Ngāti Hāua Iwi Trust

Submissions of the Ngāti Hāua Iwi Trust in relation to The Proposed Regulatory Standards Bill

13 January 2025

"**Unuunu te puru o Tūhua mā ringiringi te wai o puta**"

'If you withdraw the plug of Tūhua, you will be overwhelmed by the flooding hordes of the North'
'If you withdraw the plug of Tūhua, you empty the Whanganui River'

1.0 EXECUTIVE SUMMARY

1.1 The proposed Regulatory Standards Bill (**proposed bill**) is yet another policy agenda that seeks to erase Te Tiriti o Waitangi (**Te Tiriti**) and limit its application over the exercise of power by the Government. The consultation documentation implies that the regulatory decision-making framework in New Zealand is inefficient and lacking, despite New Zealand ranking highly on the international scale in terms of our regulatory setting and ability for people to do "business". Where regulation in New Zealand is poor and continues to fail, is with respect of Te Tiriti and creating the appropriate setting for Te Tiriti to be understood and applied in a regulatory context, particularly where law and decision-making is concerned.

1.2 Any changes or improvements to the regulatory system in New Zealand should rightfully focus on addressing that central and current flaw. Instead, the Act Party lead proposed bill (which is the most recent attempt to have such a policy implemented) does the complete opposite. The Preliminary Treaty Impact Analysis Report provided with the consultation documentation states that:

> **Of significance** is that the proposals do not include a principle related to the Treaty/te Tiriti and its role as part of good law-making, meaning that the Bill is effectively silent about how the Crown will meet its duties under the Treaty/te Tiriti in this space. While this does not prohibit the Crown complying with the Bill in a manner consistent with the Treaty/te Tiriti, we anticipate that the absence of this explicit reference may be seen as politically significant for Māori and could be perceived as **an attempt by the Crown to limit the established role of the Treaty/te Tiriti as part of law-making.**
> [emphasis added]

1.3 This impact analysis is light on the substantive impact this proposed bill will have on Te Tiriti when it comes to "good" law-making and is naïve to suggest that the exclusion of Te Tiriti only raises hypothetical issues related to the same. It is common knowledge that the Crown has always stepped away from proper compliance with Te Tiriti when it comes to the constitutional influence Te Tiriti should have on law making, and where the Crown lands in its practical law-making function. Given this and the stage at which we are at for this proposed bill, the decision to exclude Te Tiriti now is no minor error premised on addressing this after the proposed bill has been consulted on, but it is a deliberate and sinister policy agenda aimed at erasing Te Tiriti (and by extension the rights and interests of Māori) and promoting the advancement of the neo-liberal principle of economic efficiency and other similar principles not yet defined or known.

1.4 Therefore, the proposed bill is highly concerning and the process for reviewing our regulatory system should start again with Te Tiriti as the central driver. Anything to the contrary will be strongly opposed.

2.0 KO WAI MĀTOU

Ko Ruapehu te maunga
Ko Whanganui te awa
E rere kau mai te awanui
Mai te Kahui Maunga ki Tangaroa
Ko te Awa ko au, Ko au te Awa

2.1 Ngā hapū o Ngāti Hāua all share common whakapapa descent from Ngā Tūpuna – Paerangi, Ruatupua Nui and Hāua. Ngāti Hāua have 26 affiliated hapū within our area of interest:[1]

Ngāti Hāua	Ngāti Whati	Ngāti Tama-o-Ngāti Hāua	Ngai Turi
Ngāti Hauaroa	Ngāti Onga	Ngāti Ruru	Ngāti Hinetakuao
Ngāti Reremai	Ngāti Te Awhitu	Ngāti Hira	Ngāti Pareuira*
Ngāti Tū	Ngāti Wera	Ngāti Rangitauwhata	Ngāti Pikikotuku
Ngāti Hekeāwai	Ngāti Hinewai*	Ngāti Te Huaki	Ngāti Tamakaitoa*
Ngāti Keu*	Ngāti Poutama*	Ngāti Whakairi	Ngāti Pareteho*
Ngāti Kura*	Ngāti Rangitengaue		

2.2 Ngāti Hāua Iwi Trust (**NHIT**) was established in 2001, to advance and advocate for the interests of Ngāti Hāua iwi, hapū and whānau within our customary rohe. Since its inception, NHIT has represented Ngāti Hāua iwi, hapū and whānau in Waitangi Tribunal processes, Treaty settlement negotiations, Local Council matters including as an iwi authority for Resource Management Act 1991 purposes, and with respect to Ngāti Hāua interests in the Whanganui River.

2.3 On 21 November 2024 NHIT initialled a Deed of Settlement with the Crown as a redress package for the many breaches of Te Tiriti by the Crown against Ngāti Hāua. That said, the proposed bill before us touches an important and central kaupapa that underpins Treaty Settlements, being Te Tiriti. Therefore, it is our responsibility to hold the Crown accountable when necessary. To this end we are guided by our Pou Tikanga, particularly Rongo Niu - To hold the Crown to account – and submit this brief submission about the proposed bill.

3.0 TE TIRITI O WAITANGI AND THE PROPOSED BILL

3.1 Te Tiriti is the constitutional pillar for Aotearoa and provides a workable and equitable framework for all policy and law making in New Zealand. This is because Te Tiriti correctly centralises collectivism by providing for Māori rights and interests and protecting them from any agenda that seeks to advance individual property rights and financial success as primary drivers for underpinning our society. Understood and applied correctly, the Māori rights and interests that Te Tiriti protects have substantive benefit for all of Aotearoa, and their ability to contextually improve law and decision-making in New Zealand cannot be understated.

