



13/12/2024

Committee Secretariat
Justice Committee
Parliament Buildings
Wellington

Via email: ju@parliament.govt.nz

Tēnā koutou

SUBMISSION ON THE PRINCIPLES OF THE TREATY OF WAITANGI BILL

Introduction

- 1 The Dunedin City Council (DCC) welcomes the opportunity to submit on the Principles of the Treaty of Waitangi Bill (the Bill).
- 2 The DCC acknowledges the purpose of the Bill is to set out the principles of the Treaty of Waitangi in legislation, and require, where relevant, those principles to be used when interpreting legislation, and to define what the principles of the Treaty of Waitangi are in statute.
- 3 The DCC has a number of concerns that it wishes to raise with respect to implications of the Bill.

The Ōtepoti Dunedin Context

- 4 The Local Government Act 2002 (LGA) recognises and respects the Crown's obligations under the Treaty of Waitangi by placing some specific obligations on local authorities. These obligations are intended to facilitate participation by Māori in local authorities' decision-making processes. The LGA provides opportunities for Māori to contribute to local government decision making processes (ss 14(1)(d) and 81) and in certain cases, take into account the relationship of Māori and their culture and traditions (s 77).
- 5 The DCC's partnership with mana whenua has been expressed in a number of ways across a several platforms. These include: a 2003 relationship protocol agreed between Kāi Tahu ki Otago and DCC; a 2006 Memorandum of Understanding agreed between kā rūnaka and DCC; the 2006 establishment of the Māori Participation Working Party.
- 6 Significant developments have occurred in recent years, including:
 - 2021: the establishment of kā rūnaka representative positions on two Council committees



- 2022: the signing of the Manatu Whakaaetaka Relationship Agreement, a refreshed Memorandum of Understanding between the DCC and mana whenua. The intended outcome of this Agreement is to facilitate a relationship of mutual benefit between kā rūnaka and the DCC, in order to produce meaningful outcomes for current and future generations of mana whenua, mātāwaka and all citizens of Ōtepoti Dunedin.
 - 2022: the establishment of Te Pae Māori, a mana-to-mana forum. The intended outcome of Te Pae Māori is to bring all of Council, mana whenua and mātāwaka together to advance shared goals and respect, to acknowledge one another's roles and responsibilities and uphold each other's obligations under the Treaty of Waitangi.
- 7 Te Taki Haruru, DCC's Māori Strategic Framework, was adopted in September 2023.
- 8 The key purpose of Te Taki Haruru is to provide a framework to operationalise the Treaty of Waitangi partnership between mana whenua and Council. It has established te ao Māori principles and values from mana whenua that will guide the DCC contribution to Māori wellbeing across Ōtepoti Dunedin.

Submission

Explanatory Note

- 9 The DCC submits that the Bill does not fulfil its own objectives.
- 10 The DCC submits that the wording of clause 6, Principle 2, of the Bill will impact the first and third objectives at the local government level as it will cause differential treatment of Māori across Aotearoa depending on whether the iwi in the rohe Māori reside in have a Treaty Settlement. This submission is discussed further.
- 11 The DCC submits that the given timeline to complete submissions, over the Christmas break where many departments are closed, does not allow for the second objective to be met as it puts strain on completing submissions for this Bill to go through appropriate checks and Council approval.
- 12 The DCC further submits that not engaging with Māori, one of two parties to te Tiriti/the Treaty, prior to this Bill going to the House further impedes promoting a national conversation and giving legitimacy of what te Tiriti/the Treaty means in Aotearoa New Zealand. The Treaty has significant relevance to the governance and policies not only of central government but also local government. When acting under certain enactments, local authorities, like the DCC, have a statutory duty to take into account the principles of the Treaty – making it imperative to include iwi Māori before bringing the Bill forward. The establishment and implementation of Te Taki Haruru shows the DCC is committed to giving effect to the principles and intent of te Tiriti/the Treaty.
- 13 The DCC questions how the Bill will impact the Council's ability to engage with all Māori in Ōtepoti Dunedin.
- 14 The DCC notes that the Bill does not change the wording of te Tiriti/the Treaty. However, the DCC submits that the Bill heavily transforms the way in which local government can interpret te Tiriti/ the Treaty, heavily limiting current interpretations.

Referendum

- 15 The DCC notes that the final decision for the Bill will depend on the outcome of a national referendum, as stated in clause 2 of the Bill.
- 16 The DCC is concerned with a referendum being the deciding factor for this Bill as it is the majority deciding on the rights Māori, a minority, have. This is reflective of the concerns addressed in the Regulatory Impact Statement.
- 17 The DCC seeks confirmation about how the government plans to execute the referendum if the Bill was to be successful through the House.

Principles

- 18 The DCC submits that the principles, under clause 6 of the Bill, will have a negative impact on iwi Māori and the DCC's ability to fulfil its decision-making role for the benefit of all Māori residing in Ōtepoti Dunedin.
- 19 The DCC submits that Principle 1, for the most part, does not negatively impact the DCC. However, the DCC does submit that subsection (a) cannot be fulfilled due to the wording of Principles 2 and 3.
- 20 The DCC notes its unique situation with respect to Principle 2 as it resides in the takiwā of an iwi with a Treaty Settlement Act (the Ngāi Tahu Settlement Claims Act 1998 (the Act)) with mātāwaka Māori living in Ōtepoti Dunedin whose iwi may not have a Treaty Settlement. Section 6 of the Act affords Kāi Tahu whānui specific protection of their tino rangatiratanga.
- 21 The DCC submits that the current wording of Principle 2 would allow for the tino rangatiratanga of mātāwaka within the DCC boundaries to have less protection than that of mana whenua. The DCC questions how this will impact consultation processes where mana whenua will be consulted, but the voices of mātāwaka from iwi that have not settled may not be? Further clarification is needed on how the tino rangatiratanga of mātāwaka will still be protected in a local government context.
- 22 The DCC submits that Principle 3 incorrectly assumes that everyone in Aotearoa New Zealand is equal to begin with. While the Coalition's agreement aims to uphold equal citizenship, not everyone in Aotearoa New Zealand is equal and has equal opportunities. The DCC further submits that this principle goes against s 19(2) of the New Zealand Bill of Rights Act 1990, by not allowing for "*...assisting or advancing persons or groups of persons disadvantaged because of discrimination...*", the International Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples.
- 23 Lastly, the DCC submits that the following principles that are currently used have not been catered for or included in the current Bill: partnership; active protection; participation; tino rangatiratanga; equity; and mutual benefit. These principles are actively used in allowing Māori to participate in DCC decision-making.

Concluding Remarks

The DCC thanks you for the opportunity to submit on the Principles of the Treaty of Waitangi Bill.

The DCC wishes to speak to this submission at any hearings.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Jules Radich', written in a cursive style.

Jules Radich
MAYOR OF DUNEDIN