PARLIAMENTARY DEBATES ON LEGISLATION CONTAINING REFERENCE TO THE TREATY OF WAITANGI

Legislation Containing Treaty References Not Amounting to a Direction to Act

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CONSERVATION ACT 1987

An Act to promote the conservation of New Zealand's natural and historic resources, and for that purpose to establish a Department of Conservation

4. Act to give effect to Treaty of Waitangi---This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

8 Dec 1988, Parliament, Session, Hansard Vol 495, p8698
Conservation Amendment Bill (No. 2) (Second Reading)

Among clauses of Bill are proposed s60(2) stating - ``The Director-General may on behalf of Her Majesty the Queen *without complying with any provision of this Act* other than section 50(2) or any provision of the Land Act 1948, dispose of---(a) Any land acquired under subsection (1) of this section.''

McTigue expresses concern at relationship of amendment to s4 of the principal Act (the Treaty of Waitangi section) –

> Some aspects of the Bill cause me real concern. I am disappointed that the Minister has decided to introduce and pass the Bill through all its stages under urgency. I am most concerned about the relationship of section 4 of the principal Act, which gives protection under the Treaty of Waitangi to Maori land, and, in particular, that part about the proposed new section 60(2) in clause 2 that states: ``The Director-General may on behalf of Her Majesty the Queen without complying with any provision of this Act other than section 50(2) or any provision of the Land Act 1948, dispose of---(a) Any land acquired under subsection (1) of this section.'' That, to me, seems to say that the rights of the Maori people, protected under section 4 of the original Act, may well be extinguished by this amendment.
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> The House is being asked to pass the Bill through all its stages under urgency, presumably tonight, without the opportunity of consultation and counsel. That will be of major concern to the House. By passing the Bill hurriedly, Parliament may be extinguishing some Maori rights that should be protected under the Treaty of Waitangi. I find it extraordinary that the Director-General of Conservation is given powers that set aside all the other statutory powers to exercise his discretion. That is wrong in principle and I believe that it will bring about unfortunate circumstances.

J Bolger states that amendment is being passed under urgency to subvert s4 of the principal Act -

> There has to be a reason for ramming the Bill through. I suggest that the reason is section 4 of the principal Act, which was passed in 1987. It states: ``This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.'' The proposed amended section 60(2) in clause 2 of the amending Bill that will be rammed through states: ``The Director-General''---that overpaid official---''may on behalf of Her Majesty the Queen, without''---note this---``complying with any provision of this Act...or any provision of the Land Act 1948, dispose of---(a) Any land acquired under subsection (1)'', and so on. Is the purpose of pushing the Bill through Parliament that of avoiding another embarrassment such as section 9 of the State-Owned Enterprises Act, concerning which the Government was taken to the High Court and lost a judgment five to nil in the Court of Appeal? The Government was told that the Act was outside its intent and that it would have to comply with the law.

EDUCATION ACT 1989

An Act to reform the administration of education
An Act to reform further the administration of education and, in particular, to reform tertiary education and training with a view to---

(a) Giving tertiary institutions as much independence and freedom to make academic, operational, and management decisions as is consistent with the nature of the services they provide, the efficient use of national resources, the national interest and

the demands of accountability; and
(b) Establishing a consistent approach to the recognition of qualifications in academic and vocational areas; and
(c) Encouraging greater participation in tertiary education and training, in particular by removing barriers to access for those groups of persons who have previously been under-represented; and
(d) Contributing to a dynamic and satisfying society by promoting excellence in tertiary education, training, and research

181. DUTIES OF COUNCILS –

It is the duty of the Council of an institution, in the performance of its functions and the exercise of its powers,—

(a) To strive to ensure that the institution attains the highest standards of excellence in education, training, and research:

(b) To acknowledge the principles of the Treaty of Waitangi

(c) To encourage the greatest possible participation by the communities served by the institution so as to maximise the educational potential of all members of those communities with particular emphasis on those groups in those communities that are under-represented among the students of the institution:

(d) To ensure that the institution does not discriminate unfairly against any person:

[[(e) to ensure that the institution operates in a financially responsible manner that ensures the efficient use of resources and maintains the institution's long-term viability:**]]**

(f) To ensure that proper standards of integrity, conduct, and concern for—

(i) The public interest; and

(ii) The wellbeing of students attending the institution—

are maintained.

28 Jun 1990, 42ND Parliament, 2nd Session, Hansard Vol 508, p2564
Education Amendment Bill (Second Reading)

R Munro on Treaty reference in s181 –

> That matter is dealt with, of course, in the new section 178 in clause 19 under the duties of councils. I note that one of the obligations of the councils is to acknowledge the principles of the Treaty of Waitangi. That phrase is common in many legislative provisions, but perhaps the Minister or a Government member, bearing in mind the difficulties in the matter, could say just what those principles are. Case after case is being fought to try to decide just what they are. I notice, for example, that Professor Parkinson of the University of Otago and another well-known academic, Dr Claudia Orange, have separate views on those matters. There are questions at issue when university or tertiary councils and, through charters, every secondary school, have imposed on them the very difficult task of deciding what the principles of the Treaty of Waitangi are before those principles can possibly be acknowledged in a day to day way.

FORESHORE AND SEABED ENDOWMENT REVESTING ACT 1991

An Act to revoke certain endowments of foreshore and seabed, and revest those endowments in the Crown

3. Treaty of Waitangi---All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

7 Nov 1989, 42nd Parliament, 1st Session, Hansard Vol 502, p13381
Foreshore and Seabed Endowment Revesting Bill (Introduction)

V S Young on the reasons for the introduction of the Bill –

> I have discussed the Bill's contents with several district planners in the Auckland region. They told me that if the Bill is passed---that is, if the foreshore and seabed are revested in the Crown, coming under the administration of the Department of Conservation, then as Crown land opening up once again to claims under the Treaty of Waitangi Act---we can say goodbye to any marina development in the Auckland region. The final status of the seabed or foreshore will be insecure, because it will be subject to claims to the Waitangi Tribunal.
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> My colleague the member for Marlborough has learnt that prime ministerial intervention is one reason for the Bill. If the Minister of Maori Affairs, who is trying to interject, wants to take for himself, and the proportion of New Zealanders he represents, every bit of public land and access to public land, let that be his policy. It is my policy and the policy of the National Party that the opportunity for usage and access to the foreshore and seabed should be shared by all New Zealanders. They should not be subject to claims to the tribunal. I am told that such claims against the foreshore or seabed would seriously impinge on any development proposals for marinas. The explanatory note to clause 4 states: ``The intention is that the land concerned will have the same legal status as it had immediately before the alienation from the Crown. This means that any Maori interests in respect of the land at that time can be revived when the Bill comes into force.'' The Bill's intention is clear. It will be one more divisive piece of shrapnel thrown by the Government into the cauldron of social and racial affairs.

26 Sept 1991, 43rd Parliament, 2nd Session, Hansard Vol 519, p4589
Foreshore and Seabed Endowment Revesting Bill (Second Reading)

Paul Swain states –

> The Bill recognises a number of important issues. It recognises that foreshores and seabeds have a high conservation value; that there is a strong national interest in the issue; and that there are important issues that need to be addressed under the Treaty of Waitangi. The select committee received 23 written submissions, 23

supplementary submissions, and 14 oral submissions. A number of issues were addressed during the select committee's deliberations. A couple of Maori submissions indicated that they were concerned about the implications of the Bill in relation to the Treaty of Waitangi. The select committee came to the general agreement---quite rightly---that it would be better if all lands were under the control of the Crown so that any negotiations under the Treaty would be carried out with the Crown rather than with local agencies. That was the view of the select committee, and a correct one, in the view of the Opposition.

Some technical matters relating to the responsibilities of local authorities under the Bill were also raised. The member for Ohariu raised that issues. Questions about local reclamations and the Lambton Harbour project were also raised. That project is now exempt from this legislation because it has its own. A number of amendments were made by the select committee. I will not mention all of them, but it is important to record two or three. The Treaty of Waitangi has been included in the definitions because the committee thought that it was important to indicate that it is important not to avoid claims made under the Treaty, and to clarify that the Bill does not do that. The new clause 2A sets out the duty of everyone to have regard to the principles of the Treaty of Waitangi, as does other legislation. That was a correct provision to include.

1 Oct 1991, 43rd Parliament, 2nd Session, Hansard Vol 519, p4613
Foreshore and Seabed Endowment Revesting Bill (Third Reading)

John Blincoe notes existence of Treaty clause introduced at committee stage.

HARBOUR BOARDS DRY LAND ENDOWMENT REVESTING ACT 1991

An Act to provide for certain endowments of dry harbour land to be revested in the Crown or reserved for certain purposes, and to amend certain enactments

3. Treaty of Waitangi---All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

CROWN RESEARCH INSTITUTES ACT 1992

An Act to provide for the formation of Crown-owned companies to undertake scientific research and other related activities, and to provide for matters incidental thereto.

10. Treaty of Waitangi---In relation to the transfer, pursuant to this Act, of any land, or any interest in any land, to a Crown Research Institute or a subsidiary of a Crown Research Institute, the shareholding Ministers shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

7 Apr 1992, 43rd Parliament, 2nd Session, Hansard Vol 523, pp7627
Crown Research Institutes Bill (Introduction)

M Austin notes references in legislation to Maori. Also notes watering down of the Treaty of Waitangi section.

> It also seems to me, from reading the latest issue of Te Awhina, that the Bill has been held up for some time mainly because of consideration of aspects that relate to Maori issues. I note that clause 5(4), which requires a Crown research institute to be a good employer, includes requirements to recognise the aims and aspirations of Maori, the employment requirements of Maori, and the need for greater involvement of Maori as employees of a Crown research institute. That is great.
>
> But then I come to clause 10, which relates to the Treaty of Waitangi. I find that, in the transfer of any land or interest in any land, a Crown research institute ``shall have regard to the principles of the Treaty of Waitangi''. We have to ask why the Government has chosen the words ``have regard to the principles of the Treaty of Waitangi'' and why it has not transferred the wording of section 9 of the State-Owned Enterprises Act---
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> Hon. Ruth Richardson: It's not a State-owned enterprise.
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> Hon. MARGARET AUSTIN: I am aware of that. Of course it is not a State-owned enterprise, but having the word ``regard'' means that that provision is a watering down of the requirement not to be inconsistent with the principles of the Treaty of Waitangi. I noticed that senior kaumatua have been closely involved and are very supportive of the Bill's intentions, but I feel that we will need to hear from them whether clause 10 meets their requirements.

J Falloon on Treaty clause, states -

> I want to talk about the issue of the Treaty of Waitangi in clause 10, referred to by the member. That clause states that in relation to the transfer, pursuant to the Act, of any land, or interest in any land, the shareholding Ministers shall have regard to the principles of the Treaty of Waitangi. I simply want to say that there has been wide consultation that the Bill does refer to Maori issues, and that I hope that in the process of developing this vital legislation we will see a continuation of that co-operation.
>
> I would find it very sad if what is terribly important for New Zealand is interrupted by an attitude such as: ``Well, we've got a problem because some of the resources might be sold in the process of restructuring so we'll have to oblige the Treaty to the point where nothing can happen.'', and the assets cannot be transferred or dealt with adequately to develop a viable operation because of the problems with the Treaty. That has happened with Radio New Zealand.

P Tapsell on the Treaty clause, states -

> Finally, I turn to clause 10, in which one can again see the words ``have regard to the principles of the Treaty of Waitangi...''. For years I have noted that those words have been used over and over again as a perfect excuse to do nothing. I hope that the select committee will set out more clearly what the principles of the Treaty of Waitangi will mean in relation to the Crown research institutes.
>
> For example, the Forest Research Institute in Rotorua is on an

area of land that is extremely valuable because of its thermal activity. It also has the sole access to some of the residential areas behind the Whakarewarewa village; there is no other access. I hope that the principles of the Treaty of Waitangi will ensure that the Minister sees fit to take that piece of land out of the transfer to the Crown research institute before it is transferred, and give it to those people. It is the only access to the residential areas at the back of Whakarewarewa. Maori people want to build homes there. There is no possible use for the access by the Crown research institute.

I hope that the Minister will see fit to ensure that that land---certainly the access to the residential areas of Whakarewarewa---is removed before the land is transferred to the Crown research institute. It will be a temptation to say: ``We'll think about it.'' and transfer it to the Crown research institute, then say: ``It's a matter for the board and the chief executive officer.''.

If the Government chooses to do that then in my view it would not be adhering to the principles of the Treaty of Waitangi, which surely ensured that in transferring land that is in the name of the Crown the Government has a responsibility to ensure that it will not materially disadvantage those Maori who originally owned the land; this is a perfect example.

2 Jun 1992, 43rd Parliament, 2nd Session, Hansard Vol 525, p8436
Crown Research Institutes Bill (Report of Education and Science Committee on Bill)

T Steel says there were concerns expressed at committee hearings on the effect of the Treaty of Waitangi. On the Treaty clause, states –

> Clause 10, which deals with the Treaty of Waitangi, makes clear the Government's intention that Maori interests in land will be protected, but under a more flexible, quick, and cost-effective administrative arrangement than mechanisms in previous State-owned enterprise legislation. The Government is currently negotiating an administrative mechanism by which to settle such matters with Maori, rather than by litigation.

M Austin says Government could have removed clause referring to Maori aims and aspirations, but chose not to in spite of the fact that every member of the committee preferred this option. On the Treaty clause -

> The whole of the submission made by the National Maori Congress was directed at clause 10. As it is worded now, the clause allows the Government to ignore completely any recommendations of the congress about land issues. Having regard to the principles of the Treaty of Waitangi, it is weak and soft---and it comes nowhere near the statement that is set out in section 9 of the State-Owned Enterprises Act, which was put in place in 1986.

T Ryall states –

> One of the criticisms of the Bill to start with was the way in which clause 10, which deals with the Treaty of Waitangi, would circumvent the Treaty of Waitangi (State Enterprises) Act. It is worth noting that the Maori congress outlined its concerns about that

and identified two specific areas of which the select committee had to take some notice. They were the issue of asset transfer, which in itself is a principle enshrined in that Treaty of Waitangi (State Enterprises) Act, and also recognition of Maori environmental knowledge.

My friends in the congress favoured the option of using the existing joint working-party of the Crown and the Maori congress as a way of investigating the transfer of properties to Crown research institutes. They put forward a view that the Treaty clauses should be negotiated contemporaneously with contractual arrangements that might be affecting the various Crown research institutes. They expressed concern that clause 10, which circumvents the Treaty of Waitangi (State Enterprises) Act, might not actually protect Maori interests. I do not know whether that is actually a concern that Government members would share, because we think that there are appropriate forms in which this whole issue of Maori rights to the land may in fact be better dealt with.

The Maori people also contended that their knowledge of the natural environment is a taonga that was guaranteed protection under article 2 of the Treaty of Waitangi. While not disputing that, we should note that the congress noted the existence of conservation practices and natural base technologies that have been practised for centuries by Maori and that could, in fact, be of benefit to the whole community. A message to the Maori community must be that nothing in this Act prevents research into its taonga, its established traditions.

4 Jun 1992, 43rd Parliament, 2nd Session, Hansard Vol 525, p8574
Crown Research Institutes Bill (Second Reading)

M Williamson (Min of Communications) states –

Clause 10 deals with a Government policy regarding the Crown's Treaty of Waitangi obligations, particularly in relation to Maori interests in land. In supporting this clause the Crown notes that it has a sincere intention to ensure that Maori interests in land will be adequately catered for, which is backed up by the Crown's undertaking to put forward a consultative rather than a legislative approach to the Treaty issues.

M Austin on the Treaty clause, states –

In my last few minutes I want to discuss the very important issue of the Treaty of Waitangi, which is dealt with in clause 10. The provision in the Bill is weak and ineffective: the requirement to have regard to the principles is just not good enough. The provision needs to be strong, and to reflect the words in sections 9 and 27 of the State-Owned Enterprises Act. As it is phrased, clause 10 leaves far too much room for misinterpretation.

The Maori congress and the science implementation committee are dissatisfied with the words of clause 10. The implementation committee has worked long and hard with the Maori congress to arrive at a negotiated position without recourse to the courts. But the cold, hard hand of Government policy is reflected in the words of clause 10, and that is just not satisfactory. One hundred and thirty parcels of land are to be transferred to the Crown research

institutes on 1 July and there are Treaty of Waitangi claims on 90 percent of them.

It is very important that---in spite of the desire of the congress, the Government, and the implementation steering committee to arrive at an administrative position rather than to have to resort to a court decision---there is a back-stop of legislation available in the event of a breakdown in the negotiations. Mechanisms must be available that clearly set out the way in which the procedures are to be followed.

This is to be found in the Treaty of Waitangi (State Enterprises) Act 1988. I draw attention particularly to Part II of that Act that sets out in detail the provisions for resumption of land on the recommendation of the Waitangi Tribunal. Those rules must be laid down, and the Crown has an obligation to see to it that Maori interests are recognised, accommodated, and redressed.

Unless Part II of the Treaty of Waitangi (State Enterprises) Act 1988 is inserted into this Bill, there will be no provisions for resumption in the event of an administrative decision not being reached. I propose also to move in the Committee stage that an amendment be inserted in the Bill to that effect.

Opposition members support the Bill. It is in the interests of science in New Zealand, and we will do everything we can to facilitate it---provided, of course, that we get a reasonable hearing for the amendments that we propose to put forward in the Committee stage.

T Ryall in response to ***M Austin*** states –

A number of points were made by the member for Yaldhurst, who spoke for some time about clause 10 and the effect that that would have on the Maori community. It is important to note that the statements of corporate intent will allow the Ministers to monitor the social responsibilities and performance of Crown research institutes. So while clause 10 may not have the power or the strength that the member claims is in the Treaty of Waitangi (State Enterprises) Act, I think that she will have to agree that it is worth while that the Ministers will monitor their responsibilities to the Maori community and to the taonga that Maori people expect to be researched by Crown research institutes.

10 Jun 1992, 43rd Parliament, 2nd Session, Hansard Vol 525, p8734
Crown Research Institutes Bill (In Committee)

M Austin proposed new clauses based on the Treaty of Waitangi (State Enterprises) Act, providing for the compulsory resumption of Crown Research Institutes land on recommendation by the Waitangi Tribunal. The ***Deputy Chairman*** ruled these clauses out of order on the ground that they involved an appropriation. ***M Austin*** then withdrew the amendment in her name to insert the following proposed new clause –

32A. Maori land claims---The submission in respect of any land or interest in land of a claim under section 6 of the Treaty of Waitangi Act 1975 does not prevent the transfer of that land or of any interest in that land or of that interest in land--- (a) By the Crown to a Crown Research Institute; or (b) By a Crown Research Institute to any other person.

