalition agreement between National and New Zealand First and was introduced to parliament, had its first reading and was referred to the Justice Select Committee on 24 September 2024. Submissions opened on 26 September with only a two-and-a-half-week period for written submissions (such a contrast to the two months allocated for the written submissions on the Principles of the Treaty of Waitangi Bill). The Select Committee was required to report back to parliament on 5 December which it did - recommending the Bill be enacted[50].

48. As with the Foreshore and Seabed Act 2024 (FSA) and MACA, there was no negotiation or even proper consultation about this Bill with whānau, hapū and iwi who were presented with what Cabinet had already decided on 25 July 2024 and given three weeks *"to provide feedback"*[51]. Even though the proposals were unanimously rejected[52], the state party nevertheless proceeded with what it had already decided to do.

49. As with the introduction of the legislation that became the FSA, the Bill overrides Court processes that are currently underway simply because the government of the day dislikes the direction the Courts may (or may not be, that remains to be seen) be going in - a gross injustice and egregious abuse of power.

50. This has been cloaked in assorted statements along the lines of the Bill being needed to ensure the customary marine title test in MACA *"is interpreted consistently with Parliament's original intent"*[53], but MACA was introduced in 2010 precisely to *"provide a framework for recognising interests and rights in the marine and coastal area that is fairer and more durable than its predecessor"*[54].

51. It was clearly Parliament's intent to reinstate access to the Courts (and an alternative path of direct negotiation with the Crown) for whānau, hapū and iwi to establish 'customary marine title' and 'protected customary rights' - and that is precisely the process that has been underway since 2011. It was never stated that Parliament's intent was for a subsequent government to override legal processes simply because it decided it does not like where the Courts may be heading.

52. The Waitangi Tribunal's media release on the *Takutai Moana Act 2011 Urgent Inquiry Stage 1 Report* in September 2024 stated:

> *"In its report, the Tribunal finds that the Crown departed from orthodox and responsible policymaking in several concerning ways. It observes that the advice of officials was regularly dismissed and the process was rushed, leading to important steps not being taken. Key among these omissions was a failure to follow a transparent and evidence-based approach. The Tribunal says the approach to policy development was instead*

characterised by ideology and blind adherence to pre-existing political commitments at the expense of whānau, hapū, and iwi. Due to this, the Tribunal finds that the Crown has failed to meet the high standard it should set for itself with its Treaty partner.

Overall, the Tribunal finds that the Crown has breached the Treaty in a number of ways:

- *A dismissal of official advice, and important steps not taken in the policy development process, resulted in the Crown breaching the principle of good government.*
- *The Crown failed to consult with Māori during the development of the proposed amendments, despite repeated advice from officials; it offered to consult with Māori only after decisions were made; and it reduced that limited offer of consultation even further to suit its own deadline to amend the Act before the end of 2024. This is a breach of the principle of partnership.*
- *The Crown has breached the principle of tino rangatiratanga by exercising kāwanatanga over Māori rights and interests in te takutai moana without providing any evidence for one of its key justifications – namely, that the public's rights and interests require further protection beyond what is already provided by the Act. The Crown also failed to inform itself of Māori interests.*
- *The Crown's consultation with commercial fishing interests (which already have statutory protection) prior to finalising the proposed amendments, while failing to consult with Māori, is a further breach of the principle of good government.*
- *The Crown has breached the principle of active protection and the principle of good government by failing to demonstrate how it arrived at its understanding of 'Parliament's original intent' and by seeking to amend the Takutai Moana Act before the Supreme Court can hear the matter.*
- *The Crown has breached the principles of active protection and good government by proposing amendments that are applied retrospectively (from 25 July 2024 onwards). As a result, applicants will be forced to have their cases reheard, burdening them emotionally and financially through no fault of their own, and placing further strain on whanaungatanga. Retrospectivity also means that some applicants who would have been granted customary marine title under the old test might find themselves unable to meet the standards of a new test."*[55]

53. As with all of the (now multiple) Urgent Inquiries the Waitangi Tribunal conducted during 2024, the Tribunal recommended this Bill must not proceed.

iv. Local government and Māori representation

54. As mentioned in Section B above, the Local Electoral (Māori wards and Māori constituencies) Amendment Act 2021[56] removed existing discriminatory provisions around Māori wards and resulted in an increased number of local authorities establishing Māori wards to increase Māori involvement in local government.

