

ON THIS SPOT  
ON THE SIXTH DAY OF FEBRUARY 1840  
WAS SIGNED  
THE TREATY OF WAITANGI  
UNDER WHICH NEW ZEALAND BECAME  
PART OF THE BRITISH EMPIRE

**Democracy or**

**Co-Government?**



Authorised by David Seymour MP, Parliament Buildings, Wellington.







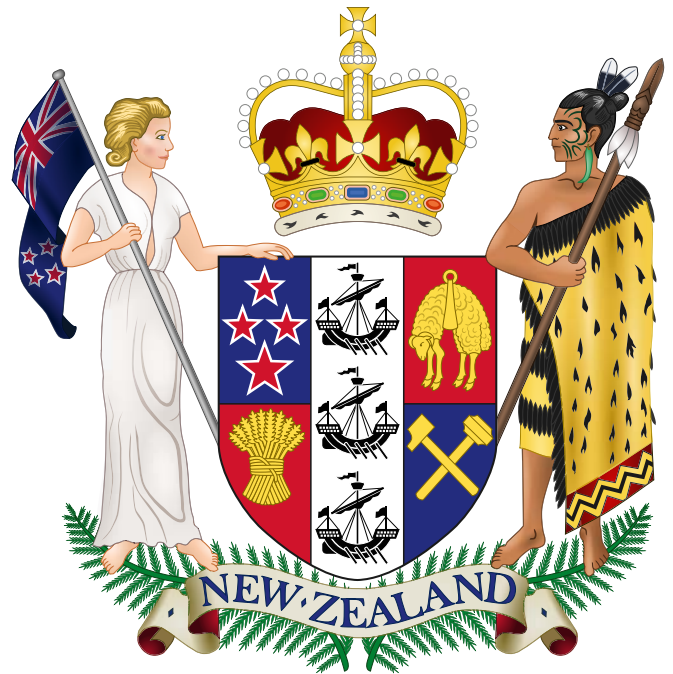


# Contents

<b>Executive Summary</b>	<b>4</b>
<b>Introduction</b>	<b>5</b>
<b>Race relations challenges our country faces</b>	<b>7</b>
<b>Can we honour the Treaty without “Partnership?”</b>	<b>9</b>
<b>A Treaty Principles Act and giving New Zealanders a say</b>	<b>11</b>
<b>Reversing Labour’s divisive laws</b>	<b>13</b>
<b>Reorienting the public service towards liberalism</b>	<b>15</b>
<b>Focusing the public service on equal opportunity, not ethnicity</b>	<b>16</b>
<b>Devolving, not dividing service delivery</b>	<b>17</b>
<b>Conclusion: a modern, multi-ethnic New Zealand</b>	<b>18</b>

# Executive Summary

- New Zealand is at a constitutional crossroad. In one direction is liberal democracy, the familiar formula that the country as we know it was built upon. In the other direction is co-government, a prescription of power sharing between one ethnic group and all others.
- There is little open debate about how New Zealand should navigate the choice between liberal democracy and co-government, because questioning co-government is often met with charges of racism. However co-government is ultimately wrong and New Zealand needs a path back from it. This paper is about how a future government might provide just that.
- As a country, New Zealand faces real challenges with the relationship between Māori and non-Māori. This discussion document sets out that ACT acknowledges these challenges, and believes they are best faced in a liberal democratic framework, rather than under co-government.
- Māori language and culture have been decimated, from being totally dominant in 1840 to nearly disappearing completely, before recovering gradually over the past few decades.
- Māori New Zealanders are statistically worse off in practically every measure from incomes to incarceration, including education, health, and home ownership.
- The Treaty of Waitangi, which was supposed to protect Māori property rights, was breached many times. These breaches can only ever be partly compensated, as much former Māori land that might be subject to a claim is now in private ownership and therefore unavailable for settlements.
- New Zealanders, being fair-minded, caring people, want the above three problems solved. They want to see the Māori language and culture preserved, every child have genuinely equal opportunity, and any wrongs of the past put right.
- Due to a combination of confusion and some deliberate deception, New Zealanders are being told that constitutional change is necessary to solve these problems. This is not only untrue, it is a dangerous development.
- We are told that we must become a 'Tiriti-centric Aotearoa,' where there are two types of people in



partnership, tangata whenua (land people), and tangata tiriti (treaty people). These people would have different political and legal rights.

