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The Right Honourable Christopher Luxon
Prime Minister

The Honourable Tama Potaka
Minister for Māori Development
Minister for Māori Crown Relations: Te Arawhiti

The Honourable Paul Goldsmith
Minister of Justice
Minister for Treaty of Waitangi Negotiations

The Honourable David Seymour
Associate Minister of Justice

Parliament Buildings
WELLINGTON

Embar...goed

15 August 2024

Tēnā koe e te Pirimia, koutou ko te Minita o
ngā take Māori, ko ngā Minita o te Ture

Tēnei ngā utanga mō runga i te waka o te kāwanatanga. Ehara i te tino kete, he rourou iti nei, me kuhuna atu e koutou ki raro i te taupopoki o te ihu, kei makere ki te moana. Ka ū ki uta, makaia atu ki te taha tika o te wāhi. Ko te tūmanako e manakohia e koutou hei mere pounamu e kuhu ai ki ō koutou manawa titi ai.

Ko tā mātou kupu ki a koutou kei roto i te kete, he kupu mō te Tiriti o Waitangi me te raweke a ētahi i ngā mātāpono. Ahakoa kua mate ki te pō ngā tāngata i whakaetia ai te kawenata tapu rā, e tiakina ana ngā kupu e ngā uri. I timata ia te whakakotahitanga o ngā iwi i tēnei whenua, ā, e kore e taea te pēhi.

Heoi, ka mahara ake mātou te hunga i kawe nei te rākau (mo te Tiriti) i ngā tau kua pahure. Me kī pēnei te kōrero ki a rātou: haere koutou ki

te pōuriuri, ki te pōtangotango, ki tua o paerau. Hoatu, haere i runga i ā koutou mahi pai i ora ai te tangata me ēnei motu.

Kāti ēnā, me huri pū tā mātou kupu.

Greetings Prime Minister, Minister for Māori Development, and Ministers

This cargo is meant for the government's canoe. It's not a large package, just a small basket that you can store in the bow of the canoe to prevent it from falling overboard. Once you reach land, place the basket on the shore in the right spot. Hopefully you will treasure it like a precious weapon made of greenstone and keep it close to your heart.

The basket contains our report to you, a report about the Treaty of Waitangi and the changes sought to some of its principles. Even though the people who agreed to that sacred covenant are no longer alive, their descendants still honour its words. The coming together of different races in this country began with the Treaty and it cannot be suppressed.

So, let us remember those who carried the responsibility (for the Treaty) in past years. Let us address them in this way: go to the dark and gloomy realms, where the streams of darkness flow, beyond the place where the deceased gather. Depart, go you who did good and beneficial things for the people and the country!

Let us now turn to the purpose of our report.

This report concerns claims submitted to the Waitangi Tribunal under urgency regarding Crown actions and two Crown policies: to progress a Treaty Principles Bill and, separately, to review legislative enactments referring to 'the principles of the Treaty of Waitangi' (the Treaty clause review).

As you are aware, both policy initiatives arise from political commitments made by the New Zealand National Party and the ACT New Zealand Party, and the New Zealand National Party and the New Zealand First Party in their respective coalition agreements dated 24 November 2023. These political commitments are now settled Crown policy currently being worked on by the relevant Ministers and officials, and they are the subject of the Cabinet Office Circular dated 25 March 2024 which requires that all Ministers, parliamentary under-secretaries, and officials work to implement the coalition agreements.

As we canvassed in chapters 2 and 3, the Treaty/te Tiriti created a foundational relationship for this country founded on a partnership

between Māori and the Crown. It recognised two spheres of authority – the tino rangatiratanga and kāwanatanga spheres. We also noted that the Cabinet Manual recognises the constitutional significance of the Treaty of Waitangi.

With respect to the Treaty Principles Bill policy, we have found that the Crown’s agreement to pursue it unilaterally belies the existence of this partnership. Despite the constitutional significance of defining the Treaty principles in legislation and the importance of this to Māori, the Crown agreed to pursue the policy without any engagement or discussion with Māori. Māori did not want this policy and in fact many have been strongly opposed to it from the beginning. We find in this report that the policy of a Treaty Principles Bill ‘based on existing ACT policy’, as the coalition agreement requires, is a solution to a problem that does not exist; there is no policy imperative that justifies it; it is ‘novel’ in its Treaty interpretations; it is fashioned upon a disingenuous historical narrative; its policy rationales are unsustainable; and its current text distorts the language of the Treaty/Te Tiriti. Logically that means it has been pursued without any consideration of the Crown’s constitutional and Treaty/te Tiriti obligations to Māori. Senior officials gave clear advice to Ministers on this, also warning that it would damage the Māori–Crown relationship, and risk undermining social cohesion.

We have noted that the rights of all New Zealanders and equality before the law are protected by a combination of domestic statutes, the common law, and international instruments. Yet by engaging with this policy the Crown is sanctioning a process that will take away indigenous rights. We have found that the Treaty Principles Bill policy is unfair, discriminatory, and inconsistent with the principles of partnership and reciprocity, active protection, good government, equity, and redress, and contrary to the article 2 guarantee of rangatiratanga. It is also in breach of the Crown’s duty to act honourably and with the utmost good faith. For the Crown to entertain ‘principles’ that contain inaccurate representations of the text and spirit of the Treaty/te Tiriti and warped interpretations of te reo Māori from te Tiriti o Waitangi is a breach of the duty to act in good faith and to act reasonably.

With respect to the Treaty Clause Review policy, the Tribunal found the Crown breached the Treaty principles of partnership, active protection, equity, redress, good government, and the article 2 guarantee of rangatiratanga. It found 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.

Reducing the impact of, or repealing, Treaty clauses affects the rights of Māori to access justice to have their rights under the Treaty/te Tiriti realised, which is in breach of the principles of equity and redress. The Crown also has an obligation to actively protect the rights and interests of Māori. To remove or limit the effect of the Treaty/te Tiriti protections contained in Treaty clauses is a self-evident breach of the principle of active protection.

In this report, we conclude that both the Crown's Treaty Principles Bill policy and Treaty clause review policies are inconsistent with the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.

We have also found that, considered jointly, these policies are 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.

Having made findings of breach and prejudice, we have made the following recommendations:

1. We recommend that the Treaty Principles Bill policy should be abandoned.
2. We recommend that the Crown should constitute a Cabinet Māori–Crown relations committee that has oversight of the Crown's Treaty/te Tiriti policies. We do not consider it appropriate that these matters are considered by the Social Outcomes Cabinet Committee.
3. We recommend that the Treaty clause review policy be put on hold while it is re-conceptualised through collaboration and co-design engagement with Māori.
4. We recommend that the Crown consider a process in partnership with Māori to undo the damage to the Māori–Crown relationship and restore confidence in the honour of the Crown. While the issue is wider than the two specific policies before us in this urgent inquiry, we make this recommendation based on the findings we have made and the redress that is necessary to remove the prejudice and prevent similar prejudice in the future.

As this report is an interim report, we reserve our jurisdiction to consider the issues again following the filing of the Cabinet paper and regulatory impact statement, and any further evidence or submissions that might be required in response to those documents.

We also reserve our jurisdiction to reconsider these issues should the Treaty Principles Bill be enacted and/or should the Treaty clause review proceed as planned and result in statutory amendments or repeals.

Nāku noa nā

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Dr Caren Fox
Chair of the Waitangi Tribunal
Chief Judge of the Māori Land Court
Presiding Officer

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