This amendment was also negatived and does not form part of the Act.

11 Jun 1992, 43rd Parliament, 2nd Session, Hansard Vol 525, p8801
Crown Research Institutes Bill (Third Reading)

M Williamson (Associate Min of Research, Science and Technology) states -

> Concern was also raised about whether clause 10 of the principal Bill gave adequate protection to Maori in respect of land transferred to Crown research institutes. The Crown's position on this matter is equally clear. It does not wish to perpetuate a litigious approach to the settlement of Treaty claims. The Crown accepts that it must honour the Treaty in respect of any claims to land held by the Crown research institutes.
>
> It does not accept that the Crown research institutes are involved in alienation of land from the Crown, and therefore it believes that the question of land claims should be dealt with directly by negotiation between the parties---that is, between the iwi and the Crown. My colleague the Minister of Justice is proceeding to negotiate an administrative arrangement that, once negotiated, will be a binding requirement on Crown research institutes that will effectively prevent the alienation of land under claim unless the claimant party is satisfied that the dispute has been properly brought to a conclusion.
>
> Clause 10 appears on the face of the statute only because at the time that the principal Bill was introduced the Crown had not managed to conclude an arrangement. It is therefore back-stop protection that, on present case law, would easily sustain the claim if the Crown were to act in bad faith. I must stress that the Crown intends to do no such thing. It fully intends to ensure that the move to set up Crown research institutes and to transfer assets to them will not be allowed to prejudice the legitimate claims of iwi under the Treaty of Waitangi.

M Austin states –

> The Opposition also indicated its dismay at the weak and soft wording in clause 10, because it represents a very much watered-down version of what appears in the State-Owned Enterprises Act. Again, the Opposition sought to strengthen the Bill by inserting Part II of the Treaty of Waitangi (State Enterprises) Act 1988 to ensure that there is a legislative back-up, in spite of the Government's desire and the Opposition's support of that desire to achieve administrative solutions to Treaty of Waitangi claims. The Opposition's view was that the legislative back-up in Part II of the Treaty of Waitangi (State Enterprises) Act provided a legislative framework that the Government should be required to adhere to.
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> There is a precedent for including that section in a Bill. It is included in the Education Amendment Act 1990, and ought to have been transferred into this legislation for the protection and security of Maori in relation to their Treaty of Waitangi claims. We know that 130 parcels of lands are to be transferred to the Crown research institutes, and 90 percent of them involve Treaty of Waitangi claims.

HAZARDOUS SUBSTANCES AND NEW ORGANISMS ACT 1996

An Act to restate and reform the law relating to the management of hazardous substances and new organisms

8. Treaty of Waitangi---All persons exercising powers and functions under this Act shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

19 Dec 1995, 44th Parliament, 1st Session, Hansard Vol 552, p10762
Hazardous Substances and New Organisms Bill (Report of Committee on Bill)

Nick Smith (Chairman of Committee) says that at the deliberation stage, the committee was only divided on one issue – the Treaty clause.

Pete Hodgson says that Labour members oppose the wording of the Treaty clause, and expressed this at the select committee.

23 May 1996, 44th Parliament, 1st Session, Hansard Vol 555, p12679
Hazardous Substances and New Organisms Bill (In Committee)

Clause 6. Treaty of Waitangi

JILL WHITE (Manawatu): I shall speak very briefly to this clause. This is one of the areas where the committee did not come to an agreement. The clause as reported states: ``All persons exercising powers and functions under this Act shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).'' The Labour Opposition has consistently viewed this as being a weaker provision than it would like, and it believes that a stronger requirement along the lines of that found in the State-Owned Enterprises Act would be preferred. That would involve using a phrase such as ``to act in a manner that is consistent with the principles of the Treaty of Waitangi''.

That was one of the few areas where the committee did not have agreement, and I think it is important to have that noted in the Committee stage.

NICK SMITH (Tasman): Jill White is quite correct. This was one of the few issues over which the select committee had a difference of opinion. It is a longstanding difference between the National Party and the Labour Party about the status of the Treaty. The Government's view is that the wording ``shall take into account the principles'' is sufficiently strong to ensure that the relevance of the Treaty is given regard to.

I do wonder about the logic behind the argument for increasing the status of a very broad Treaty--a Treaty that does not deal in any context with the very complex issues that this Bill deals with. I think that giving the Treaty a greater status than that of ``taking into account'' will bring into legal question some of the very complex and technical issues that must be confronted with legislation.

Thus, the view of Government members on the select committee is that the clause should stand as introduced.

Clause agreed to.

30 Oct 2001, 46th Parliament, 1st Session, Hansard Vol 596, p12634
Answers to Oral Questions – Royal Commission on Genetic Modification - Treaty of Waitangi

Royal Commission on Genetic Modification---Treaty of Waitangi

9. STEPHEN FRANKS (ACT NZ) to the Minister in charge of Treaty of Waitangi Negotiations: Has she considered whether the spiritual implications for Maori of the Royal Commission's recommendations on genetic modification are contemporary issues for settlement under the Treaty of Waitangi; if so, has she discussed any conclusions with members of the Labour Maori caucus?

Hon. MARGARET WILSON (Minister in charge of Treaty of Waitangi Negotiations): Yes, and, yes, I have discussed it with members of the M~aori caucus, but no conclusions have been reached.

Stephen Franks: When will the Minister produce a public statement of the principles to govern negotiation of contemporary Treaty claims, and without it how will she reassure all New Zealanders that they will not be subjected to the alleged spiritual beliefs of some M~aori?

Hon. MARGARET WILSON: Contemporary claims under the Treaty of Waitangi are not the specific responsibility of this portfolio, although from time to time I am called upon for advice. They are the responsibility of Ministers who have specific responsibility for portfolios in which they arise. At the moment, therefore, each matter is addressed specifically and not generically, because it is important to make sure that any reference to the Treaty is relevant to that piece of legislation, and not just a mantra. In terms of the reference---[Interruption]

Gerry Brownlee: This needs some explaining. Give her extra time.

Hon. MARGARET WILSON: I apologise for the length of the reply. I am very happy to sit down if the member is bored.

Mr SPEAKER: We will hear the Minister's answer.

Hon. MARGARET WILSON: In terms of the specific issue of the spiritual belief of M~aori in relation to the royal commission, that matter is being considered at the moment by the Government. It is under discussion, and after those discussions are concluded and decisions are made, then, obviously, they will be made publicly available. But this Government does respect different approaches and world views, as the Prime Minister has already indicated.

John Tamihere: Has the Government made any decisions relating to the royal commission's recommendations relevant to M~aori concerns?

Hon. MARGARET WILSON: Eight of the 49 recommendations of the royal commission's report made specific reference to the Treaty of Waitangi or M~aori cultural issues. The Government is currently engaged in discussion with members of the M~aori caucus on the best way in which to address those recommendations and other matters.

Hon. Georgina te Heuheu: How specifically will the Government's announcements on genetic engineering address the detailed concerns of the M~aori caucus?

Hon. MARGARET WILSON: That is precisely the matter that is under discussion at the moment.

Nandor Tanczos: Given the world view that is widespread among M~aori, and shared by many P~akeh~a, that putting human genes into animals is bizarre and offensive to cultural and spiritual values, will the intended amendment to the hazardous substances and new

organisms legislation end the practice in New Zealand of putting human genes into animals; if not, what was the point of M~aori making submissions to the royal commission?

Hon. MARGARET WILSON: The Government recognises the importance of that particular issue to M~aori, and there have been discussions on ways in which we can respect the different views---that view included---within the context of any legislation that will emerge. The task that is before us at the moment is to respect the different points of view, while at the same time making sure that one view does not dominate over others.

Rt Hon. Winston Peters: Why is the Government pursuing the spurious argument, which is separatist, that M~aori alone have spiritual values when it comes to this issue, and that no other race does, particularly given that Te Puni K~okiri made a submission to the royal commission supporting genetic modification?

Hon. MARGARET WILSON: This Government respects the diversity of spiritual views, including those expressed within our discussions by Pacific Island communities. As the Green member mentioned in his supplementary question, it is not only M~aori who have a particular spiritual view on that matter. What is important is that it is time for this House to recognise the validity of other points of view besides the views of individual members.

Rod Donald: I raise a point of order, Mr Speaker. I was trying quite hard to hear a very serious answer to that question. I happen to sit between two extraordinary members of Parliament, which makes it very difficult to hear a Minister's reply.

Mr SPEAKER: Extraordinary they may be, but they are also members of Parliament and they will cease their interjecting. I think Mr Donald has made a very fair point.

Rodney Hide: I raise a point of order, Mr Speaker. May I suggest a remedy and a punishment for them both---that they be asked to sit together.

Mr SPEAKER: I am sorely tempted.

31 Oct 2001, 46th Parliament, 1st Session, Hansard Vol 596, p12699

Answers to Oral Questions – Royal Commission on Genetic Modification - Treaty of Waitangi

3. Hon. GEORGINA TE HEUHEU (NZ National) to the Minister in charge of Treaty of Waitangi Negotiations: Further to her answer yesterday regarding the Royal Commission's recommendations which made specific reference to the Treaty of Waitangi or Maori cultural issues, on what specific ``matters'' is the Government ``currently engaged in discussion with members of the Maori caucus''?

ANSWER :

Hon. MARGARET WILSON (Minister in charge of Treaty of Waitangi Negotiations): The Government is currently engaged in discussion over the eight recommendations of the royal commission that made specific reference to the Treaty of Waitangi or M~aori cultural issues. In summary, for the member's benefit, I shall outline the context of these recommendations. I have already signalled that this will be a longer than normal answer, but it is one for information.

Mr SPEAKER: I will take note of that for the supplementary questions.

Hon. MARGARET WILSON: The eight recommendations are: to include at

least one M~aori member on the institutional biological safety committees; to establish a M~aori consultative committee for the Intellectual Property Office; that New Zealand be proactive in pursuing cultural and intellectual property rights for indigenous peoples internationally; to review World Trade Organization conventions to include a reference to the avoidance of cultural offence as a significant ground for exclusion or reservation; to resolve the Wai 262 and Wai 740 claims as soon as possible; to amend section 8 of the Hazardous Substances and New Organisms Act to give effect to the principles of the Treaty of Waitangi; to extend call-in powers under the Hazardous Substances and New Organisms Act to include cultural, ethical, and spiritual issues as grounds for call-in; and, finally, to establish Toi te Taiao, the Bioethics Council. Those are the matters referred to in the royal commission's report that the Government is giving attention to.

Hon. Georgina te Heuheu: Given that those matters related to the Government's decision on genetic modification are still the subject of discussion with the M~aori caucus, does this mean that its support for the Government is still up for negotiation?

Hon. MARGARET WILSON: No. Like all matters of policy, it comes as a result of debate and discussion, and we are going through our normal processes and procedures on these matters. Nothing has changed.

Mita Ririnui: What is the Government's approach to dealing with matters arising under the Treaty of Waitangi in the context of genetic modification?

Hon. MARGARET WILSON: The Government's general approach to matters arising under the Treaty of Waitangi is to work in partnership by ensuring that the rights and responsibilities of both partners are respected and included in a legislative framework, where appropriate. This approach will be adopted in relation to the Treaty of Waitangi and M~aori cultural issues that arise in the context of developing the Government's response to the royal commission's report.

Stephen Franks: Exactly which words of the Treaty require Treaty clauses in legislation dealing with genetic modification, and without them what allows the Government to impose on all of us a superstitious world view of some of us?

Hon. MARGARET WILSON: I shall repeat---[Interruption]

Mr SPEAKER: The member knows that he cannot interject when he is not sitting in his seat.

Hon. Richard Prebble: I raise a point of order, Mr Speaker.

Mr SPEAKER: Is that the member who interjected?

Hon. Richard Prebble: Absolutely, and I was replying to the Minister's suggestion that she was going to repeat an answer to a previous question, which I find offensive. Why can she not answer the question she has been asked?

Mr SPEAKER: I am sorry, I thought the interjection was from the member sitting next to him, and I apologise to him for that. I would now like the Hon. Margaret Wilson to answer.

Hon. MARGARET WILSON: The Government is engaged in a process of discussion on the recommendations of the royal commission. It is in fact not imposing any policy, except that which has come through the royal commission---and we are not imposing it; we are undertaking a process of debate and discussion. The commission's recommendations were the result of considerable public submissions.

Jeanette Fitzsimons: Is the Government considering incorporating the principle of tino rangatiratanga in the hazardous substances and

new organisms legislation?

Hon. MARGARET WILSON: That issue is always considered when we talk about the Treaty of Waitangi.

Rt Hon. Winston Peters: Given that the Federation of M~aori Authorities made an affirmative submission to the commission, and so did Te Puni K~okiri---the so-called M~aori policy arm of Government---and that the greatest proportion of any race using genetically engineered or genetically modified medicines is M~aori, why is she promoting separatist policies?

Hon. MARGARET WILSON: There is no promotion of separatist policies. There is an assumption that the discussion that is coming from within the M~aori caucus is anti the recommendations in the report. That is not the case. What we are doing is finding a way to accommodate genuine differences in views that come out of different cultural and spiritual experiences.

Hon. Georgina te Heuheu: In the light of her statement yesterday that: ``Contemporary claims under the Treaty of Waitangi are not the specific responsibility of this portfolio, although from time to time I am called upon for advice.'', what advice will she offer her colleagues to ensure that her colleague John Tamihere will not have to, as he alluded to on Mana News yesterday, die in a ditch over these matters?

Hon. MARGARET WILSON: I rather doubt that Mr Tamihere is about to die in any ditch, let alone one in this House. Mr Tamihere and I are in constant debate and discussion on these matters, as, of course, are other members of the caucus and the executive.

1 Nov 2001, 46th Parliament, 1st Session, Hansard Vol 596, p12774

Answers to Oral Questions – Royal Commission on Genetic Modification - Treaty of Waitangi

5. Hon. GEORGINA TE HEUHEU (NZ National) to the Minister in charge of Treaty of Waitangi Negotiations: What would be the practical consequences of incorporating the eight specific Treaty of Waitangi and Maori cultural Royal Commission recommendations, which ``the Government is currently engaged in discussion with members of the Maori caucus on'', into the Government's proposed genetic engineering legislation?

ANSWER :

Hon. PETE HODGSON (Minister of Energy), on behalf of the Minister in charge of Treaty of Waitangi Negotiations: These are precisely the matters that are under discussion at the moment. Therefore, an answer will be available when those discussions are concluded.

Hon. Georgina te Heuheu: Given recent statements made by Labour's M~aori caucus that genetic engineering (GE) is ``bizarre and offensive'' to M~aori, would not any move to extend the call-in powers under the Hazardous Substances and New Organisms Act to include cultural, ethical, and spiritual issues as grounds for call-in effectively place a ban on all GE field trials, or will the Government prevent that by continuing to ignore the concerns of Labour's M~aori caucus?

Hon. PETE HODGSON: One of the recommendations of the royal commission was that ethical, spiritual, and cultural considerations ought to be added to the criteria that the Minister for the Environment might deploy in deciding whether to call in something. If they are added to the Minister's criteria when deciding whether

something shall or shall not be called in it does not mean that there will, effectively, be a cultural veto on the decision made by the Minister for the Environment, of course.

Mita Ririnui: Given that the Government announced its decision to establish Toi te Taiao, the Bioethics Council, on Tuesday, what is the purpose of the council?

Hon. PETE HODGSON: Toi te Taiao, the Bioethics Council, will be established to advise, provide guidelines, and promote dialogue on the cultural, ethical, and spiritual issues associated with biotechnology. The council will focus on those issues as they affect both M~aori and non-M~aori.

Stephen Franks: How do the recommendations of the royal commission relate to the Treaty, which says nothing about them or anything like them?

Hon. PETE HODGSON: If the member is suggesting that the Treaty of Waitangi, written in 1840, might have reference to GE, then I can say that I would be surprised if it did.

Jeanette Fitzsimons: Would there ever be a situation where the Government was prepared to countenance ending a GE experiment because it was culturally or spiritually offensive to M~aori; if not, what is the purpose of the proposed amendments?

Hon. PETE HODGSON: The Government, of course, does not make these decisions, except if there were ever to be a call-in; the decisions are made by the Environmental Risk Management Authority. The significant recommendations of the royal commission are to change the Hazardous Substances and New Organisms Act as it affects the Environmental Risk Management Authority.

Willie Jackson: What general guidance does the royal commission give for dealing with incorporating Treaty issues in legislation?

Hon. PETE HODGSON: The general view of the royal commission is that Treaty issues ought to be incorporated in legislation. It then proceeds with some particularity to make recommendations, for example, that every institutional biological safety committee ought to have a M~aori representative, that there ought to be a strengthened Treaty clause, and that there ought to be a Bioethics Council. It also makes a variety of other recommendations, which the Minister in charge of Treaty of Waitangi Negotiations read out in full to the House yesterday.

Rt Hon. Winston Peters: Could the Minister tell the House, and the country for that matter, how many European members of the Labour-Alliance coalition Government made submissions on spiritual matters connected with GE, based on the Magna Carta, the New Zealand Bill of Rights Act, or on any other document, and what has become of those submissions?

Hon. PETE HODGSON: To the best of my knowledge no Government member of Parliament, from either party, made a submission to the royal commission. The Green Party did, but I cannot recall at the moment whether its submission covered spiritual issues.

Hon. Georgina te Heuheu: What action will the Minister take to overcome the perceptions that many M~aori now have, as reported in the print media today, that their MPs have sold out in the genetic modification debate, and that the Government should not expect to get back into Parliament on the back of M~aori?

Hon. PETE HODGSON: Leaving aside which of the many sides of this debate the member who asked the question wishes to play---[Interruption] All sides? If it is to be all sides---

Gerry Brownlee: I raise a point of order, Mr Speaker. That sort of

answer is totally inconsistent with the way in which replies should be given. It attempts to cast aspersions on the person asking the question, and on her integrity in seeking genuine information from the Minister. I think the Minister should withdraw and apologise for that aspersion.

Mr SPEAKER: No, I will just ask the Minister to come to the answer. Disregard the previous comment.