- Any constitutional system that gives different people different political rights is incompatible with universal human rights. ACT believes that universal human rights are essential for peace and prosperity. Whenever people are given different legal rights, they inevitably fight to regain their rights and dignity.
- A much better vision for New Zealand, in keeping with our liberal democratic traditions, commitment to universal human rights, and growing ethnic diversity, is that of a modern, multi-ethnic, liberal democracy.
- This discussion document sets out how ACT would restore universal human rights in New Zealand's laws, public affairs, and constitutional settings. We would do this with the following policy changes:
  1. Legislating that the principles of the Treaty are based on the actual Treaty, in contrast with the recent interpretation of obscure Treaty principles, and inviting the people to ratify it.
  2. Repealing recent laws, such as the Three Waters legislation, local government representation legislation, and elements of the Pae Ora legislation, that give different rights based on identity.
  3. Reorienting the public service towards a focus on equal opportunity according to robust statistical evidence instead of racial targeting, along with devolution and choice for all, as achieved with the recent Equity Index and Isolation Index policy for school funding, and charter schools among other devolutions.



# Introduction

The current government is presenting New Zealanders with a false choice. It says that if we want to right the wrongs of the past, cherish Māori language and culture, and give all New Zealanders equal opportunity, then we must throw out universal human rights in favour of co-government.

Parties on the left, led by Labour, promote decision-making made by two parties jointly co-governing when it comes to regulatory decisions and government service delivery. ACT does not doubt the sincerity of their belief - but we believe it is wrong.

In fact, the belief is extraordinary because universal human rights are a foundation of New Zealand. The Treaty guaranteed all people ngā tikanga katoa rite tahi, the same rights and duties. We followed through, in 1893, by becoming the first society in human history to give every citizen the same voting rights. New Zealand, under the first Labour Government, insisted that universal human rights be included in the United Nations Charter, and we eagerly signed up to the United Nations Universal Declaration of Human Rights which begins with “All human beings are born free and equal in dignity and rights”.

Even the Labour Party, today the driving force behind the agenda of co-government, advertises that ‘All political authority comes from the people by democratic means including universal suffrage, regular and free elections with a secret ballot’ in its constitution. Many of Labour’s current policies appear to breach its principles, if not its constitution.

Nonetheless, we are told that ‘one-person-one-vote’ is old-fashioned, and we should welcome a new, ‘enlightened’ type of political system. This new system is a ‘tiriti-centric Aotearoa,’ where we are divided into tangata whenua, people of the land, and tangata tiriti, people of the treaty. Each person will not have an inherent set of political rights because they are citizens of New Zealand. Instead, they will have rights based on their whakapapa or ancestry.

Continuing to embed the extraordinary belief will be highly divisive. The danger is that if the Government continually tells people to regard each other as members of a group rather than individuals with inherent dignity, there is a danger people will internalise that lesson. Once that happens, it is very difficult to go back.





This is why New Zealanders deserve a coherent and rational debate about the Treaty and Democracy. They are not getting it, largely because people who question co-government are often accused of racism. This paper sets out three steps that a future Government might take to step New Zealand back from the divisiveness of co-government, and promote New Zealand as a modern, multi-ethnic, liberal democracy.

Doing so requires separating out a number of quite different matters that are often mixed up. We are told that if we want to

1. Honour the spirit of the Treaty
2. Amend for past breaches of the Treaty
3. Preserve and embrace Māori language and culture, and
4. Address present day inequities between Māori and non-Māori

Then we have to embrace constitutional change that is incompatible with liberal democracy. The rest of this document explains why that is not only wrong but dangerous. It goes on to outline three changes that a future Government might make. They are interpreting the Treaty, reversing race based policies, and reorienting the public service to target need based on robust data.

We welcome your input and feedback on our co-government Discussion Document.

*“My pakeha mother told my sister and me when we were young that we would have to fight twice as hard in life for two reasons: because we were female, and because we were Māori. She said if we wanted to excel we would have to work hard as it would be based solely on our own merits. Now, decades on, I find the tables have turned and the opposite is true. Based on the exact characteristics she warned me about, I am now afforded many opportunities with my own merits seemingly an afterthought to these factors beyond my control.” Nicole McKee, ACT MP*



# Race relations challenges our country faces

New Zealand faces three significant challenges in the relationship between Māori and non-Māori. These are the loss of Māori language and culture since 1840, the taking of land and resources without proper compensation, and poor outcomes for Māori in nearly every social statistic.

These challenges are real and deserve attention. They are all different and deserve different solutions. However, we are currently being offered the same solution to each. To honour the Treaty, revive the Māori language and culture, and achieve equitable outcomes in health, education, and housing, we are told that a constitutional transformation is required.

Māori language and culture was nearly the only language and culture in New Zealand in 1840. By the turn of the 20th century, there were only 42,000 Māori in New Zealand, and some thought that not only the culture but the race of people themselves might die out. Today around 185,000 people can speak te reo, among three-quarters of million people who identify as Māori, and the number of te reo speakers is rising.

Nonetheless, some argue this number is too small to prevent the language from becoming extinct. Many people would like to see the language and culture preserved. The question is how to ensure this happens, and would a constitutional transformation to co-government be worthwhile?

