Ngāti Hāua Iwi Trust

SUBMISSIONS OF THE NGĀTI HĀUA IWI TRUST
on the Regulatory Standards Bill

14 June 2025

1.0 EXECUTIVE SUMMARY

1.1 The Regulatory Standards Bill (**Bill**) is another legislative spear heaved at our iwi in the pursuit of standardising the neo-colonial ideals of this Government. Not only does it remove Te Tiriti o Waitangi, but is seeks to normalise within the public service, and within the operation of Government, a culture of Māori denigration and a hierarchy of legal values and concepts, not of this land or even defined in the local context.

1.2 Naturally, it would be obvious for us to point out that it is an error to exclude Te Tiriti o Waitangi from the Bill's framework and substance. Doing so will cause catastrophic legal, societal, cultural, constitutional and financial consequences not seen in our country's history since the New Zealand wars. We refer the committee to our submission dated 13 January 2025 which we submitted as part of the consultation process on this Bill (**attached**) that covers off this issue.

1.3 These submissions focus on the Bills reductive framing of the Rule of Law and how such a framing sows a discord with the New Zealand legal context. That is to say that the Rule of Law in New Zealand, has a different meaning to that generally understood in the international law context or even within any one other nation state. It is our particular set of local factors that determine the pillars of the Rule of Law in New Zealand and therefore its meaning and definition.

1.4 The Bill does not grapple with that, but instead redefines the meaning of the Rule of Law in a vacuum, and by consequence, distorts the evolutionary progress of our unique legal framework, essentially, reverting us back to bygone eras of destructive Māori disenfranchisement before the law. Ultimately this results in Māori not being equal before the law, **OR** in practice, separate but equal before the law.

1.5 We oppose this Bill entirely and recommend to the committee that the Bill discontinue.

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 and Hāua. Ngāti Hāua have 26 affiliated hapū:[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*		

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

Ngāti Keu*	Ngāti Poutama*	Ngāti Te Huaki	Ngāti Tamakaitoa*
Ngāti Kura*	Ngāti Rangitengaue	Ngāti Whakairi	Ngāti Pareteho*

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 and Te Kāhui Maunga. On 29 March 2025 NHIT signed a Deed of Settlement with the Crown, with our settlement bill currently in select committee.

2.3 As part of our settlement, we have reflected both the status of Te Tiriti o Waitangi into the fabric of the intended future relationships we will have with the Crown. The Bill cuts across that, which necessitates our participation in this select committee process.

3.0 THE PROBLEMATIC REALITY OF THE RULE OF LAW IN NEW ZEALAND

3.1 Traditionally (and by traditional we refer to Western tradition) the Rule of Law is a foundational legal principle that in general terms suggests that every person is equal before the law. As a principle and not a rule, there are naturally exceptions to this stated equality. Parliamentary Sovereignty being one and by extension Parliament's ability to determine what those laws are.

3.2 Our own history shows us the devastating consequences of this particular exception to the Rule of Law, for instance:

(a) The Poll Tax of the early 1900's that suppressed the ability to vote by Chinese Immigrants in New Zealand, requiring literacy tests as a prerequisite to vote up until the 1920's.

(b) The imposition of the Foreshore and Seabed Act, which subjected Māori to a racist legal framework to determine whether they held title to the foreshore and seabed, off the back of stripping their property rights.

(c) The exclusion of women from the ability to vote, and likewise the same exclusion for New Zealand prisoners (which we note are majority Māori).

3.3 Although a limited list of examples, these do not understate the point that currently the Rule of Law in New Zealand is fraught because it does not carry with it the right set of pillars. In New Zealand, we have a moving scale of "thin" and "thick" applications of the Rule of Law. The movement on that scale commonly falls in the middle, meaning both are present at the same time. Regardless, any movement either way (or not at all) depends on two factors:

(a) The political agenda of the Government of the day; and

(b) The financial (or at least perceived) state of the nation's economy.

