Mental Health Foundation OF NEW ZEALAND
mauri tū, mauri ora

Submission: References to Tiriti o Waitangi / Treaty of Waitangi Amendment Bills

By the Mental Health Foundation of New Zealand

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26 November 2026

Justice Committee

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Tuia te rangi e tū nei
Tuia te papa e takoto nei
Tuia i te here tangata
Tihei mauri ora.

He hōnore, he korōria ki te atua ki te runga rawa
He whakaaro maha ki a rātou kua haere ki te wāhi ngaro
E ngā rau rangatira mā, ānei ngā whakaaro me ngā kōrero nā te hauora hinengaro.

Thank you for the opportunity to comment on the:

- References to Tiriti o Waitangi/Treaty of Waitangi (Strength of Legislative Obligations) Amendment Bill
- References to Tiriti o Waitangi/Treaty of Waitangi (Repeals) Amendment Bill, and
- References to Tiriti o Waitangi/Treaty of Waitangi (Standardisation) Amendment Bill ('the Bills').

The Mental Health Foundation of New Zealand (MHF) is a charity that promotes everyday actions that lift mental wellbeing, provides tools that support people through tough times, and advocates for a better mental health system and society.

The MHF strongly opposes these Bills, particularly amendments intended to change Te Tiriti o Waitangi obligations to "no higher standard than 'take into account'..." (Cabinet paper[1], para. 27), noting "this change is likely to be seen to signal a shift in the Crown's position on the status and importance of the Treaty, which could have a cooling effect on the importance decision-makers place on Treaty considerations" (Regulatory Impact Statement[2] (RIS), pg. 47).

Given the remit of our organisation, we are particularly concerned about proposed amendments to the Mental Health and Wellbeing Commission Act 2020 through the References to Tiriti o Waitangi/Treaty of Waitangi (Strength of Legislative

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Obligations) Amendment Bill. We note this Bill (as well as the References to Tiriti o Waitangi/Treaty of Waitangi (Repeals) and (Standardisation) Amendment Bills) impacts a number of other laws that are likely to affect mental health and wellbeing outcomes more indirectly.

We note our support for the recommendations made by the Human Rights Commission in their submission.[i]

General comments

While the package of three Bills is presented predominantly as measures to improve consistency and clarity in legislation, the MHF does not consider that the fulfilment of these objectives requires the dilution or repeal of Treaty clauses. Some of the proposed amendments would weaken the status and effect of existing statutory protections, diminish the practical recognition of Te Tiriti o Waitangi within Aotearoa New Zealand's law, and undermine mechanisms through which Crown obligations to Māori are implemented and upheld. Overall, these Bills risk creating wide-ranging impacts on Māori social, cultural, economic and environmental interests (as noted in the RIS), and the Waitangi Tribunal has noted that these impacts may extend across sectors including health, education, environment, local government, housing, data, climate, child welfare, and beyond.[3]

These Bills should be considered in the context of the wider Treaty clause review of which they form a part. The Waitangi Tribunal found the review is inconsistent with the Treaty principles and the Crown's duty of active protection; the repeal of Treaty clauses is not necessary to achieve legislative clarity; and the review risks prejudicing Māori rights and interests protected by Te Tiriti o Waitangi.[4] These rights include those enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

We note the United Nations Committee on the Elimination of Racial Discrimination's (CERD) expressed concerns around recent initiatives to reinterpret Te Tiriti o Waitangi. The MHF shares these concerns. We support the CERD's encouragement for the New Zealand Government to preserve and strengthen existing co-governance and partnership arrangements, to continue implementation planning in relation to UNDRIP rather than retreating from it, and to ensure Māori political

[i] Recommendations can be found at point 6, *Submission on the Proposed Removal and Amendment of Te Tiriti o Waitangi / The Treaty of Waitangi References in Legislation* (July 2026).