There have been enormous breaches of the promise “The Queen of England agrees to protect the chiefs, the sub-tribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures.”

From owning around 80 per cent of New Zealand’s land mass in 1860, less than five per cent of New Zealand’s land mass is in Māori title today. Most of the land was legitimately sold, but a lot was also confiscated or the Crown failed to keep its side of the deal.

The Crown also failed to protect Māori landowners (who often owned the land as trustees on behalf of their hapū) from the demands to sell from British settlers.



The loss of land led to an enormous grievance that climaxed in the 1970s with the Bastion Point occupation and Land March. From there, a process of redress began that sought to identify past wrongs and put them right.

Seeking to address these failings with a process of Treaty Settlements is one of New Zealand's greatest achievements. Few other countries would be prepared to forensically examine injustices stretching back 180 years and fix them. Yet New Zealand has and the process has near-unanimous support.

The remaining and most current and material challenge is that of inequitable outcomes in nearly every social and economic statistic for Māori. Life expectancy is often quoted, with Māori living seven years shorter than average. Education is another example. Last year, 36.6% of Māori, 51.1% of Pacific, 57.3% of European/Pākehā and 79.9% of Asian school leavers attained NCEA Level 3 or above. Māori home ownership follows a similar pattern<sup>1</sup>. Homeownership rates are 28% for Māori and 19% for Pacific peoples, compared with 57 per cent for European New Zealanders<sup>2</sup>. Incarceration rates are no better, with Māori being 37 per cent of people proceeded against

by Police, 45 per cent of people convicted, and 52 per cent of people in prison. This is despite Māori comprising only approximately 15 per cent of the New Zealand population.

These statistics have many causes that defy easy explanations, but most fair-minded New Zealanders believe in equal opportunity and would like to see them fixed. In this paper, we show that co-government is not the answer to achieving this, instead the solutions lie in more robust evidence-based targeting of government programs, and greater devolution of public services.

ACT believes that the answer to the challenges is maintaining New Zealand's liberal democratic system. Our society is simply too diverse and intertwined to be separated into a binary system of two peoples.

*"I talk to my friends in mixed relationships - they're the same age, they grew up in the same communities, they live in the same households with the exact same level of need, and yet the level of support they are offered is completely different. I even remember a Māori man commenting that he would refuse to accept any medical care which his wife was not entitled to." Karen Chhour, ACT MP*



<sup>1</sup> [www.educationcounts.govt.nz/\\_data/assets/pdf\\_file/0019/208072/Indicator-NCEA-Level-3-and-above\\_FINAL.pdf](http://www.educationcounts.govt.nz/_data/assets/pdf_file/0019/208072/Indicator-NCEA-Level-3-and-above_FINAL.pdf)

<sup>2</sup> [www.stats.govt.nz/reports/housing-in-aotearoa-2020](http://www.stats.govt.nz/reports/housing-in-aotearoa-2020)



# Can we honour the Treaty without “Partnership?”

ACT supports the completion of full and final historic Treaty settlements as a pragmatic way to resolve past injustices. Some of the settlements include co-management arrangements brought in before 2017, where recognised customary rights of iwi are balanced with existing public rights (such as recreational use of Crown land, fishing, etc). These co-management arrangements include the Tūpuna Maunga Authority managing Auckland’s volcanic mountains, Rotorua Te Arawa Lakes, Te Urewera, and the Te Awa Tupua (Whanganui River settlement). We believe these co-governance arrangements are pragmatic ways to reconcile Māori customary and public interests over traditionally shared resources such as rivers and mountains.

The Māori fisheries settlement is an example of how the Treaty guarantees to protect Māori customary rights to fisheries can be balanced with broader public rights (including management of a public resource).

The foreshore and seabed (takutai moana) framework is another example of how New Zealand can reconcile iwi having their customary rights recognised while public access, recreational and economic interests are assured for all New Zealanders.

What ACT opposes is that co-governance is being extended from the above instances of specific redress into a general privilege for iwi, from recognising rangatiratanga over specific property rights to an overarching granting of privilege in all things, including political rights and the delivery of public services (or co-government). That is contrary to both New Zealand as a liberal democracy and to the Treaty guarantees for government to make laws and provide equal rights for all.

Advocates for co-government have argued that the creation of co-governance, advocates for co-government have argued that the creation of co-government in fundamental aspects of government, such as healthcare, is because of a Treaty “partnership”.

The term “partnership” does not appear in the Treaty of Waitangi. The concept of “partnership”

as the driving Treaty principle was given force when Parliament, with very little debate, included undefined “principles of the Treaty of Waitangi” in the State-Owned Enterprises Act 1986. The Court of Appeal was left to be “creative” and interpret this in 1987, writing that the Treaty “signified a partnership between Pākehā and Māori requiring each other to act towards the other reasonably and with the utmost good faith”.<sup>3</sup>

However, this definition of ‘partnership’ was relatively restrained. The Court found that the principles of the Treaty “do not authorise unreasonable restrictions on the right of a duly elected government to follow its chosen policy. Indeed, to shackle the government unreasonably would be itself inconsistent with those principles”.