3.4 The "thin" application of the Rule of Law, is where it is applied as a formality only, lacking substance or weight and essentially a catch phrase deployed to uphold the perception of fairness and democracy by Government. A "thick" application is where it is applied in a substantive way. This includes the establishment of an independent judiciary, access to justice, and statutory or common law recognised fundamental rights.

3.5 In New Zealand we have a constant partial "thick" application because of the establishment of the Courts, the Bill of Rights Act, Human Rights Act and various laws providing access to justice including our legal aid system. It is partial because these are all subjected to or have a built-in exception for the exercise of Parliamentary sovereignty. Understandably, that is a necessary element of any western democracy because societies and nations change, but this is also why the core element in the New Zealand constitution is so pivotal in the regulation of Parliamentary Sovereignty and of the movement on the scale referred to earlier.

3.6 What the Bill does is replace our constitution as the regulator, and inserts new "principles" like liberties and property in its place. Not only does this make the current reality worse in terms of the application of the Rule of Law, but it also seeks to redefine the constitutional foundations and conventions by shifting the underpinning legal cultural norms away from societal collectivism.

4.0 THE RULE OF LAW IN NEW ZEALAND

4.1 It's relative to any conversation about law making in New Zealand, to address where the power to make laws in New Zealand derives. Its uncontentious now that when Te Tiriti (the te reo version) was signed, it allowed for the Crown to establish Government. With that came the almost copy and paste of the British equivalent of Government, including all its underpinnings, here in New Zealand. Overtime our system of Government has evolved to fit our particular set of circumstances, but the fact remains that its legitimacy to exist and therefore evolve, derives from the signing of Te Tiriti.

4.2 Once it was signed, the Governments power to make laws was exercised outside its intended limits and that has been acknowledged time and time again by the Crown in all Treaty Settlements. Nevertheless, that power has been self-regulated by the Crown apparatus.

4.3 Why this is important is because the fundamentalist concept of the Rule of Law (i.e. that understood in the British context) arrived on our shores as a byproduct of the signing of Te Tiriti, and the legitimacy Te Tiriti provided for it to exist as a concept of good Government here. That means that the way the Rule of Law is defined is not only subject to Te Tiriti by framed by it. In this way, Te Tiriti is the only justified lens for any western constitutional concepts in the New Zealand democratic context. Put more simply:

(a) The first is that the Rule of Law in New Zealand is completely subject to and limited by Te Tiriti. This has the result intended by Rangatira in 1840, which was that the guarantees in article 2 are paramount, and any exercise of Government (including law making) under Article 1, cannot cross the threshold into the Māori world unless by explicit consent; and

(b) Because of that limitation, the Rule of Law takes on a different set of pillars that distinguish it as a concept, principle, and as having a "thick" applicability to that of any other democracy internationally.

4.4 Arguably the alternative could be that because of the limitation provided by Te Tiriti on the Rule of Law, the Rule of Law could just exists in its fundamentalist form within delineated pockets across the motu. This argument loses traction against the realities of our nation currently. So instead, to work towards the outcome of proper Tiriti cohesion, we need to define the Rule of Law in the New Zealand context or define what it is not.

What the Rule of Law is not in New Zealand

4.5 The Rule of Law in New Zealand is not every person being treated the exact same by or before the law. Our observation of the current reality is that legislation already treats people differently, both from an inequality and equitable perspective. For example:

(a) Te Ture Whenua Māori Act legislates a different (and in some cases more onerous) system of land tenure for Māori landowners. Some would argue this is inequality, while at the same time, it can be argued it allows for the continued collective ownership of land and ease of access to the Courts for the same, acknowledging the tumultuous history of Māori land issues. Inequality and equity (to some degree) exist in this example.