Hon. PETE HODGSON: I have had a lot of discussions with all members of the Labour M~aori caucus over a number of weeks, and will continue to do so. I say to the country that the M~aori interests of this nation are extremely well represented in the Labour Party by the M~aori caucus.

30 April 2002, 46th Parliament, 1st Session, Hansard Vol 600, p15852
Hazardous Substances and New Organisms (Genetically Modified Organisms) Amendment Bill (Second Reading)

John Tamihere on possibility of amendments to the legislation to better incorporate the Treaty -

> The third point I wish to make relates to section 8 of the primary legislation, the Hazardous Substances and New Organisms Act. That section provides that all persons exercising powers and functions under it shall take into account the principles of the Treaty of Waitangi. We heard evidence from Ng~a Kaihautu Tikanga Taiao, which is the body established to provide specialist advice to the Environmental Risk Management Authority on issues relating to M~aori and the Treaty of Waitangi. Ng~a Kaihautu Tikanga Taiao expressed the view that certain matters in the Treaty of Waitangi needed to be considered and that section 8 of the Act needed to be strengthened.
>
> The Government agrees that the Act needs to be amended in order to more appropriately reflect the Treaty of Waitangi. For that reason a M~aori reference group is being established to advise and propose amendments to the Act. An amendment bill with the best of intents may well be introduced to Parliament later this year. As a consequence of that, the majority of the committee recommended no changes to the current bill with regard to Treaty issues.
>
> It is important, when we work on Treaty issues---and I note that the Leader of the Opposition announced the National Party's Treaty policy just recently---that just as I defer to, acknowledge, and tolerate the views of others on that committee and in the House, equally others should acknowledge, defer to, and tolerate matters M~aori with regard to Treaty-related matters. It is not for M~aori to caveat or injunct others with regard to Treaty-related matters. It is not for M~aori to persuade others to our way of thinking and thereby to endeavour to force them to our way of thinking. But, equally, it is unfair and not right for others with monocultural perspectives merely to drive their own xenophobic, cloistered, and closeted views over the top of ours. It is about time that our rights were rated and valued, and that will occur in the not too distant future.

CROWN PASTORAL LAND ACT 1998

An Act---

(a) To establish a system for reviewing the tenure of Crown land held

under certain perpetually renewable leases; and
(b) To establish a system for determining how Crown land formerly held under pastoral occupation licence, and certain other Crown land, should be dealt with; and
(c) Otherwise to provide for the administration of Crown pastoral land

25. Matters to be taken into account by Commissioner---(1) In acting under this Part, the Commissioner must (to the extent that those matters are applicable) take into account---
(a) The objects of this Part; and
(b) The principles of the Treaty of Waitangi; and
(c) If acting in relation to land used or intended to be used by the Crown for any particular purpose, that purpose.

(2) In acting under this Part in relation to any part of the land held under a reviewable instrument or reviewable instruments, the Commissioner must take the objects of this Part into account in the light of---
(a) Their application to all the land held under the instrument or instruments; rather than
(b) Their application to that part of the land alone.

84. Matters to be taken into account by Commissioner---In acting under this Part, the Commissioner must (to the extent that those matters are applicable) take into account---
(a) The objects of this Part; and
(b) The principles of the Treaty of Waitangi; and
(c) If acting in relation to land used or intended to be used by the Crown for any particular purpose, that purpose.

6 Apr 1995, 44th Parliament, 1st Session, Hansard Vol 547, p6827
Crown Pastoral Land Bill (Introduction)

D Marshall (Min of Lands) recites premises of the Bill -

> I am mindful of the obstacles that have plagued past attempts to rationalise the tenure of this estate. So the premises of this Bill are as follows: that there should be simple enabling, rather than prescriptive, legislation to encourage voluntary negotiated settlements; that the Crown should adopt a facilitating, rather than a greedy, approach, as equitable solutions must be found if the parties are to be encouraged to sign up; that promotion of an ethic of sustainable land management must be the overarching goal of this endeavour; and that there is a need to take into account the principles of the Treaty of Waitangi while working through the tenure review process.

7 May 1998, 45th Parliament, 1st Session, Hansard Vol 567, p8329
Crown Pastoral Land Bill (Report of Primary Production Committee on Bill)

J Luxton (Min of Lands) states that "the Bill ensures that the Crown's obligations under the Treaty of Waitangi are recognised". [Appears to make no distinction between sections that require actions taken to be consistent with Treaty (substantive), and those that require Treaty to be taken into consideration (procedural). Though present provision is of the latter kind, seems to equate it with the former.]

RESOURCE MANAGEMENT ACT 1991

An Act to restate and reform the law relating to the use of land, air, and water.

8. Treaty of Waitangi---In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

14 Jun 1988, 42nd Parliament, 1st Session, Hansard Vol 489, p4313
Answers to Oral Questions

Mining---Conservation Parks

Larry Sutherland: What is the purpose of the present resource management reform?

Rt. Hon. DAVID LANGE: Current legislation, in all the words of the trade, is ad hoc, confused, and is time-consuming; it involves long delays, is hard to understand, and is difficult for the public to participate in; it is costly and cumbersome, not integrated, and involves separate statutes; and so on. As well, the existing system does not recognise the principles of the Treaty of Waitangi.

5 Dec 1989, 42nd Parliament, 1st Session, Hansard Vol 503, p14165
Resource Management Bill (Introduction)

Warren Kyd states –

> The Bill states that the people who exercise functions must consider the Treaty of Waitangi. The Bill seems to have a watering-down effect on the Treaty. Considering the Government's thinking in relation to the principles of the Treaty, Opposition members had expected the legislation to be subject to the Treaty. However, it does not go as far as that. It states only that those people who exercise powers must consider the Treaty. In other words, it seems to contemplate some kind of lip-service. I had expected the Government's approach to the Treaty to go much further than it did.
>
> However, the Bill has some interesting statements. For example, the exercise of tiakanga---the ethic of stewardship---has to be considered as one of the main purposes of the Bill. One wonders what that means and what effect it will have. Frankly, that concept is new to New Zealand law, and will create some problems in interpretation. It is a very trendy expression, but one that I have not heard before, despite the fact that I have been trying to study some Maori concepts. The matter of water rights will give some concern to farmers, power boards, and other people, because the Bill limits the rights to 35 years. Some people consider that they have perpetual rights, and that provision could impede development and cause concern to them.
>
> The matter of heritage orders will also cause some consternation

to various groups, because power is virtually given to prevent the use of land set aside for heritage purposes. However, the Bill gives heritage matters a very wide definition. It states: ``...the purpose of preserving or protecting---(a) The whole or part of a structure of cultural, architectural, historic, scientific, or other interest or special character or amenity...(b) A feature, place, or area of ecological, scientific, historical, cultural, or other interest, or of special character or amenity value...(c) A feature, place, or area of significance to the tangata whenua in spiritual, cultural, or historical terms''. One cannot be sure how far that definition will be taken. For instance, a quarry in my area turned out to be a major pa site. It had been used as a quarry for generations, and perhaps that use could be stopped.

14 Aug 1990, 42nd Parliament, 2nd Session, Hansard Vol 510, p3424
Resouce Management Bill (Report of Committee on Bill)

Philip Woollaston mentions that the Treaty clause was amended by the committee.

28 Aug 1990, 42nd Parliament, 2nd Session, Hansard Vol 510, p3949, 4101
Resource Management Bill (Second Reading)

John Luxton states -

I want briefly to dwell on those aspects as they relate to the Treaty of Waitangi. I have no problem with recognition of the Treaty of Waitangi in the Bill, but I do have major problems with the Runanga Iwi Bill that we passed earlier in the week in which there was a last-minute amendment by way of a supplementary order paper to insert the provision for iwi management plans.

Clauses 51, 56, and 62 of the Bill require regional and territorial authorities to take iwi management plans into consideration. That is a new level of interception to prevent development from taking place. No one has really worked through the implications of that requirement, but I have a legal opinion from a very prominent Maori lawyer in one of the larger firms of barristers and solicitors. She made the comment: ``The Resource Management Bill has adopted a simplistic and unworkable solution that sets out to deal with the consultation issue purely by the inclusion of a definition and not with reference to any practical procedures to effect consultation.''. In her view, those clauses are ineffective and do not meet either the needs of Government agencies or of Maori.

Clause 6 refers to the Treaty of Waitangi and to the special relationship between the Crown and te iwi Maori as embodied in the Treaty. Te iwi Maori is not referred to in the Treaty but nga hapu Maori is referred to, so we are already trying to change the course of history by bringing in new legislation that has absolutely no correlation to past happenings. There is no mention of te iwi Maori in the Treaty. I should have thought it should be ``nga iwi'' instead of ``te iwi'', but the reference has always been to the subtribes and not the tribes of Maoridom.

9 May 1991, 43rd Parliament, 2nd Session, Hansard Vol 514, p1873
Resource Management Bill – SOP 22 (Referral to Planning and Development Committee)

After change in Government, new Government introduced SOP to amend the Bill. Wording of the Treaty clause changed.

2 Jul 1991, 43rd Parliament, 2nd Session, Hansard Vol 516, p2910
Resource Management Bill (In Committee)

9.3 p.m.
The CHAIRMAN put the question that the following amendments, tabled by John Blincoe (Nelson), be agreed to:
To delete proposed new clause 202B set out in Supplementary Order Paper 40 and to substitute the following new clause:

> Treaty of Waitangi---In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the Treaty of Waitangi (Te Tiriti o Waitangi).;

[cf s8 of the Act which refers to the "*principles* of the Treaty of Waitangi"].

and in clause 356 to delete from proposed new paragraph (a) set out in Supplementary Order Paper 40 the words ``The existence or extent of any function, power, right, or duty under this Act, including (but, except as expressly provided, without limitation)---'' and to substitute the words ``The existence or extent of any function, power, right or duty under this Act (except in respect of section 6A (Treaty of Waitangi)), including (but, except as expressly provided, without limitation)---''.
The Committee divided on the question that the amendments be agreed to.
Amendment Negatived.

4 Jul 1991, 43rd Parliament, 2nd Session, Hansard Vol 516, p3017
Resource Management Bill (Third Reading)

John Blincoe states -

> The Opposition felt that the reference to the principles of the Treaty of Waitangi ought to be deleted because it is unnecessary. Reference ought to have been made directly to the Treaty. It believes that the clauses in the two Bills---the Resource Management Bill and the Crown Minerals Bill---ought to have been consistent, but the Government has deliberately made the reference in the Crown Minerals Bill weaker. It ought not to have done that. The Opposition felt that in the present state of jurisdiction, of jurisprudence, the Planning Tribunal ought not to have jurisdiction to make declarations on the meaning of the Treaty of Waitangi clause. The Opposition felt that if people wanted a declaration of that nature they should at least have to go to the High Court.
> Because it is an important part of the way the Bill works, the Opposition also moved that the Minister ought to be given authority to make grants to Maori groups or incorporated environmental groups

to take civil proceedings under the Act, and that that would have gone some way towards remedying the Government's recent unfortunate decision, which has been confirmed just today---namely, to remove in the Legal Services Bill assistance given by the former Government to such groups.

Tirikatene-Sullivan states –

If I were to summarise the submissions made by Maori people on this Bill it would be to state their request that a much stronger Treaty clause, similar to section 9 of the State-Owned Enterprises Act, should have been included. That clause would have stated that the Crown shall not act in a manner that is inconsistent with the principles of the Treaty of Waitangi. I claim a certain proprietorial right over those words, which were included in legislation by the third Labour Government, and I acknowledge the Hon. Matiu Rata, my Cabinet colleague of the day. Those words were brought forward into the State-Owned Enterprises Act as section 9.

According to Maori people who have considered the matter, the Treaty has been subordinated in this Bill. They consider that the manner in which the Treaty is referred to is pure tokenism, in that it merely lumps the Treaty in with other considerations that must be taken account of under the Bill. One of the most insidious treatments is that the Minister and local authorities can with ease avoid giving effect to the Treaty by declaring that the Treaty of Waitangi had been considered. The Bill does not give the Treaty its due priority, nor does it suggest that there should be any active protection of tangata whenua interests. In fact, it relegates Maori interests to the sideline while the developer and the environmentalist decide how resources are best managed.

I want to refer to the second article of the Treaty, and I will abbreviate it. The Crown guaranteed to the chiefs: ``...and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession,...''. I make it very clear that it is the wish and the desire of the Maori people to retain in their possession their land assets and their natural resources.

Because of the second article of the Treaty many Maori people carry grave concern that the identical words to section 9 of the State-Owned Enterprises Act were not included in the Bill. I want to refer to the free-standing carving by Fred Graham, which stands in the foyer of this House. The beautiful, magnificent bird is called ``Te Wero'' by its carver. On its plinth is the following inscription: ``Ko-au te moe moea o te iwi. Te tawhiti o taaku rere ka rite tonu ki te hononu me-te maarama o a koutou whakariterite''. In English it means: ``I am the dreams of the people. The length of my flight depends on the wisdom of your decisions.''.

It was the view of the Maori people making submissions, and I quote from the submission of the Hauraki Maori Trust Board, for instance: ``Maoridom is resolute in its stand that the Treaty must permeate all legislation and policies and programmes.''. It was the board's view that aspects of the Bill are inconsistent with the Treaty and the contractual responsibilities that the Treaty imposes. The need to protect the special relationship of Maori culture, traditions, ancestral lands, water, sites, mahenga kai and other

taonga was what motivated those who came forward and made their submissions.

For instance, clause 256 proposes to allow access on to Maori land without the landowners' consent for minimum impact activity. Therefore, that proposal in the Bill is a breach of the second article of the Treaty of Waitangi. That clause should not be in the Bill. Surely no one should be allowed access to Maori land without the landowners' consent. As it stands, according to the learned judges of the Maori Land Court, this legislation sows seeds of bitterness that will be harvested in the communities when the communities' representatives exercise the discretions vested in them in respect of Maori land and taonga. The learned judges of the Maori Land Court wished to put on record their concern at the potential danger to racial harmony that this Bill represents.

To understand the significance of the power being vested in the territorial authorities of the Planning Tribunal in regulating the use by Maori of their Maori land and other resources, it is important to understand the significance of Maori land itself. It was held by the learned judges that at times the decisions should be referred to them in the Maori Land Court rather than to the Planning Tribunal. The local bodies have been amongst the most reactionary and conservative with respect to Maori concerns, interests, and sensitivities. In fact, they have very few Maori among their decision makers throughout the country.

In clause 6A the Bill exhorts recognition of the principles of the Treaty of Waitangi, and yet it is bereft of guidelines as to how they can be applied. Decisions relating to Maori cultural and spiritual values are taken out of the hands of Maori and are placed firmly in the hands of territorial authorities and the Planning Tribunal, which will make those decisions for them. That is not an expression of the principle of partnership so often referred to.

The Bill fails to fulfil the Crown's duty actively to protect the Maori people in the use of their lands as is provided for in the second article, which I have quoted. For instance, I refer Parliament to the decision of the Court of Appeal in the case of the Maori Council in 1987, which states: ``The duty of the Crown is not merely passive, but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable.''. The underlying philosophy of this Bill is that while, for instance, the waahi tapu and lands are Maori in name, the rights associated with ownership are not recognised. Waahi tapu and the protection they should receive under this Bill are the business of the representatives of the whole community.

That may sound reasonable, but there is no acknowledgment of Maori rights and their use or protection of them. In matters that affect Maori land the owners have no primary rights, but, rather, it is those people who others nominate as having rights. Therefore, the Bill strips the Maori people of any rights to their taonga except in name only.

For more than 120 years the Maori Land Court has had the responsibility of hearing and endeavouring to resolve conflicts relating to Maori land. However, from an examination of the Resource Management Bill a new cause of conflict is apparent. This Bill confers upon territorial authorities and the Planning Tribunal the power to make the cultural and spiritual decisions of the Maori by first permitting the territorial authorities to have an unfettered discretion in the administration of their district plans and rules

according to clause 40A, in deciding whether the whereabouts of the waahi tapu is sensitive information or whether it should be disclosed in the public interest. Clause 93(2) is completely open-ended in the power that it imposes in conditions for granting resource consents. The Planning Tribunal hears appeals and then makes those decisions for the Maori landowners.

Second, in empowering the Planning Tribunal to determine the principles of the Treaty of Waitangi that should apply to this legislation, if any, the power is separated from the Maori landowners or from the learned judges of the Maori Land Court. It is the cultural and spiritual significance of the land that distinguishes Maori land from the European concepts of real estate. It is the spiritual significance of land that is most dear to the Maori. Whenua---land---also means placenta; hapu---the wider family or community---means pregnant; and the expression te ukaipo means the area in which one was brought up, but it also means to be breast-fed. The significance cannot escape the learned members of this House.

John Carter states –

The member for Southern Maori referred to the Treaty of Waitangi, and if there is one part of the Bill that does give me concern it is the reference made in it to the Treaty of Waitangi. I listened very closely to the member's speech and she expressed concerns that the Bill does not give assistance in this regard to the Maori people of this country. I also have a concern with the reference to the Treaty of Waitangi, but it is from a different angle.

My concern with it is that in the rest of the Bill we have been very definite in ensuring that there is a complete understanding of what the Bill is about, that the definitions are clear, and that whenever reference is made to a specific subject one goes back to the definition of the Bill and it is well explained. There is no clear definition and no interpretation of the implications of the Treaty of Waitangi in relation to the Bill. That concerns me. I believe, as happens in relation to many other Bills, that that will become a stumbling-block to the purposes and the opportunities that the Bill provides. It is a shame that that has happened. Parliament will have to address that issue, not just in relation to the Bill but to all legislation, and must provide a clear definition of the purposes and the implications of the Treaty of Waitangi, so that there is clear direction when it is referred to in legislation.

CROWN MINERALS ACT 1991

An Act to restate and reform the law relating to the management of Crown owned minerals

4. Treaty of Waitangi---All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Bill was grouped together with Resource Management Bill until the Third Reading.

24 Sept 1991, Hansard Question Supplement, Vol 11, p2763
Written Question 80 – Crown Minerals Act

H. V. ROSS ROBERTSON (Papatoetoe) to the Minister of Energy: What process of consultation over Treaty issues has been established regarding the implementation of the Crown Minerals Act 1991?

ANSWER :

Hon. JOHN LUXTON (Minister of Energy) replied: A process of consultation with Maori is presently being considered by officials. Proposals will be considered by Ministers in due course.