The Court found the obligation on Treaty partners to act in good faith did not extend to an automatic obligation to consult, and the Court’s presiding judge, Justice Cooke, would later emphasise that “partnership certainly does not mean that every asset or resource in which Māori have some justifiable claim to share should be divided equally”.<sup>4</sup>

Despite political unease with the creativity of the Courts in determining Treaty principles, successive governments failed to define in law what the Treaty principles really are. Treaty principles were added into more legislation, but as the Minister who introduced the Resource Management Act 1991 stated later, “I am quite sure that none of us knew what we meant when we signed up to that formula”.<sup>5</sup>

Nevertheless, the Courts and the Waitangi Tribunal have steadily pushed the boundaries of what is meant by Treaty principles and partnership. As the Supreme Court’s *Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation* decision makes clear, the judiciary will interpret the scope of the amorphous “principles of the Treaty” very widely, though not the actual articles of the Treaty itself. In this 2019 decision, a Treaty principle of “active protection” extends to the Government having a duty to privilege iwi in economic development, in which interests with “mana whenua” were deemed stronger than other commercial interests.

<sup>3</sup> New Zealand Māori Council v Attorney-General [1987] 6 NZLR 642

<sup>4</sup> Tainui Māori Trust Board case [1989] 2 NZLR 513. See also Cooke, NZ Universities Law Review, p.6

<sup>5</sup> Simon Upton, New Zealand Herald, 22 Feb. 2003



This judicial activism is joined by an assertion of a much more interpretation of “partnership”, in which partnership means that Māori have not just the same equal rights, but special rights over other New Zealanders. Much of this owes more to left-wing academic thinking, imported from America, which argues that modern society is colonialist and “systemically racist”, and therefore institutions must become knowingly “anti-racist” and “decolonised”.

The interpretation of “partnership” as meaning co-government or parallel government in everything, is sweeping in its logic. This makes that view of the Treaty as a partnership awarding Māori special rights a question of constitutional importance for all New Zealanders to decide.

ACT questions whether the Treaty is a “partnership” that goes beyond the original definition of all parties acting “reasonably and with utmost good faith.” ACT thinks that the original text of the Treaty signed in 1840 is a guide forward.

As Dame Anne Salmond wrote, “it is the 1987 neo-liberal rewriting of the Treaty of Waitangi as a ‘partnership between races’ that lies at the heart of current difficulties in reconciling Te Tiriti with democratic principles, not the original text.” She goes on to state:

“Sir Robin Cooke’s rewriting of Te Tiriti as a binary ‘partnership between races’ has been interpreted as requiring a split in kāwanatanga, or governance at the national level. The division of populations into ‘races,’ however, is a colonial artefact that cuts across whakapapa and is scientifically obsolete. It is not a sound basis for constitutional arrangements in the 21st Century. In these complex, challenging times, leaders need an acute sense of justice and fair play, and how this is understood by different groups in our small, intimate society. The exchange of promises in Te Tiriti requires fair and equal ways of living in which indigenous tikanga are respected, and ordinary persons, as well as rangatira and hapū, have tino rangatiratanga. At present, as the inequities within and among different groups increase, we are heading in the opposite direction.”<sup>6</sup>

*There is nothing in any of the three Treaty Articles that suggests that Māori should have any special right above other New Zealanders. The Treaty itself guarantees that “all the ordinary people of New Zealand ... have the same rights and duties of citizenship...”. The Treaty does not confer greater privileges on Māori than the Government owes to other New Zealanders. All New Zealanders have a basic human right that they are treated equally under the law and with equal political worth - one person, one vote.*

<sup>6</sup> [www.newsroom.co.nz/ideasroom/anne-salmond-te-tiriti-and-democracy-part-ii](http://www.newsroom.co.nz/ideasroom/anne-salmond-te-tiriti-and-democracy-part-ii)



# A Treaty Principles Act and giving New Zealanders a say

ACT proposes that the actual text of the Treaty itself is a powerful guide for New Zealand's future.

Far from a divisive document that affords unique privileges to one group, the Treaty is a taonga for all New Zealanders, establishing that all New Zealanders have above all else the same rights and privileges as each other and that the Government has a duty to protect those rights. The three articles of the Treaty should form the basis of Treaty principles.

## **1. The New Zealand Government has the right to govern New Zealand.**

In the first article of the Treaty, rangatira gave absolutely forever the complete government (kāwanatanga) of New Zealand.

