

Submission to the Constitutional Advisory Panel from Tamaki Treaty Workers

24 July 2013

This submission is written on behalf of Tamaki Treaty Workers which is a network for groups and individuals in Tamaki Makaurau who affirm Te Tiriti o Waitangi as the basis for the future of Aotearoa New Zealand. Our meetings provide a forum for Pakeha and Tauwiwi (non-Maori) to discuss and coordinate anti-racism and Treaty work while being open to tangata whenua groups who wish to raise issues and plan for specific events. We are part of Treaty People a national network for Treaty workers.

What are your aspirations for Aotearoa New Zealand?

That there are just and honourable relationships based on Te Tiriti o Waitangi.

We would like there to be a much longer, more in-depth conversation in order to develop a values based constitution.

At present Aotearoa New Zealand is one of the most unequal societies in comparison to other similar democracies. This growing inequality has a very deleterious effect on those in the lowest income bracket who are predominantly Maori or Pasifika. For Maori they are in this situation because colonisation destroyed their economic base, disparaged and denied their matauranga and tikanga, affecting their health and well-being. We would like a society that is committed to being more equitable with a level of income-an upper limit and a lower limit, and with adequate housing and freedom from poverty.

How do you want our country to be run in the future?

In a way that is just and fair to all, that is peaceful, that respects Te Tiriti o Waitangi and the human rights of all and cares for the environment. Where all citizens are aware of their rights and responsibilities. Where there is gender equality in decision making and children are valued and cared for.

Do you think our constitution should be written in a single document? Why?

It could help create a values-based statement of what is fair and just.

There would need to be comprehensive consultation and negotiation with hapu and iwi especially about the place of Te Tiriti o Waitangi.

It would be a useful and accessible reference rather than the many laws, conventions and statutes that constitute our current constitutional arrangements.

It would be a useful educational tool. At present it seems that many citizens have no idea, and significant unease, about our constitutional arrangements.

Do you think our constitution should have a higher legal status than other laws (supreme law)? Why?

Yes, so it cannot be changed or abolished by a simple majority of the parliament. Further we consider it imperative that governments are required to act constitutionally rather than, as at present, being exempt from such accountability.

Who should have the power to decide whether legislation is consistent with the constitution: Parliament or the Courts? Why?

There should be a separate court set up that stands outside the other courts, made up of an expert hapu and iwi appointed body on Te Tiriti o Waitangi, working in conjunction with other human rights bodies such as the Human Rights Commission and the office of the Health and Disability Commissioner.

Does the Bill of Rights Act protect your rights enough? Why?

No. it does not protect all civil, and political rights, including the right of self-determination of all peoples, the right to a remedy for human rights violations, the right to privacy, and the right to legal aid.

The Bill of Rights Act does not include protection for the economic, social and cultural rights articulated in the International Covenant on Economic, Social and Cultural Rights, including : including the right to work and rights in the workplace, to social security, a reasonable standard of living, healthy housing, safe water and adequate food. Social and cultural rights also include rights to affordable healthcare and education.

It does not include the right to own property individually and collectively, and not to be arbitrarily deprived of it, which is in the Universal Declaration of Human Rights.

What other things could be done to protect rights?

Include the above in the Bill of Rights Act and make it supreme law subject only to Te Treaty o Waitangi.

Do you think the Act should have a higher legal status than other laws (supreme law)? Why?

Yes it should be supreme law so it cannot be changed or abolished by a simple majority in the parliament.

Who should have the power to decide whether legislation is consistent with the Act: Parliament or the Courts? Why?

The Courts in conjunction with the Human Rights Commission and the office of the Health and Disabilities Commissioner because there must be some checks and balances on the power of the executive, cabinet and the government.

What additional rights, if any, could be added to the Act? Why?

Those listed in the additions to the Bill of Rights Act above, as they will protect the human rights of all citizens.

Thinking of the future, what role do you think the Treaty of Waitangi could have in our constitution?

Te Tiriti o Waitangi (the Maori text) is the Treaty that was signed by the rangatira and Lieutenant -Governor Hobson and must be recognized as the legitimate text, and the founding document of our country. It was the first formal agreement guaranteeing the rights and responsibilities of the signatories and gave the newcomers the right to settle here. The process for determining our constitutional arrangements must be based on Te Tiriti o Waitangi in negotiation with hapu and iwi rather than trying to fit the Treaty into the existing Westminster style constitutional framework. Te Tiriti o Waitangi and He Wakaputanga (the Declaration of Independence) need to be the starting point for any constitutional document.

Do you think the Treaty should be made a formal part of the constitution? Why?

The decision about this should be made in negotiation with hapu and iwi in keeping with the guarantee of continuance of rangatiratanga in the Treaty, and New Zealand's more recent obligations under international law. The right of self-determination (somewhat analogous to tino rangatiratanga) is articulated in the shared Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and New Zealand is a state party to both. The UN Declaration on the Rights of Indigenous Peoples, to which the New Zealand Government gave its support in 2010, explicitly reaffirms that the right of self-determination of all peoples includes indigenous peoples.

The Treaty provides the only basis for honourable and just relationships between Maori and other New Zealanders.

How should Maori views be represented in Parliament?

The decision about this should be made in consultation with hapu and iwi.

How could Maori electoral participation be improved?

The participation of not only Maori but all citizens could be improved if all students were taught civics at school, including the way our constitutional arrangements and the political process works.

How should Maori views and perspectives be represented in local government?

At a minimum there should be a set number of seats for Maori on local councils and boards as recommended by the Commission when the new Auckland Council was being set up. Other issues around Maori decision making in local government should be determined by negotiation with hapu and iwi whose rohe overlaps with the boundaries of the local body.

Other suggestions

We recommend the setting up of a cross-party Human Rights Select Committee to hold hearings and to check that all Bills are consistent with the Bill of Rights Act.