ENERGY EFFICIENCY AND CONSERVATION ACT 2000

6 Sustainability principles
In achieving the purpose of this Act, all persons exercising responsibilities, powers, or functions under it must take into account---

(a) the health and safety of people and communities, and their social, economic, and cultural well-being; and
(b) the need to maintain and enhance the quality of the environment; and
(c) the reasonably foreseeable needs of future generations; and
(d) the principles of the Treaty of Waitangi.

5 Apr 2000, Parliament, Session, Hansard
Energy Efficiency and Conservation Bill (Instruction to Committee)

J Fitzsimmons (Member who introduced this Private Member's Bill) outlines reasons for addition of new clauses –

> Turning to the amendment in Supplementary Order Paper 20 to insert a new clause 4A, I point out that the previous Minister has indicated great concern about this provision. Although the new clause is headed ``Sustainability principles'', it is actually about putting restrictions on how far we push energy efficiency. What it is saying is that energy efficiency should not be pursued to the exclusion of all other social values; that it should be pursued only where it is cost-effective over the life of the investment. The clause provides that energy efficiency should not be pursued at the expense of people's health. We should not take the insulation of a building to such an extreme degree that we end up with condensation, damp houses, and poor air-quality. We should not pursue energy efficiency in cars to the point where we compromise people's safety. We should not adopt energy efficiency measures that involve the use of highly toxic materials that would compromise people's health in other ways. We need to consider the long term, not just the short term, and we need to consider the Treaty.
>
> Clause 4A is actually a series of restrictions on the pursuit of energy efficiency, to make sure that it fits in with our other social, environmental, and economic goals. I would have thought that in that sense it would be welcomed by the Opposition as an indication that we are not going totally overboard on energy efficiency, and that we realise that it is one amongst a number of objectives that society wishes to pursue. The wording of clause 4A is taken more or less from the Resource Management Act, which is now regarded as

setting the benchmark of where we want to go in terms of environmental policy, and that is a question of consistency.

Phillipa Bunkle (Associate Min for Environment) comments on new clause –

New clause 4A makes it clear what good sense these provisions make. They give us a working definition of the elements of sustainability. The sustainability provisions bring so many issues together, and we find these in the various parts of this clause---health, environment, climate change, the future, and the Treaty of Waitangi, which are all the things that need to come together if we are to promote policies that contribute long term to our collective well-being.

HAURAKI GULF MARINE PARK ACT 2000

Preamble

[...]

(3) The Gulf has a rich history of human settlement and use. The Gulf is one of the earliest places of human settlement in New Zealand and for generations supported and was home to tangata whenua. While tangata whenua have no single name for the Gulf, the names Tikapa Moana and Te Moananui a Toi are recognised as referring to the Gulf. Auckland, the first seat of government, is also on its shore. Along the shores of the Gulf the changing culture and technologies can be traced through places like the pa, kainga, and garden sites of antiquity on every island, driving dams, copper and gold mines, whaling stations, timber mills, industrial sites, and grand and ordinary homes:

(4) The Treaty of Waitangi was signed by tangata whenua of the Hauraki Gulf both at Waitangi and on the shores of the Gulf. The Treaty provides guarantees to both the Crown and tangata whenua and forms a basis for the protection, use, and management of the Gulf, its islands, and catchments. The Treaty continues to underpin the relationship between the Crown and tangata whenua. The assembled tribes of the Hauraki Gulf reaffirmed its importance to them in a statement from a hui at Motutapu Island, 14-15 November 1992 (The Motutapu Accord):

[...]

6 Treaty of Waitangi (Te Tiriti o Waitangi)

(1) Subject to subsections (2) and (4), the provisions of Part 3 relating to the Park must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

(2) Subsection (1) does not apply in respect of any area of the Park that is foreshore, seabed, private land, taiapure-local fishery, or mataitai.

(3) When carrying out its functions under Part 2, the Forum must have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

(4) Nothing in Part 1 or Part 3 or Part 4 limits, affects, or extends the obligations any person has in respect of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) under any of the Acts listed in Schedule 1, and those obligations must be fulfilled in accordance with those Acts.

14 Preservation of existing rights

(1) Nothing in this Act limits or affects any title or right to ownership of the foreshore, seabed, or other land or natural resources of the Hauraki Gulf, its islands, and catchments, whether that title or right to ownership is conferred by Act, common law, or in any other manner.

(2) Nothing in this Act limits or affects the ability of any person to bring a claim or to continue any existing claim in any court or tribunal relating to the foreshore, seabed, or other land or natural resources of the Hauraki Gulf, its islands, and catchments arising out of the application of the Treaty of Waitangi, or any Act, or at common law, or in any other manner.

(3) Nothing in this section limits or affects any remedy associated with any claim referred to in subsection (2).

24 Nov 1998, 45th Parliament, 1st Session, Hansard Vol 573, p13684
Hauraki Gulf Marine Park Bill (Second Reading)

Nick Smith (Min of Conservation) states –

> The tangata whenua of the gulf have a longstanding and significant relationship with it. The Treaty of Waitangi was signed by tangata whenua on the shores of the Hauraki Gulf. It continues to underpin the relationship between the Crown and tangata whenua. The Bill recognises that the Treaty relationship continues to be relevant to the management of the gulf through its management objectives for the gulf, the tangata whenua membership of the forum, and the provisions for deeds of recognition to be entered into by the Department of Conservation or any local authority that manages protected areas included within the marine park.
>
> The deeds of recognition acknowledge the tangata whenua's statement of their relationship with places within the park. The sole purpose of the deeds is to identify opportunities for contribution by tangata whenua to the management of an area within that marine park.
>
> Trevor Mallard: Put a cover on it.
>
> Hon. NICK SMITH: Mr Speaker, the interjection from that member---given the fact that I have had indications from Labour that they see the importance of this Bill and are supportive---is unfortunate. The foreshore and seabed of the Hauraki Gulf are currently subject to claims before the Waitangi Tribunal and the Maori Land Court. The Bill preserves the status quo by not limiting or affecting the Crown's ownership of the foreshore, seabed, and other land or natural resources of the gulf, or, for that matter, the ability of iwi who claim tangata whenua status to bring a claim or to continue a claim.

Robyn Mac Donald on the Treaty clause –

> The other part of this Bill that I find interesting is that

although it has a clause that it must have regard to the Treaty of Waitangi, it also mentions that it will not affect the Treaty process. We would be very interested to be sure that it did not. With the Hauraki claim having only just been launched, it is absolutely imperative that this has no effect on the eventual outcome of that.

Hon. Ken Shirley: The foreshore and seabed cannot be included.

ROBYN McDONALD: It certainly has been in the Ngai Tahu claim around Lake Ellesmere, and there is no reason to believe that Hauraki cannot make the same claim and expect to have it recognised.

29 July 1999, 45th Parliament, 1st Session, Hansard Vol 579, p18669
Hauraki Gulf Marine Park Bill (Report of Transport and Environment Committee on Bill)

Simon Upton (Min for the Environment) on tangata whenua consultation and the Treaty clause –

Finally, I wish to turn to the effect of the Bill on tangata whenua interests. As the committee notes, Cabinet took the unusual step of inviting tangata whenua to comment on the Bill before it was introduced into the House. That consultation resulted in significant changes being made to the Bill. Consultation has continued and a number of submissions were considered by the committee, resulting in further changes and references in the Bill.

The committee has not proposed a change to clause 11. Clause 11(2) protects any present and future claims to the foreshore, seabed, or other land or natural resources of the Hauraki Gulf, its islands, or catchments before the Waitangi Tribunal or any other court and allows them to continue to be heard. The Government is quite clear that this Bill is not intended to affect those claims in any way, nor is it intended that by this Bill the Crown should obtain any further restatement of its rights. The retention of clause 11 is important.

The committee has not proposed any change to clause 4, the Treaty clause. This is a difficult area because there are already so many references to Treaty obligations in the legislation through which this Bill works. As it stands, the effect of clause 4 is as follows: that for all the conservation land and managed areas in the Hauraki Gulf Marine Park, the park and the Bill will be subject to clause 4 of the Conservation Act, which requires the highest test in statute---namely, to give effect to the principles of the Treaty of Waitangi. This colours the whole of Part 3.

Secondly, Part 2 has its own Treaty clause in clause 15, which requires that the forum, when carrying out its functions, ``must have regard to the principles of the Treaty of Waitangi''. Finally, Part 1 works through other legislation listed in schedule 1, but notably the Resource Management Act, the Conservation Act, the Fisheries Act, and the Local Government Act.

Most of these statutes have their own clauses. To impose something different would be to have different tests---for example, for Auckland and Hauraki local authorities over all others, or for fisheries management in the gulf over that for other places. The situation as the committee has left it---in other words, unchanged---is clear, simple to administer, but none the less effective in its references to Treaty obligations.

Judith Tizard states –

Generally, the main areas of contention about this Bill from the people of Auckland came in the areas of the Maori representation and Maori involvement in the management as kaitiaki and users of the resources of the gulf, and the representation and support for Maori representatives.

The Hauraki Maori Trust Board probably represented the concerns of tangata whenua who believe that this Bill may well affect their Treaty rights and their Treaty claims. The board's concern was that it did not want to see the assertion of the Crown's rights that is contained in this Bill affecting their claims in any way. The committee considered this at great length, and we take the view that the Bill does nothing except assert the status quo.

If there are claims that are successful and if the Government, as one of the parties to the Treaty, then negotiates a different arrangement many pieces of legislation will be affected by that, and this measure will be just one of them. To do anything other than to assert the present position would be to anticipate court cases and Treaty claims, which is not something that this House can do.

I want to tell the many sincere people who came before the select committee on behalf of tangata whenua that in our view this Bill does not affect Treaty claims in any way and if it could be demonstrated that it did we would certainly want to take action to prevent that. However, it does state the present law and the present understanding of the law. I think that issue will probably continue to be a difference of opinion, but the best advice the committee was able to get indicates that this Bill represents the status quo and does not assert anything other than that.

[...]

I also recognise that there is considerable concern from private landowners who are not represented on this forum that the impact of decisions made relating to the Hauraki Gulf will affect them and that they will not have a say. Crown land that is already administered by the Department of Conservation will be in the park, as will the waters of the gulf, and, as the Minister has said, we have gone through the hierarchy of legislation to make it very clear that the Treaty of Waitangi applies, that the Resource Management Act applies, that the Conservation Act applies, and that this legislation is in a relationship with all those but does not supersede them.

Jeanette Fitzsimmons on clause 11 (s14) –

I am particularly concerned about clause 11. The select committee was told that clause 11 does not change the status quo. That is the clause that states that this Bill does not affect the ownership rights to the seabed and it does not affect any Treaty claim. We were certainly told that the intention was simply to preserve the status quo. There was no willingness by the Government to change it to a clause that states: ``does not prejudice the outcome of any Treaty claim.'' and there was no willingness to leave it out. I would have thought that if it does not change anything then we could have quite safely left it out.

I had an opportunity, which I had been seeking for some time, to meet with Hauraki iwi. First of all, they have had legal advice that clause 11 does change the status quo. It has been drawn to my attention since we deliberated on this Bill. When one looks at the wording of clause 11 it states that it does not change the rights of anyone to bring a Treaty claim, but it does not state that it does

not change the outcome of that Treaty claim or it does not change the matters to be considered in that Treaty claim. I am now not at all sure that clause 11 does simply preserve the status quo, and I think there is good reason for our knocking out clause 11---if only to keep faith with a Treaty partner who suspects that this is a back-door method of trying to change the outcome of their case over the ownership of the seabed.

Helen Duncan says Bill is historic in that it refers to Treaty by both English and Maori name.

Nanaia Mahuta on issues of concern to iwi -

I want to focus on just a few issues, and I may not take my full time. I want to go back to concerns that have been put forward by iwi with regard to this matter. A number of my colleagues have clearly stated Labour's position, but I want to outline some of the thinking we have been through in order to ensure that the position and views that iwi have put before us will be maintained in the future.

Firstly, I will discuss the issue of ownership and the implications of that in asserting management roles. The second issue is that of representation of tangata whenua and Maori. The third issue is the ongoing management in the Hauraki Gulf Marine Park region. The fourth issue is really a question, because at the end of the day every member of this House needs to be very clear whether, in passing this Bill, there will be the potential for a Treaty claim to emerge. Some members have made that statement in the House and I want to outline some thoughts on this matter. Firstly, on the issue of ownership very clear arguments have been put forward by iwi that the Crown, in a lot of respects throughout the country and throughout our historical experience, has claimed or asserted ownership. That assumption in itself has ascribed a number of rights that the Crown has asserted in the ongoing management of conservation lands---for example, in delegating authority to local bodies for the management of council land. That is a very real concern of Maori throughout the country.

With regard to the Hauraki Gulf Marine Park, the Hauraki iwi are currently going through the process of a Waitangi Tribunal claim that challenges that assumption by the Crown. The important point is that if the Crown has assumed ownership it has also assumed the right to be able to say what happens in a particular region. The Hauraki iwi have made it very clear to Maori members in the House that they take issue with that assumption.

This Bill provides for the integrated management of the Hauraki marine area, but that in itself does not ensure that tangata whenua will participate in the ongoing management of this region. That is a concern because although integrated management may mean that a number of Acts will be working together to ensure better facilitation of management in the region, I ask whether it will ensure that tangata whenua, for example, will be involved---on the ground---in the management of the Hauraki Gulf Marine Park.

During the Committee stage it would be good to get the Minister's view on how he will facilitate greater involvement of tangata whenua in the management of the Hauraki Gulf Marine Park. In fact, I want to go to a quotation put forward by the chairperson of the Hauraki Maori Trust Board, Mr Sam Napia, when he commented strongly on the issue:

``The ownership issue needs to be sorted out before any action is taken. Neither Hauraki nor other iwi involved ever alienated title to the foreshore, seabed, or water, and there is a long history of protest on this matter that dates back to the last century. If the Bill was to go ahead then we want to play a major role in its future.'' So the nature of that major role has to be the ongoing management of the Hauraki Gulf Marine Park.

Let us turn our thoughts briefly to the issue of representation. Quite clearly, Hauraki iwi asserted that they wanted fifty-fifty representation on the forum. A lot of that assertion was based on their current claim before the Waitangi Tribunal. There are a number of views about whether a fifty-fifty representation on the forum would actually provide Hauraki iwi with a say on what is happening in their region, in particular. Although there is increased representation of Maori on the forum, if Hauraki iwi's claim to the tribunal is successful then Maori rights will be protected on the forum, and Hauraki iwi may contend that as tangata whenua they have a unique role and say about what should happen along the Coromandel Peninsula.

We all know that the Hauraki Gulf Marine Park includes a much wider area than that under claim by the Hauraki iwi themselves. The increase of Maori membership on the forum is a positive point, and there is provision for those representatives to participate and consult their people on the same basis as local authorities. I have no problems with additions within the Bill that ensure some financial accommodation for these representatives to consult their people. I think that is a positive thing.

I want to speak briefly about management and ongoing management. This is an area where I think there will be further issues raised in relation to this Bill, particularly from the Hauraki iwi. If their claim to the tribunal is successful there will be a strong contention that they will want to have a unique representation role in what happens with the Coromandel Peninsula part of the Marine Gulf Park; and rightly so, because that is the area under claim. The Hauraki iwi assert that they are tangata whenua for that area. It does not affect the other iwi who have rights in other parts of the Hauraki Gulf Marine Park.

If the ministry has not already started looking at better ways to facilitate ongoing participation and management for Maori in this area, then I suggest that it be looked at, because that issue will emerge in the years to come.

The last question I want to raise is something for us all to get our heads around. Will there be the potential for a further Treaty claim? The Hauraki iwi in putting their views to the select committee, and certainly to members in the Labour Party, suggested an avenue that the committee might consider. Section 8 of the Treaty of Waitangi Act provides for a mechanism whereby in the case of a Bill before the House of Representatives the proposed legislation can be referred to the tribunal for a report on whether in its opinion the provisions of the legislation are contrary to the principles of the Treaty. We had a lot of debate on that issue but I note that in the report back of this Bill it is also an issue that the select committee did not comment on. When we get to the Committee stage I will again put this question to the Minister. I want to hear his views as to why that suggestion was not considered.

I stress again that these are issues that Labour has been mindful of in defining its position. We want to make it very clear that

Labour believes that clause 11 will provide some protection---time will tell. I want it noted for the record that that was the basis upon which there was agreement in our caucus that this Bill go ahead, and that under clause 11 there would be protection for the interests of iwi and concerns of Maori on this matter. Tena koutou!

10 Feb 2000, 46th Parliament, 1st Session, Hansard Vol 581, p392
Answers to Oral Questions – Hauraki Gulf Marine Park Bill

1. GRANT GILLON (The Alliance) to the Minister of Conservation: Does the Government intend to propose an amendment to the Hauraki Gulf Marine Park Bill to ensure that the whole of Takapuna Point is transferred into the proposed park and is available for the public use and enjoyment of all New Zealanders?

ANSWER :

Hon. SANDRA LEE (Minister of Conservation): I have just circulated a Supplementary Order Paper in respect of the Hauraki Gulf Marine Park Bill, which contains specific provisions relating to the defence land at Takapuna Point. The coastal area of 2.7 hectares---a nationally significant historic site---will be immediately transformed into a historic reserve within the park. The remaining 8.2 hectares will also be transferred across when the property is no longer needed for defence purposes. The northern area will be transferred into the park on the passage of the bill; the southern block, where the officer training school is located, will not be transferred.

Grant Gillon: What has been the attitude of local authorities to the inclusion of this land in the park?

Hon. SANDRA LEE: The local authorities are very supportive of the inclusion of the land in the park. Indeed, the North Shore City Council has vigorously supported the retention of this land in public ownership. In fact, it took legal action against the previous Government's proposition to alienate this land into development property. Also, the council has indicated to me that it is keen to see the sports fields opened to public recreational use, as well.

Dr Wayne Mapp: Given that the amendment is virtually identical to that proposed by Dr Nick Smith last year, can the Minister explain why the current Government failed to support that amendment in time for the bill to be passed before the millennium and the crucial events of the new year?

Hon. SANDRA LEE: The Supplementary Order Paper that has been circulated today in relation to this legislation is far from identical, I assure the member. Officials from the Department of Conservation have had to go to extraordinary lengths to amend the provisions in order to ensure that recreational needs are met, that the land is adequately transferred, and that the various different flaws that existed in the previous legislation are addressed.

Jill Pettis: Would the Minister outline the difference between this Government's plans for Takapuna Point and the previous Government's plans?

