

# DRAFT FOR CONSULTATION

## **Treaty of Waitangi (Empowerment of Waitangi Tribunal) Amendment Bill**

Member's Bill

### **Explanatory note**

#### **General policy statement**

The purpose of this Bill is to amend the Treaty of Waitangi Act 1975 to make Waitangi Tribunal recommendations and reports binding on the Crown and to allow the Tribunal to consider all Bills that have been introduced into the House of Representatives. These changes will ensure that all legislation is consistent with Te Tiriti o Waitangi and its principles, and it will protect Māori rights and interests. The Bill also entrenches core provisions relating to:

- the functions of the Tribunal regarding claims (section 5)
- the binding nature of recommendations (*new section 5A*)
- the power of the Tribunal to issue reports on proposed legislation (*new section 8*)
- the requirement for the Government to respond to Tribunal reports on Bills (*new section 8AA*).

The Waitangi Tribunal is the primary avenue for Māori to ensure that Te Tiriti o Waitangi is honoured, and that its breaches are properly addressed. Current legislation allows the Waitangi Tribunal to make non-binding recommendations. By making Waitangi Tribunal recommendations binding, this Bill will restrain the Crown from further breaching the Treaty and causing further harm to Māori.

Currently, the Waitangi Tribunal is unable to conduct inquiries relating to Bills that have been introduced into the House of Representatives, unless the Bill is specifically referred to the Tribunal by resolution of the House. This restriction has meant that two urgent inquiries in 2024 were forced to stop prematurely, preventing the tribunal from determining the potential impact these Bills would have on Te Tiriti o Waitangi and Māori. By allowing the Tribunal to consider all Bills before the House of Repre-

sentatives, the Waitangi Tribunal will be able to properly fulfil its role as the kaitiaki (guardian) of Te Tiriti o Waitangi.

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause.

*Clause 3* provides that the Bill amends the Treaty of Waitangi Act 1975 (the **Act**).

*Clause 4* inserts *new section 2A*, which entrenches certain provisions.

*Clause 5* amends section 5 to allow the bringing of claims relating to proposed legislation.

*Clause 6* inserts *new section 5A*, stating that Waitangi Tribunal recommendations made under section 5 are binding on the Crown.

*Clause 7* amends section 6, removing the restriction on the Waitangi Tribunal regarding Bills and enabling claims to be made regarding Bills and proposed regulations.

*Clause 8* replaces section 8 with *new sections 8 and 8AA*, so that the Waitangi Tribunal may examine and report on the consistency of proposed legislation with the Treaty. Further, the Government is required to respond to Tribunal reports on Bills within a set timeframe.

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**The Parliament of New Zealand enacts as follows:**

### **1 Title**

This Act is the Treaty of Waitangi (Empowerment of Waitangi Tribunal) Amendment Act **2024**.

**2 Commencement**

This Act comes into force on the day after Royal assent.

**3 Principal Act**

This Act amends the Treaty of Waitangi Act 1975.

**4 New section 2A inserted (Restriction on amendment or repeal of this Act)**

After section 2, insert:

**2A Restriction on amendment or repeal of certain provisions of this Act**

- (1) Sections **5A**, **8**, and **8AA** cannot be repealed or amended unless the proposal for the amendment or repeal is passed by a majority of 75% of all the members of the House of Representatives.
- (2) **Subclause (1)** does not apply to the repeal of any of **section 5A**, **8**, or **8AA** by a consolidating Act in which the provision is re-enacted without amendment and this section is re-enacted without amendment so as to apply to the provision as re-enacted.

**5 Section 5 amended (Functions of Tribunal)**

Replace section 5(1)(b) with:

- (b) to examine, report on, and make recommendations on, any proposed legislation in accordance with **section 8**.

**6 New section 5A inserted (Recommendations of Tribunal to bind Crown)**

After section 5, insert:

**5A Recommendations and reports of Tribunal to bind Crown**

Any recommendation made by the Tribunal under section 5 is binding on the Crown.

**7 Section 6 amended (Jurisdiction of Tribunal to consider claims)**

- (1) After section 6(1)(b), insert:
  - (ba) by any Bill before the House of Representatives; or
  - (bb) by any proposed regulations or Orders in Council; or
- (2) In section 6(1), after “other statutory instrument,”, insert “or Bill or proposed regulations or Orders in Council,”.
- (3) Repeal section 6(6).

**8 Section 8 replaced (Jurisdiction of Tribunal to consider proposed legislation)**

Replace section 8 with:

**8 Jurisdiction of Tribunal to consider and report on proposed legislation**

- (1) The Tribunal may examine any Bill before the House of Representatives, proposed regulation, or Order in Council (**proposed legislation**) and report, with or without recommendations, on whether, in its opinion, any of the provisions of the proposed legislation are contrary to the principles of the Treaty.
- (2) Examination under this section may be conducted—
  - (a) of the Tribunal’s own motion; or
  - (b) in respect of a claim made under section 6; or
  - (c) on referral,—
    - (i) in the case of a Bill before the House of Representatives, by resolution of the House:
    - (ii) in the case of any proposed regulations or Order in Council, by any Minister of the Crown.
- (3) The Tribunal’s report must be given,—
  - (a) in the case of a Bill, to—
    - (i) the Minister in charge of the Bill; and
    - (ii) the Speaker of the House.
  - (b) in the case of proposed regulations and Orders in Council, to—
    - (i) the Minister in charge of the department of State that is responsible for the administration of the primary legislation under which the proposed regulations or Orders in Council are to be made; and
    - (ii) the Committee of the House of Representatives responsible for the review of secondary legislation; and
    - (iii) if **subsection (2)(c)(ii)** applies, also to the person or body who made the referral.

**8AA Requirement for Government to respond to report finding Bill contrary to Treaty**

- (1) If the Tribunal issues a report under **section 8** stating that any Bill before the House of Representatives is contrary to the principles of the Treaty, the Minister in charge of the Bill must present to the House of Representatives a report advising of the Government’s response to the Tribunal’s report, no later than—
  - (a) the 16th sitting day of the House of Representatives after the day on which the report under **section 8** is presented; or
  - (b) any earlier or later time—
    - (i) specified by a resolution of the House of Representatives; or
    - (ii) otherwise determined by or on behalf of the House of Representatives, in accordance with its rules and practice.

- (2) If the Tribunal's report contains recommendations, the report advising of the Government's response under **subsection (1)** must identify the steps that the Government will take to comply with those recommendations.