However, Māori chiefs were right in 1840 to place two crucial limits on the power of government (and the potential tyranny of the majority) - that their property couldn't be arbitrarily taken by the Government, and that they would not be denied the same rights and privileges as British subjects.

## **2. The New Zealand Government will protect all New Zealander's authority over their land and other property.**

The second article of the Treaty guarantees the chiefs, hapū and all the people of New Zealand the authority (ki ngā tangata katoa o Nu Tirani te tino

rangatiratanga) over their land, houses and treasures for as long as they wish to own those. There is no mention of rights belonging to a particular ethnicity or race in Article 2 of the Treaty. In the Treaty, Queen Victoria promises 'te tino rangatiratanga' of their lands not just to the rangatira and hapū, but to 'all the inhabitants of New Zealand.'

However, New Zealand's history has shown poor regard for upholding Māori property rights. The protections of property rights against the desires of the Government are weak in New Zealand. Repeatedly, governments seize or impose controls on peoples' property well beyond any legitimate public interest and ignore the rights of ownership.

ACT believes the principle of rangatiratanga over one's own property is a basic human right. The right to the free use and enjoyment of one's own property is a basic human right for natural persons embodied in a number of overseas constitutions and the UN Declaration of Human Rights. ACT believes in the words of the Treaty - that rangatiratanga over one's property and possessions are protected.

## **3. All New Zealanders are equal under the law, with the same rights and duties.**

The third article of the Treaty is unequivocal - it guarantees equal rights for all (ngā tikanga katoa rite tahi). This is consistent with New Zealand's egalitarian



culture and political history, where many peoples came to New Zealand to escape the inequalities of class, caste or tribal societies. The guarantee for equal rights is embodied in the Bill of Rights Act, and international human rights including the first article of the UN Declaration of Human Rights which states that “All human beings are born free and equal in dignity and rights.” ACT says that nobody is entitled to superior rights or privileges because of their ancestry or identity. To argue otherwise is inconsistent with the Treaty’s guarantee of equal rights and duties for all.

### **Putting the Treaty Principles Act to Referendum**

The End of Life Choice Act was passed by Parliament in 2019 and confirmed by the people in referendum at



the 2020 election. This sequence allowed Parliament to debate and fine tune a proposed law, and the people to have the final say about whether it should become law. Critically, this is a ‘binding’ referendum. If the majority vote yes then it automatically becomes law.

We propose the same process for the Treaty Principles Act. This law should be passed by Parliament with the usual process of debate, public submissions, and more debate, then subject to a yes or no vote by the public at large.

Public ratification would have two effects. It would put the Act above other Parliamentary Statutes because it would be one of few, along with the laws that brought in the MMP voting system and the End of Life Choice Act that have been ratified by the people. Second, it would legitimise an open debate about the Treaty and its place in our constitutional future. The result would be a much more robust and widely understood conception of New Zealand’s constitutional arrangements, and each person’s rights within it.

We note that on September 14th, the Clerk of Parliament notified a new referendum in the name of Simon Lusk. This referendum asks: “Should New Zealand implement a form of co-governance where 50% of elected representatives to Parliament and local authorities (including community boards and local boards) be elected by voters of Māori descent, and 50% by non-Māori?”

ACT welcomes any initiative that brings co-Government out into the open for public debate. We encourage people to support this petition. However, we also note that the petition would lead to a non-Binding referendum and would not address the problem of interpreting the Treaty in a modern context.

For these reasons, ACT’s Treaty Principles Act and subsequent binding referendum would still be necessary even if this petition and referendum were to succeed.

*ACT believes that the principles of the Treaty are based on all three articles of the Treaty - that the New Zealand Government has the right to govern; that the authority and ownership of land and property of all New Zealanders is protected; and that all New Zealanders are equal under the law. ACT will pass a law stating that these are the principles of the Treaty and that Government and the Courts must use this interpretation when considering Treaty principles. This law will go to the New Zealand public for their approval in a referendum.*



# Constitutional change by stealth – reversing Labour’s divisive laws

Based on its interpretation of the Treaty, the Labour Government is pushing through profound constitutional change with the intention to shift from liberal democracy based on the principle of every citizen being equal under the law to a state of two ethnically based separate “spheres” as described in *He Puapua*. The Labour Government commissioned the ‘He Puapua’ constitutional blueprint, and its authors included government officials. While Labour denies it is official policy, many of its recommendations are nonetheless being implemented.

Jacinda Ardern states that the principle of one person, one vote is “overly simplistic”. Labour states that “democracy has changed,”<sup>7</sup> but no one voted for this change. None of this was in its 2017 or 2020 Manifestos, and the New Zealand public has never debated or voted on Labour’s co-government agenda. It is notable that in Australia, the Labor Government is putting relatively mild proposals for Aboriginals to have a ‘Voice’ in the Australian Parliament to a referendum, while much more sweeping constitutional change is being pushed through in New Zealand without any reference to the public.