Hon. SANDRA LEE: Probably the greatest differences between what was contained in the bill when it came before the House under the previous Government, and this Government's plans, are contained in the Supplementary Order Paper. Select committee members may recall that some of those issues relate to issues surrounding the Treaty of

Waitangi and concerns that were expressed by the Hauraki M~aori Trust Board. Others are, of course, the negotiations that surrounded the transfer of the defence land with the exception of the officer training school. Also, there were some quite complex matters that involved the vires of the servicing of the agency that would be administering the body in any given 3-year period, to ensure that it could apply its local authority resources lawfully in order to service the Hauraki Gulf Forum.

Owen Jennings: Does the Government intend to propose an amendment to the bill to meet the concerns of the many hard-working New Zealanders in the catchment of the gulf who support the park concept, but are very opposed to costly provisions that require a consent process over and above the already established Resource Management Act?

Hon. SANDRA LEE: I reject the allegation of the member. I too come from the Hauraki Gulf and am a hard-working ratepayer. In fact, the people of the gulf islands in particular have consistently been supportive of the proposition of integrated management, which is exactly what the forum provides. Historically, there has been a myriad of agencies and organisations with statutory responsibility for this area of the gulf---regional councils, the Ministry of Transport, the Department of Conservation, local authorities, et al. This is an opportunity for all those stakeholders---to use modern parlance---to get around the table to provide some integrated management. It is a wise piece of legislation.

Jeanette Fitzsimons: Although I congratulate the Minister on what she has been able to achieve with Takapuna Point, can she tell us what she has been able to do to address the concerns of Hauraki iwi about the bill?

Hon. SANDRA LEE: That is an important issue, and I know that the member who has just spoken played a strategic and key role on behalf of those people and their concerns in the select committee process---kia ora. I met with them as recently as an hour ago. We are working through those issues still. I think it is fair to say that a large number of their concerns have been addressed. I know that there are arguments on all sides, from all communities and parties affected, and that even now there are some things in the legislation that are perhaps not ideal. But if we are all honest as parliamentarians, at the very least we have to accept that this legislation is a good model that provides a way forward for all communities and communities of interest.

22 Feb 2000, 46th Parliament, 1st Session, Hansard Vol 581, p633, 635
Hauraki Gulf Marine Park Bill (In Committee)

Clause 4 Treaty of Waitangi (Te Tiriti o Waitangi)

RICHARD WORTH (NZ National---Epsom): I would like to touch briefly on the implications of this clause, and seek the Minister's explanation for the proposed changes.

Clause 4 of the bill as introduced, and as reported back from the Transport and Environment Committee, stated: ``Except as provided in section 15, nothing in this Act is intended to affect the obligations of any persons under any Act in respect of the principles of the Treaty of Waitangi''.

Supplementary Order Paper 2 proposes a major change to that, and

we now find a wholly different form of words---a wholly different code. The proposed new clause 4(1), for example, states: ``... the provisions of Part 3 relating to the Park must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi''. As far as I am aware, that form of words appears only in the Conservation Act, and it gives rise to all sorts of legal complexities, which, I contend, would be better avoided. If we look at the Resource Management Act, for example, we can see a more standard, and more readily applied, form of words.

The problem is, what exactly are the principles of the Treaty of Waitangi, in the context of this legislation? It can be argued properly from a legal perspective---on the authority of the New Zealand M~aori Council and the Attorney-General---that consultation is a principle of the Treaty. If this is the case, it seems that the provision is unnecessary. This argument is based on the interpretation that this bill is all about---and when enacted, will be all about---very substantial degrees of consultation. That is the first issue that seems to arise. Why has it been seen as appropriate to move away from clear, well-understood legal wording into an area of murkiness?

The second issue arises from the proposed new clause 4(2) in Supplementary Order Paper 2, which states: ``Subsection (1) does not apply in respect of any area of the Park that is foreshore, seabed, private land, taiapure-local fishery, or mataitai.'' Why has that form of words been used? What would subsection (1) apply to, given that the great bulk of the Hauraki Gulf Marine Park is in fact seabed? I would suggest that insufficient consideration has been given to this part of the legislation. In a setting in which it is desirable to have clarity and to avoid confusion, this part of the Supplementary Order Paper introduces uncertainty that would have surely best been avoided.

JOHN TAMIHERE (NZ Labour---Hauraki): I seek to clarify the proposed new clause 4, but for different reasons from those of the member for Epsom. I want to make a point very clearly, on behalf of my constituents. I am grateful to my caucus for allowing me to speak, as I am having some difficulty with this clause.

If we look first at the proposed new clause 4(4) it is quite clear that that is a savings and a reservations provision that safeguards the present legislative framework, as outlined in schedule 1. Any obligations that will arise in respect of the Treaty will, consequently, be derived from that particular legislative framework. So in no way does that proposed subclause generate a new Treaty debate.

The second point I make, on behalf of my constituency, is that I do not believe that the proposed new clause 4 goes far enough. The bill acknowledges in name the tribal affiliation I come from, the seat I represent, and the name of my son. In that sense I am pleased my caucus has granted me the right to take some umbrage at the way in which it is currently framed.

The proposed new clause 4(2) contains further exemptions, and it makes it quite clear that the Treaty provision does not impact on private land. Our brothers and sisters who share the country are placed on notice that that provision is there, together with a number of other exemptions.

I turn now to the proposed new clause 4(3), which reads: ``When carrying out its functions under Part 2, the Forum must have regard

to the principles of the Treaty of Waitangi.''The forum is in effect the administrative body for the proposed Hauraki Gulf Marine Park. It must have regard to the great body of jurisprudential law that has been built up, and which provides some guidance for a range of people, with regard to the Treaty. But with respect, when we look at the make-up of the forum, once again M~aori are outnumbered nearly three to one.

Kiwis have voted clearly, in terms of an MMP Parliament, to curb the excesses of tyranny by the majority over the minority. For that reason, I stand here and say that subclause (3) should state that the forum must have effect, and should give effect to the principles of the Treaty. Why? It is because there is nothing in it. It is an administrative tribunal, and even the constituent groups that comprise it have a right to disagree. Notwithstanding any names in the bill, at the end of the day---and I might direct this comment to the member for Coromandel---golden syrup sandwiches can be wrapped in cellophane or brown paper, but, when they are opened at lunchtime, they are still a soggy mess.

The issue goes to the substance of the bill. It is quite clear that the Treaty entitlement, and the rights within it, do not go far enough. No hypothetical situations have been placed before us regarding the ramifications of this particular Treaty clause. In effect, if we look at the exclusions identified within the proposed new clause 4, it is somewhat of a Clayton's Treaty clause.

However, I am comforted by acknowledgments and undertakings received from the Minister in charge of Treaty of Waitangi Negotiations---who is also the Attorney-General---to the effect that this Government will, in the very near future, table a new and comprehensive legislative framework in this Parliament. It will be one that reflects the policy we campaigned on so vigorously prior to the last election, in order to return the M~aori vote to Labour. I am comforted by the integrity and credibility of that person. I am mindful that a head of steam has been built up throughout the 10 long years that have been needed to bring this particular bill to fruition, to come to this Committee stage. I am grateful to the members of the Labour Party who have worked on the bill, but equally I acknowledge the hard work of my own people.

Hon. Dr NICK SMITH (NZ National---Nelson): I listened with great interest to that contribution from the new M~aori Labour member. I challenge him, and say that today in Parliament we have the first test as to whether those M~aori members are lambs or lions---whether they are men or mice. My reason for saying that is that, on this side of the Chamber, we allow members to express an alternative view. It has been a long-established difference between those on this side and those on that side of the Chamber that we do not support jackboot tactics that would prevent our members from deciding for themselves. There are clauses in this bill on which some of my colleagues take a different view. The test for that member, who has just said that he does not support that particular proposed clause, is whether he will vote against it. We will definitely call for a division, to decide which way that member will go. It is not good enough for him to run back to his members and his constituents, and say: ``I flew the good flag.'' if, when it comes to the crunch, he goes into the lobby with his Labour colleagues---

Chris Carter: I raise a point of order, Mr Chairperson. This member used unparliamentary language when he referred to jackboots.

The CHAIRPERSON (Eric Roy): That word is unparliamentary. The member will withdraw.

Hon. Dr NICK SMITH: I withdraw the reference to jackboots. I refer only to rule 242 of the Labour Party, which states that if Mr Tamihere dares to vote according to his conscience and his honest beliefs---and I respect the member for those---and if he really stands by those views, he should not allow his vote to be recorded with those of his Labour Party colleagues.

This is a critical test for those Labour members of the Government. Will they be the ``Yes'' men for the Cabinet, or will they stand up for what they believe? Members on this side of the Chamber will watch with a huge amount of interest. As the New Zealand First M~aori MPs found out, it was the beginning of the end when they did not stand up for their beliefs in Parliament. I challenge that member---he has the right to a further call---to state quite unequivocally whether he will vote for this proposed new clause in the bill.

WARREN KYD (NZ National---Hunua): I listened with interest to the three previous speakers. It is quite clear that there is a division in the Committee. On the one hand there are concerns that the effects of this clause will make the bill uncertain, unclear, cause division, and will not work. On the other hand, there is concern that the bill will not go far enough.

Let me say, especially to the last Labour speaker, that this is clearly a matter on which he and some other Labour colleagues feel strongly. It is a matter of principle, and it is the sort of occasion when if a member of Parliament feels strongly, he or she should make a stand and support the people who put him or her here and vote against the clause. I am doing it. I have probably crossed the floor less than anyone here, but I feel strongly about this bill. I invite that Labour member to do exactly the same.

I come back to what my friend Mr Richard Worth said in connection with this clause. He raised some most important principles. This is a new Supplementary Order Paper. Members have not had time to consider it, and I believe that we are entitled to an explanation from the Minister about this new clause. It states that the provisions of Part 3 must be administered so as to give effect to the principles of the Treaty of Waitangi. We are entitled to an explanation of what the principles invoked are. What does this clause mean? What effect will it have in practice? What differences will it make that were not there earlier? What does the Minister envisage the effects of this clause being? We need to know that before we support it.

I am especially interested in subclause (3) in new clause 4, which states: ``When carrying out its functions under Part 2, the Forum must have regard to the principles of the Treaty of Waitangi.'' I notice that that Part 2 provision is unlimited. What principles of the Treaty does the forum have to observe? I would like the Minister to tell us what particular principles these will be. What practical effects will that have in the deliberations and conclusions?

We are all concerned to know just what the meaning of this new clause is, why it was put there, and why the previous clause did not go far enough. I remind the Minister that the State-owned enterprises had a Treaty of Waitangi clause that had profound effects. Presumably, she intends this clause to have profound effects. The Fisheries Act had Treaty of Waitangi clauses that had profound effect. Presumably, the Minister has envisaged that this will have

some major effect in the interpretation of this legislation. This Committee is owed an explanation.

Hon. BRIAN DONNELLY (NZ First): I was not on the select committee on this bill. We were represented by someone who is no longer in Parliament, so I am not wholly aware of a lot of the details. But one thing I am aware of about this bill---it was brought back to our caucus on many occasions---is that there was very, very strong concern from the tangata whenua of the Hauraki iwi about the effects that it would have upon their rights.

New Zealand First M~aori MPs made a lot of mistakes, and in some respects people can understand the decisions that M~aori people made in the electorates. But one thing I can say about the New Zealand First M~aori MPs is that when it came to M~aori issues they did not roll over. They fought, gouged, punched, and battled it through. When it came to M~aori issues they saw themselves as representatives of M~aori and they would not relent. When we had the McRitchie case---the Judge Becroft case---all of the rest of the caucus saw it from a different political viewpoint, but those M~aori members fought and argued until, finally, we could see the point they were coming from in terms of protecting the rights of the people they represented. Therefore, there is a question that has to be asked of the M~aori members of both Labour and the Alliance, but in particular of the elected representatives, like John Tamihere. Will he roll over on this one? Will he invoke rule 242 and say: ``I couldn't do anything about it.'' Will he stand in this Committee and say: ``I don't think this goes far enough, but I'm going to vote with it.''?

I reiterate the challenge made by Nick Smith---and if Mr Tamihere is genuinely to represent his people, in particular the people of Hauraki, then those people certainly need that representation to be strong: when this comes up to the vote he should vote for his people and not for his party.

Hon. JOHN LUXTON (NZ National): This clause is very significant. One can see that there has been considerable difficulty within the Labour-Alliance caucus and its M~aori members. We have already heard a most unusual circumstance where a member of that M~aori caucus has spoken against the new clause, or expressed his very strong reservations about it. I wonder how many of those M~aori members who say that they now have a mandate will cross the floor; or will they be bound by rule 242, as my colleague the Hon. Nick Smith has already pointed out?

This Supplementary Order Paper is written in a totally different way from the bill as introduced. Why have new clause 1A and clause 4(1) and 4(2) been added to this bill, and what does clause 4(1) actually mean? If we look at the normal approach, which was taken in the original bill as reported back by the select committee---and obviously the select committee has listened to representations and not amended it---then we now see the Government unilaterally coming back and amending it. The Government is moving from a position where ``nothing in this Act is intended to affect the obligations of any person under any Act in respect of the principles of the Treaty of Waitangi'', to now saying that the provisions of this particular Act ``must be so interpreted and administered so as to give effect to the principles of the Treaty of Waitangi''. It is a much stronger clause that is being inserted. I ask the Minister to explain exactly why that has been done. Can she confirm that the M~aori caucus has basically said that it will not support the Government pushing this

bill through unless this is particularly beefed up, which it certainly has been?

I can imagine that those involved with Treaty law will have a field day with what ``must be so interpreted and administered to give effect to the principles'' actually means. What are the principles that it has to give effect to? We know there is a body of law building up as to what the principles are and the requirement to consult, which is a key issue. The wording states that it is not an obligation but a requirement to consult. One sees here that we have wound the ratchet up from ``nothing in this Act is intended to affect the obligations of any persons under any Act in respect of the principles''---and that is still included in this particular bill. But we now have this new subclause (1).

I think the Minister must take a call and explain in far greater detail what the words ``must be so interpreted and administered as to give effect to the principles of the Treaty. . .'' will actually mean in this context. They make this a very strong clause. It is obvious that the M~aori caucus has said that that wording must be included. Indeed, I heard John Tamihere say that it is not enough and that those members actually have an agreement from the Minister in charge of Treaty of Waitangi Negotiations to go away and do more work on beefing-up these provisions.

I am quite sure that the majority of New Zealanders would like to know just what obligations have been decided on in the Labour-Alliance caucus and what guarantees have been given to the M~aori members. I think we should be informed about them. It is very important that the rest of New Zealand knows what is actually intended by the new requirement that the provisions ``must be so interpreted as to give effect to the principles of the Treaty of Waitangi''. I want to know which principles they are and how it will happen. I ask the Minister to get up and respond, because it is very important and this a key clause in the bill.

GRANT GILLON (Whip---The Alliance): I move, That the question be now put.

The CHAIRPERSON (Jill Pettis): No, this is an important clause of the bill and I am prepared to take further calls.

JOHN TAMIHERE (NZ Labour---Hauraki): I am much obliged to members of the Opposition for giving us some steerage on how we should vote! But at the end of the day, my people elected me and I will take my steerage from them.

I want to clarify a few issues with regard to the previous speaker. The wording in subclause (1) had been put before the previous Government and worked through by that Government---not this one. I shall give a bit of a steer on what happened. Clearly, to safeguard this clause from going too far---in the minds of members opposite, not ours---a number of exclusions were included. If members care to read subclause (4) of clause 4 they will see that. Furthermore, they will note from the Treaty provisions in subclause (1)---I am sorry to labour the point but this is for members rather than the people in the gallery---that the reality is the Treaty clause is subject to subclauses (2) and (4). So it is not a strong Treaty clause. The strongest Treaty clause we have on the statute book is the Conservation Act and it is bound within the schedule of this bill.

The point I wanted to make, and perhaps I did not make it as clear

to Opposition members as I did to others, is that when the words ``must have regard to the principles of the Treaty'' have been included they have simply meant to M~aori that we have been ushered into a room, we have been allowed to have our say, then we have been told to go out---that being the consultation process---and nothing changes.

This nation is evolving to the point where we have to change that culture so that the words ``give effect to'' simply mean: ``You have heard us and you have shaped your ideas with regard to some form of substantive requirement relevant to the desires we have.'' That is not a big ask.

I opened my comments on the bill by inviting members to show me, in terms of the never-ending evolving story of our nationhood and our constitution, where that is written. Can the member for Epsom show me one piece of legislation that does not open itself to litigation in common law? There is not one.

Members should not pick on just the Treaty clauses, which are vitally important for us in this special moment in time in terms of our evolution. I am not asking for a handout on behalf of my people, or a hand up. I am asking for equality of opportunity when we represent ourselves in the forum that administers this bill. It is a very simple ask.

I say to members opposite: ``You have all your savings, and, no doubt, you'll probably vote our way.'' Kia ora.

Hon. JOHN LUXTON (NZ National): I raise a point of order, Madam Chairperson. I just want to help the member in relation to his comments. He spoke of subclause (1) being in the original bill.

The CHAIRPERSON (Jill Pettis): That is not---

Hon. JOHN LUXTON: Just as a point of clarification---

The CHAIRPERSON (Jill Pettis): Can the member come to the point of order.

Hon. JOHN LUXTON: Subclauses (3) and (4) are from the original bill, not subclause (1).

The CHAIRPERSON (Jill Pettis): That is not a point of order.

OWEN JENNINGS (ACT NZ): The debate just underlines why this is a ratbag bill and why it is full of legal complexities that will create an absolute nightmare.

Clause 4 might well be called the ``Chen and Palmer'' clause. It will open up an opportunity for constitutional lawyers, joined by environmental lawyers in respect of clauses 5 and 6, to have an absolute heyday. Why do we need to change? Why do we need to bring in, under the guise of a Supplementary Order Paper, at a late stage with no proper discussion and debate, no consultation with the affected parties to any great extent, something that fundamentally and constitutionally changes the way consultation and relationships with the Treaty of Waitangi are undertaken?

I want to know who has been consulted on the changes that are incorporated here. How many of those parties who took part in the bill have been consulted? How many are aware of this change that is being brought in? I believe it is of such fundamental, crucial importance not just to this bill but to future bills of this nature that this alone demands that it go back to select committee for a very close scrutiny of what is being proposed and to give an opportunity to all of those who have an interest not just in the Hauraki Gulf but an interest in what happens with legislation with

regard to the Treaty of Waitangi to have a say.