55. However, as a consequence of the coalition agreement between National and New Zealand First, the omnibus **Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill 2024**[57] was introduced in May 2024, had its

first reading and was referred to the Justice Select Committee with only four working days allocated for written submissions (again, in contrast to the two months allocated for the written submissions on the Principles of the Treaty of Waitangi Bill). It was enacted on 30 July 2024 as the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024[58].

56. The Bill reinstated the racially discriminatory provisions around Māori wards that had been removed from law in 2021, that is, that a public poll of voters was compulsory before a Māori (but not any other) ward could be established. Under the new Act, any local authority that established a Māori ward following the 2021 changes without holding a public poll, is now required to hold one at the 2025 local elections. The advice from the Department of Internal Affairs explanation of the Act says:

> *"If the local authority does not want to hold a poll at the 2025 local elections they will have the option to reverse their decisions on Māori wards. This would involve rescinding the decision if it has not yet been implemented, or disestablishing Māori wards if they are already in place."*[59]

57. The Waitangi Tribunal's media release on the *Māori Wards and Constituencies Urgent Inquiry Report* stated:

> *"In its report, the Tribunal finds that the Crown has breached the Treaty principle of partnership by prioritising coalition agreement commitments and completely failing to consult with its Treaty partner or any other stakeholders. The Crown has failed to adequately inform itself of its Treaty obligations and has failed to conduct adequate Treaty analysis during the policy development process, in breach of its duties to act reasonably and in good faith. It has inadequately defined the policy problem as restoring the right of the public to make decisions about Māori wards and constituencies, when no other type of ward or constituency requires a poll, in breach of the principle of equity.*
>
> *In addition, the Tribunal finds that the Crown has failed to actively protect Māori rights and interests by ignoring the desires and actions of Māori for dedicated local representation, and it finds breaches of the principles of mutual benefit and options. Combined, these Treaty breaches operate to cause significant prejudice to Māori."*[60]

v. Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

58. The Oranga Tamariki (Repeal of Section 7AA) Amendment Bill[61] was introduced in May 2024 and referred to the Social Services Select Committee, which reported back to parliament in November[62].

59. The Bill was a consequence of the coalition agreement between National and ACT, with the purpose of repealing Section 7AA of the Oranga Tamariki Act 1989: Section 7AA provides specific duties to the chief executive of Oranga Tamariki in relation to Treaty of Waitangi (Tiriti o Waitangi).

60. The reason given for the introduction of the Bill was undocumented *"concerned voices"* and *"anecdotal concerns"*[63], which places it in the realm of fulfilling a political agenda rather than there being any evidence-based need for Section 7AA to be repealed. Instead, all of the evidence over many years has pointed to the tragic failure of the state to protect the well-being of the disproportionate number of Māori children taken into its care[64], which is what led to the key policy objective of Section 7AA: to reduce that number, and to improve outcomes for tamariki Māori already there.

61. As Orangi Tamariki (Ministry for Children) pointed out in its Regulatory Impact Statement (RIS), the evidence indicates that: *"Changes introduced in Oranga Tamariki that resulted from the introduction of 7AA have been effective at reducing some of the disparities and inequities experienced by tamariki, rangatahi, and whanau Māori"*[65].

62. While the Explanatory note in the Bill says that the RIS was *"to help inform the main policy decisions taken by the Government relating to the contents of this Bill"*, Oranga Tamariki's recommendation - *"it is more likely that non-regulatory changes, such as further strengthening of practice guidelines, would better address the problem"* - was outside the scope of what the ACT Minister permitted them to consider.

63. There was no consultation with hapū or iwi, with tamariki Māori already in state care, with the survivors of abuse in state care, or with the general public before the Bill was introduced.

64. This Bill is in direct opposition to the advice of Oranga Tamariki itself, and also the Waitangi Tribunal, the Children's Commissioner, and other expert bodies including the Committee on the Rights of the Child (CRC), whose 2023 Concluding Observations pointed out that they remain *"seriously concerned"* about: *"The persistent overrepresentation of Māori children in State care, including among the high number of infants taken into State custody, and the incidents of harm disproportionately experienced by such children"*.[66]

65. The CRC recommended the state party:

> *"strongly invest in measures developed and implemented* ***by Māori children and communities*** *to prevent their placement in out-of-home care, limit removal, when it is deemed necessary, to the shortest time possible, provide them with adequate support while in alternative care, including access to mental health and therapeutic services, and facilitate reintegration into their families and communities"*.[67] [our emphasis]

66. From the examples provided in the section above, clearly the state party has no intention of following any of these recommendations in relation to Māori children; nor the multiple recommendations from this Committee, the Committee on Economic, Social and Cultural Rights, and Committee on the Elimination of Racial Discrimination regarding the collective and individual rights of Māori overall.