The Government has sought to cancel open debate on the issue, dismissing any criticism as ‘racist’ or ‘race-baiting’. With the Government intent on passing so-called ‘hate-speech’ laws, the ability to debate constitutional subjects may well be further curtailed.

Supporters of co-government state that “there’s a new regime, get with it folks,”<sup>8</sup> as if the change to people’s political rights without their consent is a done deal. Their thinking appears to be that if the people are given a say by referendum on Labour’s constitutional experiment, they will deliver a verdict that the Government and their supporters don’t want.

This is not “tweaking” democracy, but fundamentally overturning the concept of “one person, one vote”. That this change is being undertaken by the Labour



Party without mention in their election manifesto, without deserved political debate and with no referendum, undermines democratic values.

Labour’s co-government agenda is being driven through a range of laws.

**The Pae Ora (Healthy Futures) Act** is an exercise in co-government. The historic control of health through local democratically elected boards has been swept away. The health system will be controlled by two new entities - Health New Zealand, and a parallel Māori Health Authority. This delivers a centralised but ethnically divided health system. The new health system principles say that the system should “provide opportunities for Māori to exercise decision-making authority”, but there is no requirement for anyone else. The Māori Health Authority will have a joint say in the provision of health services for all other New Zealanders. In effect, healthcare is being prioritised according to racial identity and not the actual needs of individual patients.

<sup>7</sup> Willie Jackson says democracy has changed, co-governance is good, Act leader is a ‘hypocrite’ – NZ Herald; HDPA 11 August

<sup>8</sup> Finlayson – [www.rnz.co.nz/programmes/the-detail/story/2018841355/co-governance-time-to-get-on-with-it](http://www.rnz.co.nz/programmes/the-detail/story/2018841355/co-governance-time-to-get-on-with-it)

Another example is the **Three Waters** legislation. Labour is determined to force an untested and risky ethnicity-based co-government model onto the new water service entities. Control of water services will sit with 50:50 representatives of democratically elected councils and appointed Māori. The new water corporations must give effect to “te Mana o te Wai” principles which prioritise the health and well-being of water above the health needs of people or the economic needs of communities.

Co-government is being put into the heart of all future resource planning and administration, through the proposed **Natural and Built Environments Act** (the primary piece of legislation to replace the RMA). A vague concept, “Te Oranga o te Taiao” is the foundational principle of the Bill. Local democratically elected government is being replaced by centralised ethnicity-based decision-making. Local planning requirements are to be set by elected representatives (1 per local authority) and mana whenua representatives. It is notable that trying to determine those Māori representatives may prove to be fraught, since urban Māori authorities dispute whether iwi as “feudal tribal constructs” represent Māori, and that:

*It is a breach of te Tiriti for mana whenua Māori to be treated as first-class Māori, while tangata whenua Māori are treated as second-class Māori. There should be no first and second class when it comes to Māori, for we are all equal.<sup>9</sup>*

The **Canterbury Regional Council (Ngāi Tahu Representation) Act** has two voting members appointed by Ngāi Tahu to the otherwise democratically elected Canterbury Regional Council, in effect giving Ngāi Tahu people in Canterbury two votes and a completely disproportionate vote weighting on the Council.

This is, according to Labour MPs, “the evolution of our Treaty partnership”. Labour Members of Parliament state that this Act (with iwi appointed members to otherwise elected regional councils) is a “potential pathway” for all other regions.

The **Oranga Tamariki Act** has been amended by the addition of Section 7AA. The section requires that Oranga Tamariki put the Treaty at the centre of its operations. In practice it means that Māori children are reverse uplifted from pakeha foster homes even when they are perfectly happy and thriving, because cultural considerations trump considerations.

*ACT will immediately repeal the Māori Health Authority, Pae Ora (Healthy Futures) Act, the Natural and Built Environments Act, and Three Waters. Other Acts will be amended as necessary to ensure that the principle of “one person, one vote” is the basis of democratic representation in local government, and that the essential purpose of legislation is focused on the delivery of effective government for all New Zealanders.*



<sup>9</sup> Stoush over Crown's preference for iwi and hapū goes to tribunal – NZ Herald



# Constitutional change by stealth II — and reorienting the public service towards liberalism

Besides legislation, race based ideology is being woven into the practices and administration of the public service. Government departments are busily pursuing co-government through policies, governance bodies and strategies. Across all governments there has been a proliferation of policies where the first and primary focus is on “Te Tiriti”, and requirements for knowledge of te ao Māori, skills in te ao Māori and mātauranga Māori, rather than a focus on the agency delivering for all citizens on an equitable basis.