We have heard from John Tamihere that he wants to see the issue taken further, and that he is not content merely with legislation that requires consultation on Treaty issues or the words ``having regard to the Treaty''.

The law courts of this land have made it very clear what is required of bodies under respective pieces of legislation with regard to consultation. Indeed, if consultation does not include those bodies not merely having regard to but taking into account and actually changing their attitude, their approach, or their actions then it is not consultation.

I think we have opened up Pandora's box. I do not believe that any member understands the full implications of what is before us. I do not think we should be passing legislation that has such critically important and such crucial and fundamental changes, particularly as proposed in subclause (1). The ACT party opposes very strongly the changes that are being pushed through under a Supplementary Order Paper.

Hon. SANDRA LEE (Minister of Conservation): If it assists the members of the National Party, I can point out that the origins of this set of wording that now appears in the Supplementary Order Paper under my name were, in fact, prepared when National was the Government. The Hon. Nick Smith was the sign-off Minister for the Supplementary Order Paper at that time with that wording. He is nodding in agreement. John Luxton is saying ``No''. I have bad news for John Luxton---he is wrong and I am right. Perhaps we should get the former Minister to take a call and explain it, given that it was his wording.

It is disappointing but predictable that this bill would start to stumble when we get to the Treaty clause. I have never seen a piece of legislation put through this House, whatever the legislation, that when it got to the Treaty clause did not have the Chicken Lickens of this Parliament come out and wail that the sky was about to fall in. The truth of the matter is this: it is wording, it is amending amendments, and subclause (4) in new clause 4 is the important one, where it states: ``Nothing in Part 1 or Part 3 or Part 4 limits, affects,'' etc.

It is a savings clause. It was put up by the previous Minister in order to nullify the effect, and John Tamihere's critical analysis is 100 percent correct. Anybody who could read a Supplementary Order Paper must surely understand that. The legal beagles who are arguing that this sets some grand precedent have got to be joking. If it was, they could be absolutely assured that the member for Hauraki would be sitting on his perch with his lip zipped in the hope that no one would notice it. He has done far from that, and well members know it, because it does not go very far at all. It is not adequate. The kaum~atua from the Hauraki M~aori Trust Board made that abundantly clear to me. But it says a little bit about the good faith of M~aori people, none the less, that they have been prepared to accept at least that this is an inevitable process as regards the Treaty.

If those members who have spoken in this part of the debate are genuinely concerned about the application of the provisions of what is this nation's founding document contract and compact---and those who are the champions of law and order ought to remember that first order, if one likes, that created the ability in this nation for all other laws to be made---if those members are so concerned, one of the

issues this Parliament would do well to give regard to during the next 3 years would be to ensure that, at last, we provide some consistency in all the statutes that have Treaty clauses in them so that lay people, ordinary New Zealand citizens, M~aori, and statutory bodies can have some coherence and understanding of what these Treaty clauses mean across the board.

Of course, the difficulty in promoting such a proposition would be that it would invite a debate that must be had at some point politically if we are going to be honest as those who sit in the legislative Chamber of this House at this time. There are major ramifications for that as we move into a new century, and a new proposition in terms of the role of tangata whenua as citizens of this nation.

I put it to members that the calls for a division need to be factored in against the simple fact that this Supplementary Order Paper attaches to the former Minister. What does it mean? It means that the park must be administered to give effect to the Treaty principles. Well, whatever that means. In my experience, when Treaty principles have to be considered they are overwhelmingly ignored in too many cases. But this does not apply to the seabed, nor should it. The Attorney-General and Minister in charge of Treaty of Waitangi Negotiations has indicated that she is addressing issues to do with the seabed vis-a-vis Treaty settlements at this very time---foreshore, taiapure, and mataitai. The provision states that the forum has to have regard to the principles, and that the Treaty principles and obligations in other legislation are unaffected and must be fulfilled.

In conclusion, what we have here, if members go from new subclause (1) to (4), is an emphatic statement that does go beyond the original wording in the original bill. That was mooted in response to submissions made before the select committee. Then what we got was an exemption---that it does not apply to private land, and Mr Jennings may be interested to note that. It does not apply to the foreshore or the seabed, and so on. It applies purely to the conservation land and the estates and reserves that are applicable. New subclause (3) states: ``When carrying out its functions under Part 2, the Forum must have regard''---that is the soft touch there; the weakening, if one likes---``to the principles of the Treaty of Waitangi''. The final crunch is in new subclause (4), which states that nothing in Parts 1, 3, or 4---which leaves only Part 2, which is the ``have regard'' provision---shall be applicable. So what is the concern?

I want to state for the record that Mr Tamihere, the member for Hauraki, has made passionate submissions on behalf of his people to ensure that their rights and interests and---dare I say it to Mr Jennings---their private property rights, are protected as we work through the very important wording in this clause. I can state clearly for the record that the elders and those who appeared before me in consultation, expressed a strong desire to see something far more emphatic than what is contained here.

As is the case with all Treaty provisions in all legislation that comes before this House, this is the ultimate compromise, if one likes. It is not good enough. We can do better as a Parliament.

I will say one more thing on that issue, and it is this: as long as we opportunistically, as New Zealand leaders in this Parliament from different political parties, use the Treaty debate in a spurious way for political opportunity, we will not advance this debate at all. So therein lies the challenge. Members should search their own

souls. I pay tribute to Mr Tamihere for the stand that he has taken today.

Owen Jennings: That's not the issue.

Hon. SANDRA LEE: It is the issue. He will continue to litigate a real commitment to the Treaty of Waitangi, and I acknowledge him for that.

Hon. Dr NICK SMITH (NZ National---Nelson): As one of the original architects of the provisions in this clause I want to provide some explanation, and to respond to the challenge from Owen Jennings that nobody in this House understands what this does. Well, let me explain specifically what it does. The dilemma we have with this bill is that we are integrating a number of Acts of Parliament. We have the Conservation Act, the Resource Management Act, and the Local Government Act. Each of those Acts of Parliament, as the Minister correctly points out, has a different Treaty clause. The Conservation Act has a very strong provision from the 1989 Act, the Resource Management Act has a softer Treaty clause, and the Local Government Act, being quite an old Act, has no Treaty clause at all.

So when we went to put this bill together, the dilemma was what would be the Treaty clause that would apply. Understandably with such a contentious debate, nobody wants to give any ground, and nobody wants to lose any. That is effectively what we provided for in relation to new clause 4 in the Supplementary Order Paper. Let me explain why that is. Firstly, Part 1 deals with the Resource Management Act. This clause states that in terms of the Resource Management Act we should apply the same Treaty clause that is in the base Act. That makes good sense.

Secondly, when we make the Hauraki Gulf a marine park, and we include conservation reserves, the same Conservation Act, with the stronger Treaty clause, should provide for those areas. Look, we cannot expect M~aori members in this House to accept that as a consequence of the Hauraki Gulf Marine Park Bill they lose ground, that the Treaty clause gets softer on those provisions.

The third issue is that we establish the Hauraki Gulf Forum. What should be the Treaty clause that applies when those members of the forum meet? We will have an extensive debate about the role of the forum soon when we come to Part 2. This clause states that the Conservation Act provision of the Treaty clause should apply. I think there is a very sound argument for that to be the case. Remember, it is the Minister of Conservation who has responsibility for the body, and it is, in fact, a conservation bill. It is misleading of members to stand up in this Chamber and say that as a consequence of applying the Treaty clause to the Conservation Act, and to the forum, there is somehow some great big deal that will result in the end of the world.

The last point I make is that in respect of the Treaty clause, the forum, the Resource Management Act, and the Conservation Act, substantially we are not moving the goalposts in respect of one matter. Mr Tamihere did not say it explicitly, but I heard it very explicitly from those members who met with me just as they have met with the Minister. They would like to use this bill as a vehicle for getting a Treaty provision within the Local Government Act.

I think there is a legitimate argument to be had in this Parliament about the application of the Treaty to local government. But I would also say that it is not right to include it in this bill. It is not right because it would be a nonsense to have a Treaty clause applying to some of our local authorities in one part of the

country, and not to others. That is a debate that we should have, but this is not the bill in which to do it. So I stand by the provisions here, which do not advance but do not move backwards in respect of those key Treaty issues associated with the Conservation Act, the Resource Management Act, and the Local Government Act, and how they interact with the provisions of this bill.

Clause 11

JEANETTE FITZSIMONS (Co-Leader---Green): I want to speak in favour of the Minister's amendment to clause 11. Clause 11 has had a longish history. It is the clause that purported to maintain the status quo in relation to any Treaty claims, particularly in relation to the foreshore and seabed. In the select committee, we were assured that clause 11, as it originally stood, protected the status quo. The select committee accepted that advice and reported the bill back accordingly. After we had reported back, I was visited by representatives of the Hauraki M~aori Trust Board, who took me through the arguments very carefully. In fact when one read the clause carefully enough, one saw that it did not protect the status quo.

Clause 11(1), as it was, read: ``Nothing in this Act limits or affects the Crown's title or right to ownership of the foreshore, seabed . . .''. Also, clause 11(2) stated: ``Nothing... limits or affects the ability of any person to bring a claim ...''. It did not say anything about the remedies that might be available when that claim was brought, and it did seem to contain a presupposition that the Crown did have title to the foreshore and seabed. In fact that matter is before the courts at present, and should be decided there.

So I stated in the report-back debate last year that I would not be able to continue to support the bill unless clause 11 was changed. It has been changed, and I think it is now genuinely neutral, in that it does not add or take away anything from anyone's rights in that case that will be heard by the court. I commend the Minister for making that change, and I support it.

Hon. BRIAN DONNELLY (NZ First): Once again, we have to reiterate that we are not opposed at all to the objectives of this particular bill. But we do, once again, have to ask some questions about where it leaves the rest of the country. If we have to put this legislation through, surely some questions should be asked about existing legislation and how well it is operating to conserve the waters around New Zealand, which are so important to all of us, whether or not we live in Auckland.

I had to laugh at the comments made by Grant Gillon when he talked about the pristine waters of the Hauraki Gulf. I just wonder whether he eats shellfish from there. I am quite happy to gather some up for him and offer them on a plate! We well know, in fact, that the Hauraki Gulf, particularly the inner part of it, has suffered very badly from the lack of conservation measures, particularly over on the North Shore, where Mr Grant Gillon comes from. They have probably got the worst sewerage system in New Zealand over there.

So we have to ask ourselves about the existing legislation that has allowed that to happen, and that applies to the rest of the country. What is there in the existing legislation that needs to be changed to ensure that what has happened to the North Shore waters does not happen anywhere else? Yet if we pass this legislation, then

there is really no incentive on this Parliament to look carefully at that legislation, which could have the same sorts of effects upon Doubtless Bay or Whangarei Harbour, and certainly has had on Tauranga Harbour, and other harbours and marine environments around New Zealand. There is no incentive, and the reason there is no incentive is that most of the MPs come from Auckland.

Therefore we believe that what we should be doing is looking at the existing legislation to find where there may be some weaknesses, in order to modify that legislation so it applies equally to Auckland and anywhere else in the country.

For example, clause 6 states: ``To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are---'', blah, blah. What it basically is saying is that this bill, this Parliament, recognises the national significance of the Hauraki Gulf. We certainly recognise the national significance of the Hauraki Gulf. But, then again, we also recognise the national significance of Wellington Harbour. We recognise other parts of the nation. Why should we just select out Auckland and say that that has national significance, but that Wellington or Dunedin has not got national significance?

So once again we want to ask what is wrong with the existing legislation that has led to a situation where the sorts of things I talked about---like improving the condition of North Shore waters---can in fact come about.

I refer again to clause 11, because I tried to take a call when clause 4 was being debated, and missed out at the end. It is more a point of clarification, I guess. It is certainly something that we have to be very careful about here. The Hauraki M~aori Trust Board is one group that has been very concerned about this legislation. I think we are well aware of that. One of the issues is the ownership of the seabed. As we well know from Treaty claims, that is still a disputed issue. I go back to clause 4, and I just want to say what we agreed to---

The CHAIRPERSON (Jill Pettis): Briefly.

Hon. BRIAN DONNELLY: I realise that we are not talking about that clause, but it relates to clause 11. In the Supplementary Order Paper that was put forward, which we have already voted on, clause 4(2) states: ``Subsection (1) does not apply in respect of any area of the Park that is foreshore, seabed . . .'', but that is the provision that talks about the principles of the Treaty of Waitangi. Therefore it says that the principles of the Treaty of Waitangi cannot apply to the seabed in this particular case.

I hope I am wrong, because if I am right, then we are actually taking away from the Hauraki iwi some of what I consider to be their fundamental rights---including to challenge under the Treaty the issues of ownership of the seabed.

I would like the Minister to take a call to clarify these particular issues for me. I want to ensure, in my own mind, that we have not got something that is going through carelessly that will later on be used by lawyers, as Mr Owen Jennings said, to frustrate legitimate claims from the Hauraki M~aori Trust Board or the tribes, the hap~u, or the wh~anau in the Hauraki Gulf Marine Park area.

Finally, I just have to mention---and I guess in some respects it reflects more on the past Government than it does on this Government---the issue relating to---

The CHAIRPERSON (Jill Pettis): I am sorry to interrupt the member,

but his time has expired.

23 Feb 2000, 46th Parliament, 1st Session, Hansard Vol 581, p729
Hauraki Gulf Marine Park Bill (Third Reading)

Sandra Lee (Min of Conservation) states –

> The Hauraki Gulf is, of course, also a very special place to the tangata whenua. This legislation that will be enacted tonight will involve at least 12 iwi, and their hap~u and wh~anau groups. It has long been their special place. They have fought for it, loved it, and lived in it for generations, and I know that they will continue to do so.
>
> I acknowledge that there has been a debate surrounding the Treaty clause. I believe that that debate has been valid, but that it belongs in another piece of legislation at another time when, as people who make legislation in this House, we look at the issue of the integration of Treaty clauses in legislation generally.

Warren Kyd on the Treaty clause –

> I and others on this side have expressed concerns about clause 4, which makes the management of the park subject to the Treaty. It has to give effect to the principles of the Treaty. I have asked the other side what those principles are and what effect they will have, and I have had no answer. Presumably, they will have some effect, but nobody knows what that will be. I have pointed out the difficulties when those words have been used in other Acts. Also, clause 15 states that the forum in conducting its business must have regard to the principles, but no one says what the principles are and what that means. Presumably, it will have some meaning. But that is not the main reason I oppose this bill. Sandra Lee expressed concern that people were criticising the bill on that ground. Members are right to criticise it on that ground if they do not know what is meant and we have had no rational explanation of it.

Jeanette Fitzsimmons on iwi concerns with Bill –

> I am very concerned that Hauraki iwi are still not happy with the bill. The celebration tonight is under a certain shadow of sadness as they have not yet accepted that the bill is a good thing and they still believe that their rights are affected by it. I listened very carefully, first of all, to their submissions at the select committee hearings. They asked for a number of things at those hearings. They wanted recognition that the gulf was about protecting kaimoana, not just about a park. The select committee has put the protection of kaimoana into the bill. The iwi wanted recognition of the name by which they know the gulf---Tikapa Moana on the Hauraki side and Te Moananui a Toi for the Auckland iwi. That is in the preamble and in the bill. They wanted an increase in iwi representation, and we have moved it from four to six. They wanted funding so that those iwi representatives could consult properly with their people, and that funding is provided for.
>
> We then rethought the real effects of clause 11, which deals with protection of the status quo for the claim to the seabed and foreshore. We have altered clause 11 to make sure it does preserve

the status quo, as it was intended to.

I believe that the deeds of recognition between tangata whenua and parts of the gulf place on record the historical connection, the mana, and the kaitiakitanga of the tangata whenua with the gulf, and I welcome that. The iwi are still very concerned that clause 4 affects their Treaty rights. I have studied it carefully and I am convinced that clause 4 preserves the status quo. I would not be voting for this bill if I thought clause 4 degraded their rights under the Treaty. In fact, those rights ought to be improved and we ought to develop further the partnership and the rights of M~aori under the Treaty, but there are other times and other places that we can do that.

H V Ross Robertson on the possibility of the Bill going to the Waitangi Tribunal -

The Treaty and the tangata whenua are important considerations in this legislation. I have heard Sandra Lee and John Tamihere speak on this legislation. Suffice to say that the Hauraki M~aori Trust Board suggested that the bill should be referred to the Waitangi Tribunal. However, members of the Waitangi Tribunal told the select committee that they would rather it was not referred to the tribunal, because it would require hearings and could take any length of time.

Richard Worth states -

The first issue has been covered briefly by other speakers. It was mentioned by the honourable Minister and by John Tamihere. It relates to clause 4. When the bill was reported back, clause 4 was in simple terms. It is now before us in a more complex formula. Subclause (1) reads: ``Subject to subsections (2) and (4), the provisions of Part 3 relating to the Park must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).''

Hon. Sandra Lee: Read subclauses (2), (3), and (4).

RICHARD WORTH: I will read them, but perhaps I can come back to them in a moment. The bill as introduced provided much more simply that it was not intended to affect the obligations of any person under any Act in respect of the principles of the Treaty of Waitangi. The two exceptions that I believe can properly be taken to clause 4(1) are, first, that it unreasonably raises the expectation of M~aori in respect of what this legislation might achieve. It is important, I suggest, to manage those expectations down so that they are not unreasonably held.

The second aspect relates to what in fact is meant by ``so interpreted and administered as to give effect''---and I emphasise the phrase ``give effect''---``to the principles of the Treaty of Waitangi''. That particular form of words finds its place only in the Conservation Act. It may be that those who with hindsight looked at the legislation saw that there was some merit in having consistency with that legislation. But when one comes to contemplate what is actually involved in giving effect to the principles of the Treaty of Waitangi, the problems really start.

If one looks at the law in this area and sees the principle of consultation as a key element in that phrase, then quite clearly the legislation itself provides for a consultation framework that makes that particular form of words unnecessary. How much safer it would have been to stay---as the honourable Minister drew our attention to

a moment ago---with the words of clause 4(3) that regard should be had to the principles of the Treaty of Waitangi. That form of words, which is used in the Resource Management Act, sufficiently, fully, and appropriately covers the issues of concern to M~aori. That was the first issue that I sought to speak about. The second relates to the impact on private property rights, including farming activities on properties within what is clearly an extended catchment.