67. **Thank for** your attention to this information, and we are happy to provide further material on any of the above points to assist with your compilation of New Zealand's LOIPR if that would be helpful.

References

[1] For example, to the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People in 2005; to the Committee on the Elimination of Racial Discrimination in 2007, 2013 and 2017; to the Human Rights Committee in 2009, 2010, 2014 and 2016; to the Committee on the Rights of the Child in 2010, 2011, 2016, 2020, 2022 and 2023; to the Committee on Economic, Social and Cultural Rights in 2011, 2012, 2016 and 2018; to the Committee Against Torture in 2015; to the Human Rights Committee for the General Discussion on Article 6 of the International Covenant on Civil and Political Rights in 2015 and 2017; to the Committee on the Rights of the Child on the Draft General Comment on Article 4 of the Convention (Public Spending) in 2015, and on draft General Comment No. 26 on Children's Rights and the Environment, with a Special Focus on Climate Change in 2023; and jointly with the Aotearoa Indigenous Rights Trust and others, to the Human Rights Council for the Universal Periodic Review of New Zealand in 2008, 2009, 2014 and 2024

[2] Concluding Observations on the Sixth Periodic Report of New Zealand (CCPR/C/NZL/CO/6), Human Rights Committee, 28 April 2016

[3] Report on follow-up to the Concluding Observations of the Human Rights Committee: Evaluation of the information on follow-up to the Concluding Observations on New Zealand, Special Rapporteur for Follow-up to Concluding Observations, 6 August 2021

[4] Local Electoral (Māori wards and Māori constituencies) Amendment Act 2021, https://www.legislation.govt.nz/act/public/2021/0003/latest/whole.html

[5] See, for example, 'Putting rights on hold', Claire Charters, 30 April 2023, https://e-tangata.co.nz/comment-and-analysis/putting-rights-on-hold/

[6] Coalition Agreement New Zealand National Party & ACT New Zealand, 24 November 2024, https://assets.nationbuilder.com/nationalparty/pages/18466/attachments/original/1700778592/National_ACT_Agreement.pdf and Coalition Agreement New Zealand National Party & New Zealand First, 24 November 2024, https://assets.nationbuilder.com/nationalparty/pages/18466/attachments/original/1700778597/NZFirst_Agreement_2.pdf

[7] House of Representatives sitting programme for 2024, https://www.parliament.nz/en/get-involved/features/sitting-programme-confirmed-for-2024/

[8] Pae Ora (Disestablishment of Māori Health Authority) Amendment Bill, https://bills.parliament.nz/v/6/79c10303-5472-4eb3-9496-08dc3736cfbc?Tab=history

[9] 'Tribunal releases report on disestablishment of Te Aka Whai Ora', Waitangi Tribunal, 29 November 2024, https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-disestablishment-of-te-aka-whai-ora

[10] Fast-track Approvals Bill, https://www.legislation.govt.nz/bill/government/2024/0031/latest/whole.html - please note: the Bill

was enacted on 17 December 2024, but changes have not yet been made to the range of legislation it will impact (fifteen different Acts) due to the summer break

[11] Points from, for example, Russell McVeagh summary, 18 December 2024, https://www.russellmcveagh.com/insights-news/fast-track-approvals-act-2024/ and 'Fast and Furious - The Fast Track Approvals Act is here', Dentons Kensington Swan, 19 December 2024, https://www.dentons.co.nz/en/insights/articles/2024/december/19/fast-and-furious-the-fast-track-approvals-act-is-here

[12] An overview of the issues around the Fast-Track Approvals Bill is available in 'How the Fast-track Approvals Bill became law', RNZ, 18 December 2024, https://www.rnz.co.nz/news/in-depth/536978/how-the-fast-track-approvals-bill-became-law

[13] See, for example, the Ministry for the Environment's announcement, https://environment.govt.nz/news/government-announces-listed-projects/

[14] 'Government releases more Fast-track detail', 11 October 2024, https://www.beehive.govt.nz/release/government-releases-more-fast-track-detail

