Te Tiriti o Waitangi and the new Resource Management Laws (Natural & Built Environment Bill and Spatial Planning Bill)

Te Tiriti o Waitangi, alongside He Whakaputanga o Te Rangatiratanga o Nu Tireni, is the foundational constitutional document of Aotearoa. It protects tino rangatiratanga and provides some basis for Crown kāwanatanga (government) in a manner that respects rangatiratanga, and for the presence Tauiwi (non-Māori) in Aotearoa.

It is therefore essential that any new law honours te Tiriti o Waitangi. The new resource management laws in their current form do not achieve that.

The two new laws that make up the resource management reforms – the Natural & Built Environment Bill and the Spatial Planning Bill – contravene te Tiriti o Waitangi in multiple ways.

This primer explains how.

What's wrong with the Bills (the draft laws) – four problems

First of all, they refer to the principles of te Tiriti o Waitangi, rather than the text. Although this refers to Te Tiriti, not The Treaty, there is still a high risk that this will be interpreted to mean the principles that were created by the government and the courts in the 1980s and 1990s. They water down te Tiriti (the Māori text) and reaffirm the essence of the English text. More recently, there has been a move towards greater focus on the text: even Cabinet issued a 'circular' in 2019 encouraging policy-makers to use the text, not the principles. The Supreme Court have acknowledged recently the criticism of referring to only the principles.

So the te Tiriti clause as included in these Bills is a problem.

Secondly, the Bills confirm that risk because they assume that the Crown has more power than it has under te Tiriti. Their frameworks for water, riverbeds, lake-beds, and the removal of natural materials assume the Crown has power over these things that extends far beyond the kāwanatanga it is given under te Tiriti.

Thirdly, the Bills don't effectively recognise or empower Māori to exercise their tino rangatiratanga under te Tiriti.

The Bills make iwi and hapū the representatives of Māori. That is wrong.

The Natural and Built Environment Bill sets up a National Māori Entity but it has a very narrow role.

There is not enough funding given to support the capacity-building of Māōri as decision-makers and participants.

One part of the draft law requires iwi and hapū to assist new 'regional planning committees'; to "assist" another such entity is not the exercise of tino rangatiratanga. A very limited role is granted for iwi, hapū, and Māori in developing 'regional spatial strategies' under the Spatial Planning Bill, and in developing 'natural and built environment plans' under the second draft law, the Natural and Built Environment Bill.

Fourthly, the draft laws distort tikangā Maori. They take a narrow view of the taiao when using a 'Te Oranga o te Taiao' concept that is put front and centre of the new laws. Like the old Resource

Management Act, the new draft laws also drop single Māori values like “mauri” and “mana” into the legal framework, taking tikanga out of context. This is a problem because it does not tie these values to the interconnected framework that they are a part of.

Wouldn’t we just expect this from the Crown, ignoring te Tiriti again?

Maybe this is what you’d expect. But there is an opportunity now to act to address these problems urgently. These laws will have a major impact. It’s very important that we at least understand these problems, so we can explain to people in our community what’s wrong and how things should be done differently under te Tiriti.

Is there any chance that any of this will change?

The Bills or draft laws are now with the Environment Select Committee. Now is the time where amendments can be made. While we know there is a long history of contravening te Tiriti, the weeks ahead are our chance to call for these changes.

Even if the law refers to te Tiriti rather than the principles, will that make any difference to the Crown’s actions?

There are more policies, laws, and court decisions now referring to the text of te Tiriti o Waitangi and not just the principles. So it is possible that the law could be amended to refer to the text of te Tiriti. It is true that a change to the text would provide no guarantee that the Crown would respect te Tiriti. But it would give communities a hook to challenge the Crown, in the courts and elsewhere, if the Crown does breach te Tiriti in future. It would be important for a new resource management framework to have this hook. If it is not changed, there can still be an argument that the principles of te Tiriti must be derived from te Tiriti itself and not be the Crown’s self-serving version of the principles of the Treaty.

How can the draft laws be changed to get a better balance of kāwanatanga and tino rangatiratanga?

We’re demanding that the Crown pulls back from the powers that it has assumed in the draft laws, and that they expand the parts of the bills that claim to support tino rangatiratanga.

More funding could be given for capacity-building and the National Māori Entity could have a broader mandate. It could be given real power to shape resource management decisions.

It is possible in this next phase that we change the balance that has been struck.

The Crown is trying to rush this through and there should be more time for consultation. That is why it is important we understand the problems quickly and act now by making a submission to the Environment Select Committee on the Spatial Planning Bill and the Natural and Built Environment Bill. Submissions close 30 January 2023.

With tikanga Māori, isn’t the only way to ensure the Crown doesn’t distort tikanga to make sure there’s a proper tino rangatiratanga sphere?

Yes. But for now it’s useful for us to highlight where tikanga values are taken out of context and parachuted into draft legislation. That’s what we are trying to do here, and to explain why that is something that should be avoided.

What could it mean if we allow these problems to go uncorrected?

It would mean a resource management system that is likely to continue to make decisions that don't work for Māori.

It would mean a system where tikanga could be distorted, where Māori are not given enough say, let alone the right to exercise their rangatiratanga and perform kaitiakitanga responsibilities, and where the Crown extends its powers beyond what Te Tiriti granted them.

Resource management provides the foundation for how decisions are made about resources, building, infrastructure, and te taiao.

This is significant legislation. If the legislation is broken from the outset, there could be significant negative consequences for our communities over the medium- and long-term.

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12 December 2022