In supporting the bill I am not seized with the imaginings that my friend Mr Kyd has in respect of this legislation. I do not believe it has the draconian effect for which he contends. The Hon. Brian Donnelly has drawn our attention to the provisions, substantially in clause 16, relating to the advisory powers of the forum---powers, one could cynically observe, that do not have much teeth to them.

24 February 2000, Hansard Question Supplement, Vol 40, p618
Written Question 3119 – Representation – Hauraki Gulf Marine Park Bill

ERIC ROY to the Minister of Conservation: Did she receive any representations, written or verbal, on changes to the Hauraki Gulf Marine Park Bill from Mr John Tamihere?
ANSWER :

Hon SANDRA LEE (Minister of Conservation) replied: Yes, I received numerous representations from John Tamihere, MP, on changes to the Hauraki Gulf Marine Park Bill.

13 March 2000, Hansard Question Supplement, Vol 40, p830
Written Question 4151

ERIC ROY to the Minister of Conservation: Does she stand by her comment in the New Zealand Herald of 23 February 2000, that the Treaty clause in the Hauraki Gulf Marine Park Act 2000 ``means that the Park must be administered to give effect to the Treaty principles—whatever that means''; if so, why did she include a clause whose meaning she did not understand?

ANSWER :

Hon SANDRA LEE (Minister of Conservation) replied: The Treaty principles have been established in case law and in Government policy. A principle is that the Treaty is an evolving contract, and in that sense the precise meaning of the principles may change depending on the place, its history and significance. To understand my intent the member should put the emphasis on the word whatever in the quote.

13 March 2000, Hansard Question Supplement, Vol 40, p834
Written Question 4175

ERIC ROY to the Minister of Conservation: Further to her answer to written question No. 3119 (2000), what were the main points raised by Mr John Tamihere MP in his numerous representations?

ANSWER :

Hon SANDRA LEE (Minister of Conservation) replied: John Tamihere sought to delete parts of clause 4(2) and change clause 4(3) of the Hauraki Gulf Marine Park Bill relating to the Treaty obligations in managing the Park and in the business of the Hauraki Gulf Forum. He sought to broaden the access to the Deeds of Recognition mechanism outlined in Part 3 of the Bill.

NEW ZEALAND PUBLIC HEALTH AND DISABILITY ACT 2000

4 Treaty of Waitangi
In order to recognise and respect the principles of the Treaty of Waitangi, and with a view to improving health outcomes for Maori, Part 3 provides for mechanisms to enable Maori to contribute to decision-making on, and to participate in the delivery of, health and disability services.

3 Aug 2000, 46th Parliament, 1st Session, Hansard Vol 585, p3907
Answers to Oral Questions - New Zealand Public Health and Disability Services Bill

New Zealand Public Health and Disability Services Bill

2. Rt Hon. WYATT CREECH (Deputy Leader---NZ National) to the Minister of Health: Why did she decide to propose a generic Treaty clause for ``interim inclusion'' in the New Zealand Public Health and Disability Services Bill, and does this mean the Government will propose further amendments in relation to this aspect of the proposed legislation?

Hon. MARGARET WILSON (Attorney-General), on behalf of the Minister of Health: Because of this Government's commitment to transparency, I presume the member is referring to a Cabinet paper released on Tuesday from a Cabinet meeting 2 weeks ago. I am pleased the member is making use of that information now available to all New Zealanders. However, additional Cabinet decisions have been made on the matter last week, and those papers will be released shortly. As the member would know from his experience as a Minister in charge of legislation, clauses in bills are subject to change. Of course, irrespective of Cabinet decisions, all clauses in legislation are in fact interim until that legislation is passed by Parliament.

Rt Hon. Wyatt Creech: How does the Minister expect New Zealanders to accept that the Government has got this matter right, in the light of the fact that the Associate Minister of Health, Tariana Turia, is reported as thinking that the bill does not give iwi sufficient recognition and that the member for Hauraki is reported as saying that he will not vote for the bill while it ignores urban M~aori?

Hon. MARGARET WILSON: The Government has been giving considerable thought to this policy development, which is why it was noted in the paper that it was an interim decision. As I have said, the final decision and the arguments surrounding that will be released.

Judy Keall: What positive outcomes does the Minister expect for M~aori from the inclusion of the Treaty provisions in the New Zealand Public Health and Disability Services Bill?

Hon. MARGARET WILSON: This Government is committed to closing the gaps by improving health outcomes for M~aori. One of the few positive legacies left by the previous Government was the emergence of effective service provision to M~aori by the increasing number of M~aori providers. We are committed to ensuring that such positive outcomes continue, by formalising partnerships between the district

health boards, local iwi, M~aori provider organisations, and the wider M~aori groups in the community.

Hon. Richard Prebble: Could the Minister tell the House whether the Cabinet papers released on Tuesday, or the ones shortly to be released, will explain how her associate can believe that the Treaty gives the basis for a health system based on race, and will it also explain how apartheid in the health system will help close the gaps?

Hon. Dr Michael Cullen: I raise a point of order, Mr Speaker. I suggest to you that the use of a term such as ``apartheid'' in relation to Government policy is unacceptable, as any such similar forms of reference are unacceptable.

Hon. Richard Prebble: ``Apartheid'' is a legal term. It is a term that is in English, and it relates to setting up separate development based on race. If a Government is doing that, then it is perfectly appropriate to so describe it.

Mr SPEAKER: Parts of what the member said are correct, but epithets are out of order in a question, so that particular comment and definition---that word---is to be ignored by the person giving the answer.

Hon. Richard Prebble: I raise a point of order, Mr Speaker. If I cannot actually use the word ``apartheid'' to describe separate development, I rephrase the question and ask: how does the Treaty justify a health system based on separate racial development?

Hon. MARGARET WILSON: As I recall the intent of the question, I think it is widely known that there is a considerable range of views on the precise meaning of the Treaty in any particular circumstance. That is a debate that is being conducted within the wider community, and it has certainly been conducted within various parties in this House. That debate is healthy as it contributes towards the development of policy that will eventually be expressed in legislation. When the full papers are in fact produced, as they will be, and produced in a timely fashion, one will be able to see the process that has been undertaken by this Government to arrive at its decision as to what were the appropriate Treaty clauses for this legislation. We are aware that it will not satisfy everyone, but it has been an iterative process with contributions from all parties.

Rt Hon. Winston Peters: Could the Minister advise us as to whether it is the official policy of the Government that the view of urban M~aori authorities that they may be iwi is a view that will destruct the very fabric of the M~aori people and therefore should be opposed?

Hon. MARGARET WILSON: The Government's policy that relates to the Treaty is an inclusive one. It recognises the legitimate role of traditional iwi, hap~u, and wh~anau organisations within the proper context. It also recognises the emergence of urban M~aori organisations that have sometimes been described as pan-iwi. What is appropriate, of course, is to ensure that the representative nature of all those groups is in the appropriate legislation as it arises. It is not a question of picking one against the other, or divide and rule; in fact it is a process of being inclusive and working through what is appropriate for the particular circumstance.

Rt Hon. Wyatt Creech: Given the Minister's answer to my question that this process was a constructive one, is there any basis to the media reports that the Associate Minister of M~aori Affairs ``stormed out of the Labour caucus meeting in tears on Tuesday''; if so, was the reason for her concern her view that the Health and Disability Services (Safety) Bill failed to meet the Government's obligations under the Treaty of Waitangi?

Mr SPEAKER: The Minister may answer that question in relation to the Health and Disability Services (Safety) Bill as requested.

Hon. MARGARET WILSON: It probably defies even my capacity to be able to construct an answer out of a non-question, but I can say that I have not had the opportunity---

Rt Hon. Wyatt Creech: I raise a point of order, Mr Speaker. You have already said on a number of occasions that Ministers must stop prefacing their questions with criticisms. The question was whether there was any basis to media reports. If that is too much for the Attorney-General, then perhaps she should not have the job.

Hon. Dr Michael Cullen: If the question related to the basis for media reports, then the Minister bears no responsibility for what any member of the Labour caucus did at any time before, during, or after a Labour caucus meeting.

Mr SPEAKER: As far as I am concerned, the answer given by the Minister to the first part of the question must not involve comments that she knows are perhaps additional to what is required for the answer. I would now like her to answer the question.

Hon. MARGARET WILSON: Unfortunately, I have not read the article to which the honourable member referred, nor was I at caucus when these events were alleged to have taken place. I am afraid that I am unable to assist the member.

10 Aug 2000, Hansard Question Supplement, Vol 44, p3076
Written Question 15239

Rt Hon WYATT CREECH to the Minister of Health: What is the explanation for the Cabinet's decision to draft a generic Treaty clause for ``interim inclusion'' in the New Zealand Public Health and Disability Services Bill; and does this mean the Government will propose amendments to this aspect of the proposed legislation?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: I refer the member to my answer to the oral question in the House on 3 August, question No 2.

10 Aug 2000, Hansard Question Supplement, Vol 44, p3076
Written Question 15240

Rt Hon WYATT CREECH to the Minister of Health: Have fiscal impacts or one-off costs been identified as flowing from the decision to include a generic Treaty of Waitangi clause in the New Zealand Public Health and Disability Services Bill; if so, what are the specific costs or impacts?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: The costs are still being estimated.

10 Aug 2000, Hansard Question Supplement, Vol 44, p3076
Written Question 15242

Rt Hon WYATT CREECH to the Minister of Health: Were M~aori consulted on the inclusion of the Treaty of Waitangi clause in the New Zealand Public Health and Disability Services Bill; and what comments were received; if so, who commented?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: The need to see the Treaty included in the Bill, as a necessary step toward improving the performance of the health sector in relation to Ma~ori health and service delivery, has been the subject of numerous comments received by Ma~ori on the health sector changes. These include submissions from Ma~ori organisations, and feedback from a series of national and regional information hui organised by the Ministry of Health to inform Ma~ori of the proposed health sector changes.

10 Aug 2000, Hansard Question Supplement, Vol 44, p3076
Written Question 15243

Rt Hon WYATT CREECH to the Minister of Health: Has she received any comments or advice from the Associate Minister of Health, Honourable Tariana Turia, regarding the inclusion of a generic Treaty of Waitangi clause in the New Zealand Public Health and Disability Services Bill; if so, what were the specific advice or comments she received?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: Yes, all ministers were consulted and Cabinet agreed the specific clause.

10 Aug 2000, Hansard Question Supplement, Vol 44, p3077
Written Question 15244

Rt Hon WYATT CREECH to the Minister of Health: What specific advice has she received from the Crown Law Office regarding legal consequences flowing from the wording of the Treaty of Waitangi clause in the New Zealand Public Health and Disability Services Bill?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: Crown Law Office advice is included in the papers on the Treaty provision which are on my internet web site.

10 Aug 2000, Hansard Question Supplement, Vol 44, p3077
Written Question 15245

Rt Hon WYATT CREECH to the Minister of Health: Has she received advice suggesting that the inclusion of a Treaty of Waitangi clause in the New Zealand Public Health and Disability Services Bill exposes the Crown to risk of litigation; if so, what are the specific risks and how does the Crown intend to mitigate them?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: It has not been possible to obtain the information required to enable me to respond to this question by the due date. I undertake to provide the member with a copy of the information once it is available. A copy will also be lodged with the Parliamentary Library for perusal by other members.

10 Aug 2000, Hansard Question Supplement, Vol 44, p3079
Written Question 15257

Rt Hon WYATT CREECH to the Minister of Health: Can she give a guarantee that she will forward, to the select committee considering the New Zealand Public Health and Disability Services Bill, all advice she receives from officials which specifies how the Government will give effect to its commitment to the principles of the Treaty of Waitangi; if not, why not?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: I will provide information as per parliamentary conventions.

10 Aug 2000, Hansard Question Supplement, Vol 44, p3076
Written Question 15240

Rt Hon WYATT CREECH to the Minister of Health: Have fiscal impacts or one-off costs been identified as flowing from the decision to include a generic Treaty of Waitangi clause in the New Zealand Public Health and Disability Services Bill; if so, what are the specific costs or impacts?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: The costs are still being estimated.

14 Aug 2000, Hansard Question Supplement, Vol 44, p3121
Written Question 15467

Rt Hon WYATT CREECH to the Minister of Health: What are the claims upon the health system, in addition to those that they have as citizens, that are referred to in a recently released Cabinet paper (that I quote in full), ``The insertion of the Treaty clause is acknowledgement that Government accepts that M~aori do have claims upon the health system in addition to those they have as citizens, which relate to the status as indigenous people and Treaty partners and their desire to have a say over the delivery of their own health and disabilitity services''?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: Those matters which are outlined in the New Zealand Public Health and Disability Bill.

15468. Transferred, see question No 15467.

17 Aug 2000, 46th Parliament, 1st Session, Hansard Vol 586, p4983
New Zealand Public Health and Disability Bill (First Reading)

Annette King (Min of Health) states –

One of the most important areas of this bill concerns the Crown's partnership with M~aori. The partnership approach will ensure the engagement of M~aori at all levels of the health sector. Provisions for the partnership, including the reference to the Treaty of Waitangi, are set out in the bill and will also be set out in the district health board accountability documents. The new public health service must, as a priority, work alongside M~aori to turn round the tragic M~aori health statistics.

The partnership relationship builds on progress made by the previous National Government. That is why I am somewhat surprised that some members of the Opposition, including the previous Prime Minister, have been claiming that the Treaty provision will create two classes of patients, based on skin colour. I am extremely disappointed in Mrs Shipley playing the redneck race card instead of engaging in rational debate, particularly given her party's previous Treaty---

Rt Hon. Wyatt Creech: I raise a point of order, Mr Speaker. There have been many rulings by presiding officers of this House that it is inappropriate to accuse another member of the House in the way the Minister of Health has.

Mr SPEAKER: That is perfectly correct. I ask the member to withdraw and apologise.

Hon. ANNETTE KING: I withdraw and apologise. It is extremely disappointing that Mrs Shipley will not engage in rational debate, given her party's previous Treaty partnership with M~aori.

The previous health system created two classes of patients: those with money and those without. The new public health service will make health accessible to all, regardless of where they live, how much money they have, and, certainly, regardless of their skin colour. I know that prominent former National Party Ministers, including Sir Douglas Graham and the Hon. Bill English, share our belief in the importance of the Treaty as a guiding partnership document. When Mr English was Minister of Health he was proud of partnerships he forged with M~aori providers.

Under National, the Health Funding Authority---the funding organisation that National set up---established Treaty relationships with iwi organisations. A Health Funding Authority report published this year stated that about 50 percent of M~aori health providers interviewed in 1999 considered that the Health Funding Authority was committed to the Treaty. A draft memorandum of understanding between Ng~ai Tahu Development Corporation and the Health Funding Authority in August last year agreed that the Treaty offered both parties the opportunity to establish a partnership relationship with the principal objective of an improvement in M~aori health status.

Sir Douglas Graham, in his 1997 book, Trick or Treaty?, called for a redefinition of the relationship between M~aori and non-M~aori and a recommitment to build a cooperative friendship so that everyone can benefit. He wrote, and I quote: ``If we have learnt anything from the past it is when M~aori are likely to be affected by Government policy. They must be consulted, and to avoid mistakes it may be time to establish a joint council.'' Sir Douglas also pointed out in a

statement from the President of the Court of Appeal that perhaps: ``Too little emphasis has been given to the positive and enduring role of the Treaty.

``Fearmongers have already begun arguing that the inclusion of a Treaty clause in this bill opens the possibility of M~aori being able to go to the court and to argue that they should be considered differently, regardless of clinical advice.'' The reality, as they know, is that because the Treaty has already been so strongly embedded in health partnerships in the last few years, anybody who wanted to take the extraordinary action could do so whether or not there is a Treaty clause in this bill.

The clause is included because the Government agrees that the Treaty has a positive and enduring role. We want a better New Zealand, a healthier New Zealand. We need to build on the partnership that already exists, and we need to believe in our own healthy future, not to live in fear of committing ourselves to a better life together.

The bill has appropriate non-commercial arrangements for organisations like Pharmac and the bill allows for two committees to be established, as already talked about. One committee is the health workforce advisory committee. The other committee, which I know Bob Simcock will be interested in, is the mortality review committee, which will review and report on specified classes of death. Initial priorities include the child mortality, maternal mortality, and perioperative death. I thank all those who have been involved in the preparation of this bill.

Wyatt Creech states –

National opposes the inclusion of a Treaty clause in social legislation. This is an extremely serious issue. It is of major constitutional significance. If this Treaty clause is to be included in health legislation, there is no logical reason it should not be included in all social legislation. It should be fully and properly considered by the House and the country before it is done, and it should not be shoved through using a simple parliamentary majority just to deal with internal Labour Party political problems.

No one, though, should interpret my comments as anti-M~aori, or anti-improving M~aori health. Nothing could be further from the truth, and we have a very good track record in that regard, as the Minister of Health herself has gone through in her speech. Party politics to the side, many M~aori leaders have told me that more progress was made with M~aori health in the 1990s, under the reforms that Labour so hated, than had been made in the years before. Our policy allowed M~aori providers to flourish. It allowed Pacific providers to flourish. M~aori providers are, of course, non-public sector. They are private providers. Officially, the Labour Party detests private providers, and Annette King should explain that obvious contradiction. To include a generic Treaty clause against the reams of advice Ministers have received on the risks---and they have been released to the public so the public can see them---to include a Treaty clause, without understanding where it may lead, is plain irresponsible. This Treaty clause has already caused big headaches within Government caucuses. Key members of the M~aori caucus are at odds over the wording, and how the Treaty clause should be included. To create different rights for M~aori from traditional areas, as opposed to M~aori generally, is a formula for division within

M~aoridom. This will lead to litigation, and big money will be spent on lawyers, not health improvements for M~aori.

Our view is straightforward. We support improving M~aori health because we need to, not because it is a Treaty right. When it comes to access to health services, all New Zealanders should be treated equitably. Papers released under the Official Information Act in relation to this issue are a real worry. I quote: ``The insertion of a Treaty clause is an acknowledgment that Government accepts that M~aori do have claims on the health system in addition to those as citizens.'' The Minister of Health should say what that means. The criteria for treatment for New Zealanders should be need. The Minister of Health said just that on television last week. Were it to work out that way, I would not be objecting. But Parliament should not make laws like this unless it can state and understand what it means, and this is not possible, as the papers show.