3.2 Te Tiriti protects the central values and principles that underpin a kaupapa Māori approach to law making and decision making. Values such as manaakitanga and whanaungatanga encompass strands of collective principles such as collective responsibility to the environment, economy and society while at the same time providing a pathway for the contextual application of those principles, only focusing on a specific strand when appropriate for the relevant context and easily reconciled to that particular set of circumstances. It has always been a regulatory

[1] We acknowledge hapū that have shared interests with other iwi as marked with an asterisk.

downfall that by applying a set of principles in a general way somehow achieves consistency and therefore efficiency. However, the repeated attempts to establish such a set of generalised principles always fails, because:

(a) those principles are politically charged; and

(b) they ignore the already establish principles that flow from Te Tiriti.

3.3 This consequence has always been detrimental to Te Tiriti and therefore for Māori, with economic financial factors always given priority (and/or at the wrong stage). Te Tiriti is clear and simple and with the assistance of a large volume of jurisprudence on the same, it is difficult to understand why it is ignored in such a policy agenda as "making an improved regulatory system" other than to say its removal is the true objective for such changes.

3.4 Constitutionally, culturally and societally, this will create system issues that will lead to poorer efficiencies, limited if any economic growth and a congested system (both in Government and our Courts and tribunals). To this end, Treaty Settlements will also be undermined because they have never been negotiated as a stand only reference for providing for the rights and interests of whānau, hapū and iwi. They are redress packages aimed at addressing Crown breaches of Te Tiriti and providing a platform for those breaches to not happen again.

3.5 However, the extent of any Treaty Settlement has never and currently does not influence the law-making process, save for where legislation directly touches a particular redress mechanism (for example the previous governments reform of the RMA system explicitly provided for the Whanganui River, Waikato River and Ngai Tahu settlements) but only to ensure the same provision for those settlements replicate the policy setting as at the date of their inception. Therefore, the analysis throughout the law and decision-making process has never attempted to assess proposed laws against the Treaty Settlement as a whole or they context they are negotiated in.

3.6 For instance, the historical account, Crown apology and Crown acknowledgments are redress mechanisms within a Treaty Settlement. They (from our perspective) set out in detail and in the Crowns own words, the breaches of Te Tiriti by the Crown. These redress mechanisms would therefore provide an appropriate minimum standard for reviewing proposed laws against an attempt to ensure similar breaches do not occur again.

3.7 That is not and never has been the approach the Crown takes or means to take when they include reference to Treaty Settlement compliance in the law- and decision-making process. The relegation of such mechanisms is akin with that of Te Tiriti and is the toxic underbelly of the Crown that regularly exposes itself. It's clear that the Ministry has not viewed Treaty Settlements in this way and instead opted for the standard flawed Crown approach. In our view, the correct and appropriate framing of regulatory principles should start from Te Tiriti, and Treaty Settlements as a whole can only add to that framing exercising.

3.8 The analysis (including that contained in the Regulatory Responsibility Taskforce Report 2009) does not address how good regulation could stem from Te Tiriti itself. Instead, it focuses on the overly complicated system and principles inherited from Britain, and suggests that centralising these into one place and simplifying their contents

is the best (and maybe only) means of improving the regulatory setting in New Zealand. That, as Māori know, is not true.

3.9 By setting in primary legislation a core set of principles of responsible regulation, the proposed bill attempts to give weight to those principles that in reality would be applied as overarching or primary with respect of Te Tiriti. Without understanding what those principles exactly are nor understanding what the Minister for Regulation will say in the way of what they mean and how they should be applied, it can only be taken that the proposed bill will constrain the Governments Treaty (and therefore constitutional) role. Further, the proposal that the Minister will set the guidelines for what these new principles mean and how they will apply, has the effect of making those principles politically motivated, lack impartiality, and will enhance the powers of the said minister over the general law-making function of Parliament and the role of the executive. This should be a concern and is at odds with other systems where such direction is issued by independent decision-making bodies (thus removing any issue of corruption) or where such principles and guidelines are secondary legislation not primary.

3.10 It is also concerning that if principles of responsible regulation are established, that these would then set a standard for existing laws to be reviewed and possibly amended. Because Te Tiriti does not feature in the proposed bill at all, it is clear that any such review of existing laws would likely generate an unfavorable or detrimental outcome for Te Tiriti (and thus Māori), particularly where those principles primarily promote individual property rights and economic financial interests over collective matters of importance (like the environment). Similarly, the limited analysis on the New Zealand Bill of Rights and the codification of that in the proposed bill is problematic.

3.11 We have assumed that this is deliberate, but not surprising as the consultation documentation continues to highlight the systematic supremacy of the executive government even over and where individual rights are concerned. The establishment of an independent board to assess consistency with the principles of responsible regulation provides no assurance that the rights of New Zealanders and importantly pre-existing rights protected by or that evolve from Te Triti will be protected. In our view, such a board (as with the Ministry for Regulation itself) is another overcomplication to the current system and just moves the incorrect exercise of power somewhere else. We see no improvement to the regulatory setting in Aotearoa arising out of the proposed bill and caution the Ministry about the same as it moves to give effect to a coalition agreement in place of good government and the proper exercise of power.

4.0 Recommendations

4.1 Given the above, we recommend that this whole process be paused and that:

(a) The Government commit to upholding and honouring Te Tiriti by recommencing this process with Te Tiriti as the central driver;

(b) Māori be consulted directly to determine (meaning be the decision maker for) how and what meaning Te Tiriti takes in any amended or proposed new regulatory setting; and

(c) That any principles of responsible regulation (if established after steps (a) and (b) above are completed) include an overarching principle that protects Te Tiriti and uses it as the directive force behind all other principles.

Dated 13 January 2025