[15] Final Report (Fast-track Approvals Bill), Environment Select Committee , https://selectcommittees.parliament.nz/v/SelectCommitteeReport/71eb1c85-d5ea-4006-4936-08dceefd594f

[16] Fast Track Advisory Group Report to Ministers, 2 August 2024, https://environment.govt.nz/assets/acts-and-regulations/fast-track-projects-advisory-group-report-to-ministers-redacted.pdf

[17] See, for example, 'Iwi 'sounds alarm bells' as seabed mining company withdraws consent application, Te Ao Māori News, 29 March 2024, https://www.teaonews.co.nz/2024/03/29/iwi-sounds-alarm-bells-as-seabed-mining-company-withdraws-consent-application/ and 'Ngāti Ruanui warns of environmental risks in seabed mining, seeks bill delay', Stratford Press, 14 October 2024, https://www.nzherald.co.nz/stratford-press/news/ngati-ruanui-warns-of-environmental-risks-in-seabed-mining-seeks-bill-delay/2R3LRAM37JHZPLHSQZDSUQYLUA/

[18] See, for example, 'Seabed mining left out of regional plan for Taranaki', RNZ, 4 December 2024, https://www.rnz.co.nz/news/thedetail/535581/seabed-mining-left-out-of-regional-plan-for-taranaki

[19] See, for example, 'Trans-Tasman Resources: Taranaki seabed mining included in fast-track projects list', 7 October 2024, https://www.rnz.co.nz/news/national/530067/trans-tasman-resources-taranaki-seabed-mining-included-in-fast-track-projects-list

[20] Offshore wind company doubles-down on opposition to seabed mining, RNZ, 8 October 2024, https://www.rnz.co.nz/news/national/530149/offshore-wind-company-doubles-down-on-opposition-to-seabed-mining

[21] See, for example, 'Taranaki ironsands mining appeal fails at Supreme Court', RNZ, 30 September 2021, https://www.rnz.co.nz/news/national/452642/taranaki-ironsands-mining-appeal-fails-at-supreme-court

[22] Have your say on the proposed Regulatory Standards Bill, Ministry of Regulation, November 2024, https://consultation.regulation.govt.nz/rsb/have-your-say-on-regulatory-standards-bill/

[23] As at note above

[24] Preliminary Treaty Impact Analysis for the proposed Regulatory Standards Bill, Ministry for Regulation, https://www.regulation.govt.nz/assets/Publication-Documents/Preliminary-Treaty-Impact-Analysis-for-the-proposed-Regulatory-Standards-Bill.pdf

[25] As at note above, p 3

[26] See, for example, '$500,000 in political donations associated with fast track projects', RNZ, 10 October 2024, https://www.rnz.co.nz/news/in-depth/530312/500-000-in-political-donations-associated-with-fast-track-projects - it should be noted that this is a substantial amount in terms of political donations in Aotearoa New Zealand

[27] See, for example, 'Revealed: All the 300 Fast-Track projects and ministers' conflicts of interest', RNZ, 11 October 2024, https://www.rnz.co.nz/news/political/530476/revealed-all-the-300-fast-track-projects-and-ministers-conflicts-of-interest

[28] See, for example, 'Fast-Track projects: Speaker rules no private benefit in list', RNZ, 11 December 2024, https://www.rnz.co.nz/news/political/536285/fast-track-projects-speaker-rules-no-private-benefit-in-list

[29] Arms (Shooting Clubs, Shooting Ranges, and Other Matters) Amendment Bill, https://www.legislation.govt.nz/bill/government/2024/0085/14.0/LMS993712.html Further information about this Bill is available at https://bills.parliament.nz/v/Bill/dbe6cb17-6bbe-4eac-0ede-08dcdb5e62cc and in our submission, http://www.converge.org.nz/pma/Submission%20Arms%20Amendment%20Bill,%20Peace%20Movement%20Aotearoa,%2029%20October%202024.pdf

[30] Regulatory Impact Statement: Supporting shooting clubs and ranges, Ministry of Justice, 24 July 2024, https://www.regulation.govt.nz/assets/RIS-Documents/Regulatory-Impact-Statement-Supporting-shooting-clubs-and-ranges.pdf

[31] 'Checking the record on Firearms Minister's Q+A interview', 1News, 6 October 2024, https://www.1news.co.nz/2024/10/06/checking-the-record-on-firearms-ministers-qa-interview/