(b) Treaty Settlements provide rights to specific whānau, hapū and iwi that other whānau, hapū, iwi and New Zealanders do not have. Those rights, although minimal given Article 2 of Te Tiriti, are a form of equitable relief for the injustices of the past inflicted by the Crown. On the other hand these are technically unequal under the premise that we all need to have the exact same rights or treatment before the law.

(c) The right to vote conferred by section 12 of the New Zealand Bill of Rights Act (**NZBORA**) gives every New Zealand citizen over the age of 18 the right to vote. Inequality arises with this law in two forms:

(i) the inconsistency with the Supreme Courts decision that the voting age should be 16 for the age limit to be consistent with the NZBORA; and

(ii) the imminent reinstatement of the prisoner voting ban.

Arguably, equity might be seen in this type of ban because of the breach of civil obligations that occurs by committing serious crimes/offences.

4.6 There are more examples that lead to the same point: that the Rule of Law in New Zealand is not and has never been a concept of exact equal treatment of its citizens by or before the law. What does run through a portion of the examples is that where there is inequality there is sometimes an equitable justification. However, in most cases where there is inequality (particularly where this is faced by Māori) it is commonly due to Tiriti reduction or erasure.

4.7 It is unworkable to achieve equality for all before the law, because the needs of people vary and so the law must respond to the variance equitably. This is also why

Te Tiriti and tikanga must frame the concept of the Rule of Law. Te Tiriti highlights the bi-cultural variance in New Zealand, and the genesis of different rights (not better rights) existing as a constitutional reality.

What the Rule of Law is in New Zealand

4.8 It follows that, in our view, the Rule of Law in New Zealand must mean equity under Te Tiriti o Waitangi, with tikanga as the vehicle for application.

How the Bill mirrors what the Rule of Law is not and reduces its meaning further

4.9 Clause 8(a) of the Bill states:

> *Rule of law*
> (a) the importance of maintaining consistency with the following aspects of the rule of law:
> (i) the law should be clear and accessible:
> (ii) the law should not adversely affect rights and liberties, or impose obligations, retrospectively:
> (iii) every person is equal before the law:
> (iv) there should be an independent, impartial judiciary:
> (v) issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion:

4.10 Clause 8(a) has two overarching flaws:

(a) It limits the current, or even traditionalist meaning of the Rule of Law by noting that administering the Bill, only requires consistency with that limited construction; and

(b) Those aspects of the Rule of Law, advance individualism by excluding the New Zealand Constitution and constitutional norms.

4.11 Short circuiting the description of the Rule of Law is a significant red flag. By doing this, the Bill excludes critical pillars of the Rule of Law as currently understood, by cherry picking those parts that advance a particular neo-liberal policy agenda.

4.12 To understand this, in the following table we have undertaken a brief exercise of highlighting the extent of the cherry picking against some of the understood basic underpinnings of the Rule of Law, and those excluded from clause 8(a) of the Bill.

Clause 8(a) of the Bill	Current Jurisprudence and excluded matters (in bold)	Differences
The law should be clear and accessible:	The law must be accessible, **and so far as possible**, **intelligible**, clear and **predictable**.	The exclusion of these highlighted elements suggests laws could bypass a threshold of intelligibility and predictability meaning that laws could be made for no reason or on a political whim addressing no issue at all, and be based on warped ideas or concepts not consistent with current norms. By excluding the "as far as possible" aspect, the Bill also removes an important scale used to measure the important lengths law makers must go to uphold the intelligible, clear and predicable thresholds.
Every person is equal before the law:	The laws of the land should apply equally to all, **except to the extent that objective differences justify differentiation.**	Highlighted here is a necessary exception to the equality element. It takes account of the domestic and natural human contexts that require bespoke responses by the law or which the law cannot touch.
There should be an independent, impartial judiciary:	There **must** be an independent and impartial judiciary **from Government, and also independent from all other judges**.	The use of the word should, indicates a level of discretion to have an independent judiciary. We presume it is the independent and impartial part that the word "should" is being targeted as apply to. Like in other jurisdictions, total independence and impartiality of the judiciary is not doctrine, and that must be avoided as to occur here. This extends to the other highlighted portion which ensures the independence and impartiality of the judiciary from Government and other Judges.

Issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion:	Questions of legal right and liability should **ordinarily** be resolved by application of the law and **not the exercise of discretion**.	The key difference here is the word 'ordinarily'. This is a complex issue, but a clear problem is whether there are existing areas where discretion is necessary because there is no direct law to apply or where discretion is exercised but culminates in law. For example, the Treaty Settlement process is conducted under the exercise of discretion guided by policy and partially by legal principles and law. That process can answer questions of legal right. It would seem on its face, that the exclusion of 'ordinarily' when coupled with the review powers of the proposed regulatory standards board under the Bill of existing and proposed legislation, that exclusion may warrant a review of current settlement legislation and allow for recommendations to legislate the Treaty Settlement process. We do note that this aspect of the Bill relates to the exercise of administrative discretion and not the discretion held by the Courts. That said, it is problematic for public services to be completely confined to the law of the executive. This raises cross over between the role and function of elected representatives and the public service. It also means that matters not currently prescribed in law, like Te Tiriti which is currently still applicable because of its constitutional primacy, cannot be drawn on to guide administrative decision making, or be rationale for the same.
The law should not adversely affect rights and liberties, or	Nil	This is a new concept in terms of being an aspect of the Rule of Law. Understanding this would require some further analysis but assessing against the current Government's pay equity law changes, its

impose obligations, retrospectively:		not a concept they currently abide by either (simply because it doesn't exist in reputable theory). It seems that the second portion about not imposing obligations retrospectively, is a way to fetter out any ability to address issues against the government retrospectively.
Nil	Natural justice: adjudicative procedures should be fair, a means for resolving legal disputes without prohibitive cost or inordinate delay (i.e. the provision of legal aid), and the protection of confidential communications between a lawyer and client.	Excluded completely. Possible partial coverage by clause 8(g)-(h).
Nil	There should be an independent legal profession, equipped to advise citizens on their rights and freedoms, and assist them in availing themselves of these rights, without fear of repercussion.	Excluded completely.
Nil	Individuals are presumed innocent until proven guilty and are not deprived of their liberty without the opportunity for a fair hearing before an impartial court or tribunal.	Excluded completely.
Nil	Citizens can openly and freely criticise the law and its administration and should have access to the Courts to litigate such criticisms.	Excluded completely. Possible partial coverage by clause 8(h).
Nil	Respect for property, with a fair and rigorous process where it is to be taken from a citizen, or its use restricted in some way.	Excluded completely. Possible partial coverage by clause 8(c).
Nil	The law must afford adequate protection of fundamental human rights, the protection of human rights and institutions which provide citizens access to redress in the event of discrimination.	Excluded completely. Possible partial coverage by clause 8(b), (i)-(l).

Nil	Ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred and without exceeding the limits of those powers.	Excluded completely. Possible partial coverage by clause 8(h).
Nil	States must comply with their obligations under international law derived from treaties, and international customs and practices.	Excluded completely.

4.13 Again, we have only touched on basic underpinnings of the Rule of Law. We do not accept these basic underpinnings are even correct in the New Zealand context given tikanga and Te Tiriti. The point being made by the above exercise is that even against western system of law standards, the construction of the Rule of Law in the Bill does not stack up, and further highlights that this Government is comfortable moving the goal posts on its own field to achieve its political agenda.