This ideology extends to how the Government runs national parks - the Department of Conservation’s partial reviews of its General Policy claims that conservation is a “Eurocentric” concept, and recommends that tangata whenua should be able to develop conservation estate in a way consistent with “mātauranga Māori”. It calls for fundamental reform of the conservation system “to reflect Te Tiriti partnership at all levels”, including potentially commercial privileges and development rights.

Funding for science “expects all research priorities to be co-developed with Māori, and to give active effect to Te Tiriti, with a clear process in place to enable this.” In effect, science is being subjected to the determinations of what is Māori traditional knowledge.

A highly politicised ‘Aotearoa New Zealand’s histories’ will be part of all schools’ curriculum from 2023. Children will be asked to reflect “on the processes and consequences of colonisation”.

The Public Interest Journalism Fund guidelines state that media taking government money must “Actively promote the principles of Partnership, Participation and Active Protection under Te Tiriti o Waitangi acknowledging Māori as a Te Tiriti partner”. The NZ On Air “Te Tiriti Framework for News Media” states that the media must accept that:

*“it is not simply a matter of reporting ‘fairly’, but of constructively contributing to te Tiriti relations and social justice..... Media organisations need to consider the colonial context of living in Aotearoa New Zealand, and identify structural causes – institutional racism, colonisation, inequities and Pākehā advantage.”*



The effect of this fund and its principles on media reporting has almost certainly been overstated. However that overstatement in it self is a problem because it has created the perception that the media is compromised, reducing trust and social cohesion.

A common theme for many of the policies being driven through government is a concern for Māori equity, in which, for example, Māori health outcomes on average are worse than for other New Zealanders. The rationale is that Māori health outcomes are because of “systemic racism” (though little evidence supports that). However, equity reasoning would have resulted in including Pasifika, disabled people, elderly, rural people, and others having their own co-government solutions as well. If worse socioeconomic outcomes for one ethnic group justify co-government, then it should apply to all disadvantaged ethnic groups. Separate governance for Māori, and not others, is justified on the basis of obscure Treaty obligations.

Besides reversing race-based statutes brought on under the auspices of the Treaty, ACT’s approach to the public service would remove these biases and reorient the public service towards serving all citizens equally based on their measured need rather than Treaty status.

# Focusing the public service on equal opportunity, not ethnicity

In order to focus on citizens' need, the Government requires more sophisticated ways of measuring need. ACT in government would orientate the Public Service towards sophisticated use of data to identify need rather than crude race based targeting.

Trying to differentiate public services on the basis of ethnicity is fraught. The definition of who is Māori matters. Is the target of public services anyone who can whakapapa to a Māori ancestor (and how?), or is it membership of a corporatised tribe? What of households where one person is of European ethnicity and the other is of Māori ethnicity - why should two people in identical circumstances be treated differently by the State? And if services (such as earlier vaccinations or provision of medical drugs) are prioritised for people claiming one ethnicity, what is to stop other people simply claiming that ethnicity to get preferential access?

More problematically, does ethnicity alone serve as an indicator of need? If government services are to be delivered on the basis of ethnicity, then there must be strong evidence that ethnicity is the primary cause of the problem. Otherwise, the policy will result in injustice, in which a well-off member of the privileged population is receiving treatment ahead of someone outside the group who may be a lot worse off. An example is the Ministry of Health analysis, which justifies separate healthcare treatment on the basis of ethnicity because "systemic racism" denies Māori equal access to quality of care - but the Ministry

of Health's own analysis is that there are other significant factors in determining health outcomes.<sup>10</sup> Ensuring that accurate data and evidence drives policy is critical, especially if decisions are to be made that deliberately privilege one group over others.

The good news is that parts of government are starting to develop tools which enables the targeting of policies in a much more accurate way, on the basis of actual individual need rather than overarching blanket categories of ethnicity. While average Māori outcomes may be worse, this is not always the case at the individual level. Many Māori have better health, education, personal wealth and other outcomes than non-Māori, and many non-Māori have worse outcomes than average Māori people. Ethnic identity and racism are factors in creating socioeconomic disadvantage - but it is one factor amongst many others, including education, isolation and strength of family structures.

More than ever before, the Government has access to data that can assess the risks and disadvantages faced by individual people, and deliver services in a more targeted way. For example, the Ministry of Education has developed an Equity Index, to understand the relationship between socioeconomic circumstances and student achievement and address equity issues. The model assesses which socioeconomic characteristics across 37 variables which best predict a student's academic achievement to produce an EQI number for each school. This can allow for much more targeted policies based on the actual needs of the individuals, and not a single blanket category of ethnicity.

The Ministry of Education EQI also shows that co-government on the basis of ethnicity to achieve socioeconomic outcomes is unlikely to work. Undoubtedly, ethnicity is a factor explaining worse outcomes - but it is not the only one. Government policy to work has to deal with a multitude of factors, and creating an entire bureaucracy revolving around one - ethnicity - won't work.