[32] 'Government response to firearms select committee report', Paula Bennett, 14 June 2017, https://www.beehive.govt.nz/release/government-response-firearms-select-committee-report

[33] Arms (Shooting Clubs-Content of Annual Reports) Amendment Regulations 2024, 24 June 2024, https://www.legislation.govt.nz/regulation/public/2024/0127/latest/whole.html

[34] Discussion Document: A new approach to regulating shooting clubs and ranges, Ministry of Justice, 2024, p 12

[35] Now the subject of a Waitangi Tribunal Urgent Inquiry - Te Reo i te kāwanatanga - Te Reo in the Public Sector Urgent Inquiry, https://waitangitribunal.govt.nz/en/inquiries/urgent-inquiries/te-reo-i-te-kawanatanga-ruku-tatari-ohotata-te-reo-in-the-public-sector-urgent-inquiry

[36] See, for example, *"The Tribunal found that the policy process the Crown followed to disestablish Te Aka Whai Ora was a departure from conventional and responsible policymaking in several concerning ways. The Crown did not act in good faith when disestablishing Te Aka Whai Ora as it did not consult or engage with Māori, nor did it gather substantive advice from officials.*

Consequently, the Crown made the ill-informed decision that Te Aka Whai Ora was not required, despite knowledge of grave Māori health inequities. The Tribunal found that Māori did not agree with the Crown's decisions but were denied the right to self-determine what is best for them and hauora Māori. Instead, the Crown implemented its own agenda – one that was based on political ideology, rather than evidence, and one that fell well short of a Tiriti/Treaty consistent process. It did so without following its own process for the development and implementation of legislative reform" - Hautupua: Te Aka Whai Ora (Māori Health Authority) Priority Report, Part 1, Waitangi Tribunal, 29 November 2024, https://waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-disestablishment-of-te-aka-whai-ora

[37] Principles of the Treaty of Waitangi Bill 2024, https://www.legislation.govt.nz/bill/government/2024/0094/latest/whole.html#LMS1003450

[38] As stated several times by Mr Seymour during this interview on Q+A, TVNZ, 24 November 2024, https://www.youtube.com/watch?v=m12UItFaDXQ

[39] 'Treaty Principles Bill passes first reading', David Seymour, 14 November 2024, https://www.beehive.govt.nz/release/treaty-principles-bill-passes-first-reading

[40] 'Treaty Principles Bill: We all have tino rangatiratanga, the right to self-determine, not only Māori – David Seymour', NZ Herald, 18 November 2024, https://www.nzherald.co.nz/kahu/treaty-principles-bill-we-all-have-tino-rangatiratanga-the-right-to-self-determine-not-only-maori-david-seymour/SKSNCSI7HZDNRIPPPPKI5AFNIA

[41] See, for example, https://waitangitribunal.govt.nz/en/about/the-treaty/maori-and-english-versions

[42] Coalition Agreement between the National Party and the ACT Party, 24 November 2024, p 9, https://assets.nationbuilder.com/nationalparty/pages/18466/attachments/original/1700778592/National_ACT_Agreement.pdf

[43] The Waitangi Tribunal has issued two reports on this Bill: *Ngā Mātāpono - The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia - The Constitutional Kaupapa Inquiry Panel on The Crown's Treaty Principles Bill and Treaty Clause Review Policies*, August 2024 - Media release (with link to report), https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-treaty-principles-bill and *Additional chapter: Ngā Mātāpono - The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia - The Constitutional Kaupapa Inquiry Panel on The Crown's Treaty Principles Bill and Treaty Clause Review Policies*, November 2024 - Media release (with link to report), https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-chapter-6 - the quotes above are from the second report.

[44] See, for example, 'Govt to change or remove Treaty of Waitangi provisions in 28 laws', Newsroom, 14 October 2024, https://newsroom.co.nz/2024/10/14/govt-to-change-or-remove-treaty-of-waitangi-provisions-in-28-laws

[45] Coalition Agreement New Zealand National Party & New Zealand First, 24 November 2024, https://assets.nationbuilder.com/nationalparty/pages/18466/attachments/original/1700778597/NZFirst_Agreement_2.pdf

[46] 'Tribunal releases report on Treaty Principles Bill', Waitangi Tribunal, 16 August 2024, https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-treaty-principles-bill

[47] Report on follow-up to the Concluding Observations of the Human Rights Committee: Evaluation of the information on follow-up to the Concluding Observations on New Zealand, Special Rapporteur for Follow-up to Concluding Observations, 6 August 2021