4.14 We also acknowledge in the above exercise, areas where the construction of the Rule of Law excludes existing aspects of the Rule of Law but possibly partially covers them within other principles in clause 8 of the Bill. We identify this as purposeful given the architect of this Bill. By creating stand-alone principles out of the residual aspects of the Rule of Law not included in clause 8(a), it means that:

(a) those aspects become principles and carry their own weight as opposed to being weighed within the context of the Rule of Law and alongside all its elements in the local context; and

(b) overtime results in those stand-alone principles becoming accepted principles of law and of our constitution much like the Rule of Law currently is. The stand-alone nature and the added weight referred to above, mean they take of dual importance alongside the current concept of the Rule of Law, Parliamentary Sovereignty and the Separation of Powers, but also in the treatment of Te Tiriti and tikanga in a constitutional context.

4.15 More importantly, we reiterate that the limited construction of the Rule of Law in the Bill is significantly more troublesome, because the Bill also excludes the primary constitution for New Zealand and introduces either new principles or not defined terms, and without reason.

Other notable observations

Second tier Treaty Principles Bill

4.16 The limited construction of the Rule of Law in the Bill is another attempt at ring fencing Tiriti and tikanga based rights to those outlined in Treaty Settlements as was proposed under principle 2 of the Treaty Principles Bill, albeit within a different administrative context. This is identifiable because:

(a) The assertion of equality before the law, including individual rights/liberties, is expressed in the same manner across both Bills and with the same exception related to Treaty Settlements; and

(b) By creating any legislative framework (regardless of purpose and function) that excludes tikanga and Tiriti rights, save for those in Treaty Settlements, is constitutional denial and Tiriti/Māori erasure.

4.17 We see the Bill as a watered-down version of the intent of Treaty Principles Bill and as an alternative route to seek the same outcome.

Social fear mongering

4.18 Populism is driving the communication strategy behind this Bill. The use of the current experiences across low- and middle-class New Zealanders of social deprivation

caused by the cost of living and international unrest, as a means to justify and obtain support for the Bill, is only one example of this populist approach. The use of it as a means of selling to the nation that the Bill is necessary to address that deprivation by suggesting their individual rights require protection, is fear mongering. It also misconstrues the importance of collective rights and responsibilities that is critical in times of need. This needs to be called out, because of the underline abuse of power and the duty elected members have with respect of the public.

The Legislation Design and Advisory Committee (LDAC)

4.19 In 2015 the Legislation Design and Advisory Committee was established to:

(a) to improve the quality and effectiveness of legislation;

(b) provide advice to government agencies about the design and content of bills earlier on in their development;

(c) address problems in the basic architecture of legislation;

(d) identify potential legal and constitutional issues before bills are introduced;

(e) builds on the work of the former Legislation Advisory Committee and Legislation Design Committee; and

(f) takes on responsibility for the Legislation Guidelines and the related website.

4.20 There are similarities between the proposed regulatory standards board and other provisions in the Bill, with the current function, purpose and role of LDAC. The Bill does not mention nor differentiate from LDAC, meaning that the functions of the Bill are repetitious and/or futile.

4.21 Importantly, the creation of LDAC on the basis of creating improved quality and effective legislation, has culminated in the 2021 Legislation Guidelines that provide for many of the gaps we have identified with the Bill. We do not accept the argument that those guidelines are also why the Bill is necessary, for the reasons stated throughout this submission.

5.0 CONCLUSION

5.1 The cherry picking that the Bill reflects, aims to create a system of strict neo-liberal freedoms for individualistic means, and cause a culture shift away from collective responsibility. Although the Bill does not have any teeth in terms of removing the power of our constitution or of Parliaments framed superiority, allowing continuous discourse about law making based on a limited set of aspects of the principle of the Rule of Law (among other misconstrued principles), will eventually result in those being the accepted norm, convention and then foundation of our democracy/constitution.

5.2 The creation of a monocultural society through the means of altering the public, legal and constitutional discourse is indigenous erasure. In any society that allows the setting in motion of this type of orchestrated extremist agenda, history shows, almost always results in ethnic cleansing and genocide of its minority and often indigenous factions of that society. Therefore we oppose this bill entirely.

"**Unuunu te puru o Tūhua mā ringirngi 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'