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representatives, the Waitangi Tribunal, iwi, hapū, and whānau are engaged in accordance with free, prior and informed consent.[5]

Undermining Te Tiriti o Waitangi obligations risks damaging progress towards equitable mental health outcomes for Māori

Māori continue to experience significant inequities in mental health and wellbeing outcomes, including higher rates of mental distress, suicide, poverty, incarceration, placement in State care, and compulsory assessment and treatment under the Mental Health Act. These persistent inequities are well-documented and closely linked to the ongoing impacts of colonisation and historical and contemporary failures of the Crown/New Zealand governments to uphold Te Tiriti o Waitangi.[ii]

Māori are disproportionately exposed to harmful interactions with State systems, including well-documented inequities in the use of seclusion (solitary confinement) and other coercive mental health practices. The harms experienced by Māori are not solely a consequence of poorer outcomes but are also linked to the operation of Crown systems and institutions themselves.

From the MHF's perspective, legislative references to Te Tiriti o Waitangi are not merely symbolic. They are practical mechanisms through which Crown agencies are obligated to engage with Māori, support Māori participation in decision-making, actively protect Māori rights and interests, and work towards more equitable outcomes. Undermining these obligations therefore risks reducing protections against the recurrence of such harms, undercutting efforts to improve Māori mental health and wellbeing, and widening the equity gap between Māori and non-Māori. Supporting the ability of Māori to exercise tino rangatiratanga[iii] and participate

[ii] For more detail on how colonisation led to the disparities in health outcomes we see today, refer to Waitangi Tribunal. (2019). *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry: WAI 2575*; Data regarding the disparity and disproportionality in the care and protection system (to June 2023); Statistics regarding the overrepresentation of Māori in the criminal justice system; Data regarding use of the Mental Health Act (1 July 2024 to 30 June 2025, p.11).

[iii] A concept in te ao Māori (the Māori world) that has no single English term which properly represents its meaning). Although it can mean autonomy, self-determination, sovereignty and/or independence, its true meaning is more nuanced. Rather, it refers to Māori control over Māori lives, with the overarching purpose to improve the collective wellbeing of a group, including iwi, hapū and whānau (Te One & Clifford, 2021).

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meaningfully in decisions affecting their health and wellbeing is fundamental to hauora,[6] including mental wellbeing.

Implications for the Mental Health and Wellbeing Commission Act 2020

The MHF is concerned about the proposed weakening of Te Tiriti o Waitangi-related obligations in the Mental Health and Wellbeing Commission Act 2020 through the References to Tiriti o Waitangi/Treaty of Waitangi (Strength of Legislative Obligations) Amendment Bill. If passed, the board of Te Hiringa Mahara | the Mental Health and Wellbeing Commission (the Commission) would no longer be required to ensure that the Commission's systems and processes provide the capability and capacity to **uphold** Te Tiriti o Waitangi and its principles. Instead, the Commission would be subject to a lower obligation to merely "**take** [Te Tiriti o Waitangi] **into account**".

This is particularly concerning given Te Hiringa Mahara's role as an independent Crown entity. Strong Treaty obligations help ensure that this independent oversight and advocacy role is exercised in a manner that actively recognises and protects Māori rights and interests. By contrast, a reduced requirement to only "take into account" Te Tiriti o Waitangi risks affording greater discretion about the weight given to Treaty considerations and could weaken the basis on which the Commission can be held accountable for meeting its obligations.

Thank you for the opportunity to make a submission.

Mauri tū, mauri ora,

Shaun Robinson
Chief Executive

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References

[1] *Review of references to the principles of the Treaty of Waitangi in legislation: next steps* (pg. 2).
[2] *Regulatory Impact Statement: providing certainty on legislative references to the Treaty of Waitangi* (pg. 89).
[3] *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).
[4] As found by the Waitangi Tribunal in *Ngā Mātāpono/The Principles: Part III of the 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* (October 2025).
[5] *Submission on the Proposed Removal and Amendment of Te Tiriti o Waitangi / The Treaty of Waitangi References in Legislation* (July 2026).
[6] Reweti, A., Ware, F., & Moriarty, H. (2023). A tangata whenua (people of the land) approach to conceptualising Māori health and wellbeing. *Global Health Promotion, 30*(2), 11-18. https://doi.org/10.1177/17579759221130948

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