[48] Preamble of the Bill: *"In 2023, in Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board [2023] NZCA 504, [2023] 3 NZLR 252, the Court of Appeal interpreted provisions of the Marine and Coastal Area (Takutai Moana) Act 2011 about the requirements for recognition of customary marine title. The Court's interpretation of those provisions changed the effect that Parliament intends them to have, and materially reduced those requirements (for example, that an applicant group must prove exclusive use and occupation of a specified area from the start to the end of the applicable period without substantial interruption). Amendments to those provisions are needed to ensure that they have the effect that Parliament intends."*

[49] Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill, https://www.legislation.govt.nz/bill/government/2024/0083/latest/LMS993613.html

[50] Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill, Government Bill: As reported from the Justice Committee, https://www.legislation.govt.nz/bill/government/2024/0083/latest/d53584938e2.html

[51] Takutai Moana Pānui: Proposed amendments to the Takutai Moana Act - Effective from today, Te Arawhiti, 25 July 2024

[52] Regulatory Impact Statement: Clarifying Section 58 of the Marine and Coastal Area Takutai Moana Act 2011, Te Arawhiti, 19 September 2024 (released 3 October 2024), Appendix 1

[53] See, for example, Departmental Disclosure Statement: Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill, Te Arawhiti, 19 September 2024

[54] 'Marine and Coastal Area Bill introduced', Attorney-General, 6 September 2010

[55] 'Tribunal releases report on the Takutai Moana Act 2011', Waitangi Tribunal, 25 September 2024, https://www.waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-the-takutai-moana-act-2011

[56] Local Electoral (Māori wards and Māori constituencies) Amendment Act 2021, https://www.legislation.govt.nz/act/public/2021/0003/latest/whole.html

[57] Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill 2024, https://www.legislation.govt.nz/bill/government/2024/0046/11.0/d5650788e2.html

[58] Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024, https://www.legislation.govt.nz/act/public/2024/0028/latest/LMS962306.htmlhttps://www.legislation.govt.nz/act/public/2024/0028/latest/LMS962306.html

[59] 'Reinstating the ability for polls on Māori wards', Department of Internal Affairs, 31 July 2024, https://www.dia.govt.nz/maori-wards

[60] 'Tribunal releases report on Māori wards and constituencies', Waitangi Tribunal, 17 May 2024, https://waitangitribunal.govt.nz/en/news-2/all-articles/news/maori-wards

[61] Oranga Tamariki (Repeal of Section 7AA) Amendment Bill 2024, https://legislation.govt.nz/bill/government/2024/0043/latest/LMS960294.html

[62] Oranga Tamariki (Repeal of Section 7AA) Amendment Bill: Government Bill As reported from the Social Services and Community Committee, https://www.legislation.govt.nz/bill/government/2024/0043/latest/whole.html

[63] Oranga Tamariki (Repeal of Section 7AA) Amendment Bill, Explanatory note: Purpose of the Bill - note: this is no longer available online. These references can still be found in Oranga Tamariki's Regulatory Impact Statement at https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Information-releases/Cabinet-papers/7AA-repeal/Regulatory-Impact-Statement-Repeal-of-section-7AA.pdf

[64] From the 1988 Ministerial Advisory Committee report *Puao-Te-Ata-Tu* to most recently, for example, the Royal Commission of Inquiry into Abuse in Care which refers throughout its site to *"the disproportionate representation of Māori"* https://www.abuseincare.org.nz, the Waitangi Tribunal's 2021 *He Pāharakeke, he Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry Report* (WAI 2915) and the Waitangi Tribunal's *Oranga Tamariki (Section 7AA) Urgent Inquiry Report* (WAI 3350), May 2024, https://waitangitribunal.govt.nz/en/news-2/all-articles/news/tribunal-releases-report-on-oranga-tamariki-section-7aa

[65] *Regulatory Impact Statement: Repeal of Section 7AA*, Orangi Tamariki, March 2024, paras 20 and 21, https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Information-releases/Cabinet-papers/7AA-repeal/Regulatory-Impact-Statement-Repeal-of-section-7AA.pdf

[66] Concluding Observations on the Sixth Periodic Report of New Zealand, Committee on the Rights of the Child (CRC/C/NZL/CO/6), 28 February 2023, para 27

[67] As at note above, para 28