ACT in government would make the Equity Index an example of how social policy can be done. It measures actual need based on real world data instead of assumptions applied to all members of a given race.



<sup>10</sup> 2020 briefing for Incoming Minister of Health, p.8



# Devolving, not dividing service delivery

Throughout Labour's term in office, it has consistently sought to solve complex problems by creating large centralised bureaucracies, with a parallel Māori structure (or embedded 'te Tiriti' branches). It is not explained how the creation of a divided centralised bureaucracy will resolve problems.

The rationale for co-government appears to be that creating additional tiers of Māori bureaucracy will somehow trickle down to ordinary Māori experiencing poor health outcomes. There is no evidence that creating a parallel, centralised bureaucracy will achieve better outcomes, whether it is Māori or not. Indeed, the frustration of many, such as primary healthcare providers, at the inflexibility and sluggishness of the Wellington bureaucracy, suggests that simply greater centralisation, but with ethnic separation, is not going to result in better outcomes on the ground.

ACT believes that decentralised systems close to their communities allow for greater innovation and responsiveness. ACT advocates moving from an ethnicity-based, centralised system to a more equitable and socially responsible one where the actual needs of individual people underpin decision-making.

One example of successful devolution was the creation of Partnership Schools Kura Hourua (aka 'Charter Schools'). Most of the schools were run by Māori or Pasifika trusts. The policy intent of partnership schools/kura was that if they have clear, outcome-focused accountability, freedom to manage and govern, and a broadly similar level of funding to that for state schools, they will then be able to develop innovative solutions that match local needs while still meeting high-quality standards. This, in turn, enabled them to attract students who have previously not been well served by the education system and led to equitable achievement outcomes for those students. Within two years of their establishment, an independent review found that most partnership schools/kura had positive outcomes for students across a range of areas, including exceeding targets for student achievement, student attendance and student engagement, as well as positive outcomes in subjects other than reading, writing and mathematics for primary age students, improved self-esteem and self-worth, development of high aspirations, adopting school/kura values and greater



security of identity, culture and language.<sup>11</sup> Sadly, one of Labour's first acts was to abolish the schools.

There are also successful devolved services for Māori being delivered by individual iwi and hapū for their members. Ngāti Whātua runs a medical centre and have private health insurance for its members. The Tainui iwi's Raukura Hauora O Tainui currently operates four medical clinics in Waikato.

*Government agencies will be refocused on effective delivery of services for all New Zealanders and vague criteria for "Te Tiriti" will be ended. A coalition government including ACT will make it clear that the delivery of public services should be according to individual needs, and not aimed at privileging any particular group. This will be done by using data to assess the needs of individual citizens to guide policy and devolution of service delivery as close to the affected people as possible (including by iwi or marae).*

<sup>11</sup> Evaluation of Partnership Schools | Kura Hourua Policy

# A modern, multi-ethnic New Zealand

Fair-minded New Zealanders who want dignity and a fair go for all have been offered a false choice and have been taken advantage of by a small group of elites. Those elites are not only in Māoridom but in the judiciary, public service and academia.

They are being told that the Treaty requires a radical constitutional experiment that departs from universal human rights. They are told that this experiment in co-government is necessary to preserve the Māori language and culture, and 'close the gaps' between Māori and non-Māori in a range of economic and social statistics. They are told that, if they disagree, then they are uncaring at best and racist at worst.

However, this claim is not only wrong but dangerous. Co-government, that is attempting to create political privileges for one ethnicity on the basis that they have a special Treaty partnership with the Crown denied to everyone else, is doomed.

The reality is that 21st-century New Zealand is diverse and multi-ethnic. Since 1840 European, Chinese and Māori have become intertwined in our whakapapa. Since the 1970s, Pasifika peoples have arrived and become an important part of our community, and more recently, Indian, Filipino and other ethnicities have added to our national identity. Even within

te ao Māori, identity is complex, crossing multiple hapū and with differences between urban and rural Māori. Attempting to create a binary system based on ethnicity or tribal rights is unworkable, though it will create polarisation.

The Treaty called for equal rights, not a corporate relationship between races or a 'partnership' for one race and some other status for all others. The way to address inequities is to target government assistance based on actual need using actual evidence rather than crude race-based targeting. The way to keep the Māori language and culture alive and thriving is not to politicise it by forcing it on people in their everyday lives, but to allow New Zealand's languages and cultures to evolve in a natural and authentic way.

The basis for the New Zealand project to thrive is universal human rights where there is a place for all. Each child born in this country deserves one five millionth of the opportunity it has to offer, nothing more and nothing less. Only under such a framework of universal human rights can every child born in New Zealand flourish.

That is precisely the path forwards that ACT promotes; a modern, multi-ethnic, liberal democracy.











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