M~aori leaders too have raised this concern. The Ng~apuhi leader, Shane Jones, is quoted in the media as saying that the definition of mana whenua has been taken and used out of context. Mr Jones says that in his area alone 12 to 15 tribal groups of M~aori will expect to be regarded as the customary mana whenua group. Labour MP John Tamihere has highlighted the huge legal problems this will cause in Auckland.

I want to emphasise that National does not support the inclusion of the Treaty in social legislation. It is a step on the road to division, not to a shared future. Great 20th century civil rights leaders, like Martin Luther King and Nelson Mandela, all call for equality for their people, not for separatism. This will take New Zealand down the wrong pathway, and it is the wrong thing to do. I mention the Treaty because it has had publicity of late, but this is health legislation, and it does not include only that. There are provisions in this bill, for instance, that introduce the single transferable vote system.

This bill should not have a truncated select committee process. The National Party will not support this bill.

Tariana Turia (Associate Min of Health) states –

I was really interested to hear people talk about the Treaty and about our using our majority to get Treaty legislation through the House. I want to talk about the Treaty. By gosh, I want to talk to members about the Treaty. Let us think about when the Treaty was introduced into this country. Let us talk about democracy. Let us talk about the numbers of that time. Do those members want to tell me that the tangata whenua of that time---the indigenous peoples of this country, of which each and every tribal grouping held on to its sovereignty; there were more than 200,000 of them---handed that sovereignty over to 2,000 people who were here from another nation?

It was not difficult for those of our people at that time who understood what it was to be the host in their own whare, to know how to treat guests who came there. It was not difficult for them to see a place like this established to deal with governance issues over all others who came to this country; more than happy were they to see, as hosts of their own whare, that all others who came here could be hosted by this particular House. They knew how to behave as hosts when they were in their own houses, and they knew how to behave as guests when they were in other houses. Since I have been in this House I have noted that those who are part of it do not know how to

be good hosts. I would be very embarrassed if I were to see how those members would behave as guests in other peoples' houses.

The Treaty is a really important document. It speaks of that significant relationship that was agreed to and established in 1840, and understood the rights of both those who were given the right to govern and those who still maintained their rights as mana whenua within their rohe. I am really proud that we as a Government are so committed to making sure of the rights of mana whenua that have never been recognised in the past by any Government in this country. I see the member smiling over there, and I could not help but think about that commitment when we were talking about the really good intentions of the previous Government to improve M~aori health. Some really good things have happened in M~aori health. However, some enormous questions need to be asked about where the mainstream health dollars were spent, particularly when they were funded on a population base.

I shall talk about heart surgery and how many M~aori people have been able to access heart surgery. It is easy to get out there and identify all the issues and the problems of M~aori people, but when it comes to addressing those really serious issues, where did the health dollars go? We could examine the last 9 years and find out where that money was spent and who it was spent on. We might be deeply distressed to find exactly who accessed not only the primary-care health dollars but also the secondary-care health dollars.

I am really proud to be part of a Labour Government that intends to enshrine the Treaty of Waitangi in legislation, that is prepared to acknowledge the role of mana whenua as the host of the rohe, that is prepared to encourage integration of health services as part of wider iwi, hap~u, and wh~anau development, that is prepared to ensure that for the first time in the history of this country we will be represented at that table making the decisions---and gosh, that is distressing for some people---that is prepared to provide direct resourcing to those M~aori health providers who have done a really good job in the past, that is prepared to see the cultural safety is part of the quality and monitoring in the health service, and that is prepared to be committed to increasing a M~aori health workforce.

For me, Labour's M~aori policy document has particular significance. It is saying that it is prepared to promote changes in the traditional systems and processes of Government. I believe that this is a necessary response. The fact is that mainstreaming has not been effective in reducing health disparity between M~aori and non-M~aori. We have seen the closing the gaps reports that highlight that. Improving service access to wh~anau and increasing wh~anau opportunity to provide services are seen as cooperative and necessary vehicles to advance wh~anau health status.

I believe that movement to address M~aori disparities in health must ensure wh~anau involvement from the early stages and the establishment of programmes. Indigenous peoples progress best when they have control of the process and control of the implementation. That is why we are totally committed to the philosophy of capacity building. It is our intention to build the capacity of wh~anau, hap~u, iwi, and M~aori organisations, and to restore them to their rightful place of being in control of their development and their lives.

I finish by saying that I think we are entering exciting times. It is probably important to remind ourselves that by the year 2050, the number of those of indigenous descent in this country will be equal

to all others. Kia ora koutou.

Georgina Te Heuheu on development of Maori health, and on Treaty clause –

I acknowledge that the Minister at least had the courtesy to acknowledge the developments that were made in M~aori health in M~aori communities in the last 9 years. I know that John Tamihere would have said the same in the Labour caucus, and would have had the grace to acknowledge it, had he been given the opportunity to take part in this debate. In his own words, and I want to pick them up because they are good words, he said: ``A sea change has occurred in M~aori communities.'', and I agree with that. Under the National Government a systemic structural change occurred that recognised the vibrancy of M~aori communities, their desire to have input into and to participate in their own health improvement, their desire to develop themselves, and their capacity to design and develop health solutions that would see them influencing their health status rather than leaving it in the hands of bureaucrats, which is what we are about to see.

In the last 9 years---and I am proud to have been a part of this before I came into Parliament---we saw the development of over 230 M~aori providers providing a range of primary health-care services. We saw the development of arrangements between M~aori communities and the Health Funding Authority that had M~aori making some very important decisions about allocation and the way that mainstream providers delivered to M~aori. We had M~aori participation in a way that had not ever been seen before, and that, in my view, in the current reforms proposed had the capacity to be untangled. I hope that is not the case, but in fact M~aori providers across the country also have anxieties on that score. The National Government did that, not because of the Treaty, but because it made absolute good sense and because the status of M~aori health demanded that we do that and give a proper priority to M~aori health.

I want to turn to this Government's intention to include Treaty references or clauses in this legislation. We will be opposing that, again on the basis of experience. First, in the matter of Treaty community interface, we have had 9 years of that experience on the basis of considered and thoughtful judgment, on the basis of the need to strike a balance between the number of competing interests not only in the health sector but outside it, and on the basis that a Government always, in terms of being a responsible Government, needs to reconcile those interests across the country.

On the other hand, that does not exclude the notion that where a priority needs to be given, indeed that priority will be given, and we demonstrated that that was possible. We considered the insertion of a Treaty clause in 1991---I was not here at the time, but that is my understanding---but, on balance, decided that it was inappropriate in health legislation in terms of applying the Treaty to the dispersal of public funds across mainstream services. Instead, we committed ourselves to making M~aori health a priority, and we sought to achieve that by thinking clearly about the principles we wanted to have underpin our engagement with M~aori to deliver better services and better health for M~aori people. That is the way we approached it, and after 9 years' experience we are absolutely committed to that approach.

Labour, on the other hand, shows its inexperience in the Treaty-community interface. Against all official advice it seeks to

make a major change in the public sector, and it does that even without proper consultation among M~aori people, who stand to lose the most if this is not the right thing to do, and we say that it is not. The Labour Government shows no desire to consult. It can say that this will go to a select committee, but if its track record is anything to go by it will not change anything. [Interruption] This Government's approach is designed to pit New Zealanders against each other, but even more than that---and I am sure that Tariana Turia knows this---to pit M~aori against each other. Otherwise, why is it that John Tamihere is so worried about this legislation? Answer me that.

In my view the more important thing to do, and the better way to approach these matters rather than steer us all into uncharted waters, is to ask ourselves what it is that we want to achieve here. What are the principles that this Government wants to underpin its approach to M~aori health?

Judy Keall: Cooperation.

Hon. GEORGINA TE HEUHEU: What have we got already? We have cooperation. Does the member want to give me something else? I have an answer for that, as well. If it is the Government's desire and wish to achieve excellent health outcomes for M~aori people, then it should state that clearly. It should state how it intends to do that. It will not necessarily occur just because it has put something into place that will get two representatives on district health boards, and members opposite know that. They should state how they want to achieve these things. If they believe that strong partnerships are the way to achieve good health outcomes for M~aori people, then they should state that clearly and tell us how they intend to develop those partnerships.

If Government members want bureaucrats to be enablers of good M~aori health outcomes, then they should pass this legislation. If they want M~aori to decide their own future and their own good health, they should commit to that and let us know how that will be done. That is a far more honest way to achieve those objectives than including a Treaty clause for reasons that probably have very little to do with good health for M~aori.

I want to leave a thought with M~aori members on the other side of the House. In the words of one of our young and upcoming M~aori leaders, this Government's approach has the potential to unleash a torrent of rhetoric about rights but precious little about improving M~aori health outcomes. If that is the case, I will hold both the Government and the M~aori MPs on the other side of the House responsible.

In closing, I pay tribute to the thousands of dedicated people who, up and down the country, work daily and tirelessly in their commitment to good health for all New Zealanders. As a member of the regional health authority I had the pleasure of working with many of them from 1992 to 1996. I can only admire their dedication and commitment; that is what we want to keep in this sector, but that is what will be lost with the reforms of this Government.

Ron Mark says NZ First supports the main thrust of the Bill, but does not support the Treaty clause, saying that it is separatist and divisive.

Ruth Dyson (Min for Disability Issues) states –

I am disappointed in the speaker who has just resumed his seat, and I am

particularly disappointed in the member who spoke before him---Georgina te Heuheu. It is unacceptable for a member with strong and proud tribal history to come into this House and use the fact that we have finally come out of the closet on Treaty of Waitangi issues, and have taken what I consider to be the proper step of putting the Treaty within the legislation, and for the member to use that as a tool of division amongst M~aori members in this House and in our community. That is not acceptable, and it is very disappointing that the member did that.

That member knows, because of her previous portfolio responsibilities, that the Health Funding Authority did have partnership contracts with M~aori providers. That fact has now been reflected in the legislation. There cannot be anything wrong with recognising the Treaty in the legislation, rather than doing deals behind closed doors.

Dr Paul Hutchison states –

There will inevitably be intense debate about the insertion of a Treaty of Waitangi clause in this legislation. The gaps in M~aori health---which have been present for decades---must be addressed on the bases of clearly identified need and of achieving identified outcomes. I am very concerned by the warnings of many officials and commentators, both M~aori and P~akeh~a, that inserting a Treaty clause is politically and technically very risky and could be counterproductive in achieving excellent health gains for M~aori, because we want nothing short of excellence. In Government, National has shown its commitment to improving M~aori health in a tangible way. It will continue to evolve that commitment. It is absolutely critical for New Zealand's future.

Judy Keall states –

There is something else that I want to stress in this legislation, and that is the partnership with M~aori. I must say that I was very, very disappointed by Georgina te Heuheu's speech. I should have thought that she would agree with the explanatory note to the bill, which states: ``The Crown's partnership with M~aori is an integral part of the health and disability sector and is therefore also an integral part of the NZPHD Bill.'' I remind that member, who talked about splits and divisions, that she does not seem to be in line with the previous Minister of Health, Bill English, who was proud of the partnerships that he forged with M~aori providers. Georgina te Heuheu does not seem to understand all the work that was done by the previous Health Funding Authority, in building up Treaty relationships with iwi and signing contracts. If it was signing contracts, why should that not be acknowledged in the bill? I am proud to be part of a Government that does acknowledge it and that is intent on doing something to close the gap, when it comes to the disparities in health between M~aori and non-M~aori.

Dr Lynda Scott states –

We know that there is a major disparity regarding M~aori and Polynesian health. National worked to address that, and it backed the delivery of M~aori health services to M~aori by M~aori organisations. National did that without having a Treaty of Waitangi clause in

social legislation, because it believes in improving health outcomes for all New Zealanders on the basis of need, not of the Treaty. M~aori and Pacific Islanders have poor health statistics and we do need to strive to improve those outcomes in every way that we can. However, it is not right to insert a Treaty of Waitangi clause in this bill without full public debate about the implications of such a move. In 1991 National rejected the inclusion of a Treaty clause in social legislation, because it considered that people should be treated on the basis of need. Annette King was singing our praises previously, saying that she knows that National did achieve good things for M~aori health in the 1990s. I believe that New Zealand's people need to move forward in partnership, not division.

To summarise, I cannot support this bill. It will not improve health outcomes for New Zealanders. It will put politics back into health. It will see M~aori treated on the basis of the Treaty, not of need. It is not the health structure that will make a difference, but people. We are about to lose many good people in the health sector.

22 Aug 2000, 46th Parliament, 1st Session, Hansard Vol 586, p5029
Answers to Oral Questions – New Zealand Public Health and Disability Bill

1. Rt Hon. WYATT CREECH (Deputy Leader---NZ National) to the Chairperson of the Health Committee: Why did she instruct the clerk of the committee to advertise for submissions on the New Zealand Public Health and Disability Bill by 22 September, before the committee or Opposition members had been consulted on the matter?

ANSWER :

JUDY KEALL (Chairperson of the Health Committee): The House has required the committee to report the bill by 14 November. Given the importance of the bill and my concern that members of the public be given adequate opportunity to make submissions, I took the decision to advertise for submissions as soon as I could.

Rt Hon. Wyatt Creech: Would the member not think it appropriate at least to consult other members of the select committee, when a 1-month period for one of the most important bills is the only time that will be available for people to prepare their submissions?

JUDY KEALL: I have no doubt of the support of the majority of the select committee. However, under the Standing Orders I have the right to do what I did. I refer the member to Standing Order 197, and the longstanding practice of Parliament that was followed by his colleague Brian Neeson, MP, during the 3 years he chaired the Health Committee under the previous Government.

Rt Hon. Wyatt Creech: I raise a point of order, Mr Speaker. This point is in relation to the issue that has just been discussed in the supplementary question. There are no Standing Orders specifically governing procedures of select committees. There is, however, considerable discussion in McGee. It states: ``it is normal for the chairman of the committee to direct the clerk of the committee to place newspaper advertisements calling for submissions on the bill by a particular time. Although these steps are taken under the chairman's authority, the chairman is acting on behalf of the committee in this regard and is subject to the control of the committee.'' There is an issue here as to whether the chair has a power to pre-empt any discussion with the committee on the matter. Furthermore, there is the wording of the advertisement itself: ``The

Health Committee has called for submissions on this bill.'' I did not know they were being called or what the date was until I read this advertisement in the paper. A number of people have already asked me why the Health Committee approved it. It would be accurate for the chair to say: ``The chair, acting in her authority, has unilaterally decided to call submissions for the select committee.'', but to say: ``The Health Committee has...'' implies that all members were involved, when they were not.

A further issue is the wording of the advertisement itself. It gives a very truncated and, in my view, one-sided explanation of what the bill does. It fails to mention aspects of this bill---such as the fact that it includes the Treaty in social legislation for the first time, which is a matter on which many members of the public may wish to make submissions. The public, therefore, is not properly informed about the contents of this bill. I think all those matters should be determined by a Speaker's ruling so we can know how the procedure works.

Mr SPEAKER: I think the member has raised two very valid and important points. As far as the first one is concerned, I was thinking back to my own memory of the Standing Orders, and the Clerk has confirmed this. I would like to have a serious look at the matter and will certainly give a ruling in the next day or so.

24 Aug 2000, 46th Parliament, 1st Session, Hansard Vol 586, p5183
Answers to Oral Questions – New Zealand Public Health and Disability Bill – Treaty of Waitangi

1. Rt Hon. WYATT CREECH (Deputy Leader---NZ National) to the Chairperson of the Health Committee: Has the Prime Minister advised the committee that the Government may clarify a Treaty of Waitangi clause in the New Zealand Public Health and Disability Bill currently before the committee; if so, what arrangements will she make to ensure that the public have the opportunity to make submissions on any proposed new provision?

ANSWER :

JUDY KEALL (Chairperson of the Health Committee): No.

Rt Hon. Wyatt Creech: Has the chair of the select committee spoken to the Prime Minister about media reports that appeared today that ``the Government may clarify a Treaty of Waitangi clause in health legislation as it seeks to avoid further fall-out over allegations of heavying by M~aori Ministers''; if so, will she find out whether the provision is going to be changed so that the public can have an opportunity to make submissions on what actually is going to be in the bill?

Mr SPEAKER: The only part of that question that is relevant is the first part, because the member is the chair of the select committee. The member is perfectly entitled to ask that part of the question, and I will ask Judy Keall to answer it.

JUDY KEALL: No, I have not spoken to the Prime Minister. The rest is pure speculation.

Rt Hon. Wyatt Creech: I raise a point of order, Mr Speaker. I would like an explanation as to why the second part of that question was out of order. Let me explain. The first part of the question asked a perfectly legitimate question of a member---and you said that. The second part gave the reason it would be necessary for that information to be made available for the public. It is not a

different part of the question at all.

Mr SPEAKER: It is to the extent that the chair of the committee is not the Minister who is in charge of the bill.

20 Sept 2000, 46th Parliament, 1st Session, Hansard Vol 587, p5686
Debate - General

Hon. ANNETTE KING (Minister of Health): We have had to listen to an incredible amount of cant and nonsense from the Opposition benches this year, but there is nothing to match the Opposition's cant on the Treaty of Waitangi issues. There has been an almost hysterical response to the inclusion of a Treaty clause in the New Zealand Public Health and Disability Bill, and a lot of it has come from the Leader of the Opposition. She has tried to paint a scenario, aimed primarily at the rednecks in our society, that somehow M~aori are going to be given access to health services that will not be available to non-M~aori. In fact, that could not be further from the truth. As a former Minister of Health she should be well aware of the need for this country, this Parliament, and this Government to raise the health status of M~aori and Pacific people in this country. But rather than debate the real issues and look below the surface, we have a Leader of the Opposition who has gone around New Zealand saying the highest amount of cant this Parliament has ever heard.

I think it is important that we remind the National Party of some of the things its members said in Government, but are not now saying in Opposition. It was under the National Government that the move to include a Treaty clause in health legislation started---under Bill English. I believe that in his heart Bill English believes in what this Government is doing in terms of the inclusion of a Treaty clause, because Bill English was very pleased to see Treaty partnership relationships developed with M~aori during his time as Minister of Health, and that was continued by Wyatt Creech. Those Treaty partnership relationships were developed within the Health Funding Authority and its arrangements with M~aori. They exist now. In Auckland and the far north Bill English helped put in place what are called MAPOS---M~aori provider organisations. They are co-purchasing organisations made up of M~aori that sit alongside the Health Funding Authority in a Treaty partnership relationship, to make decisions over how money will be spent to help improve the status of M~aori.

That started under a National Government, and now National is saying that because this Government wants to continue in that direction, and to put a Treaty clause in new legislation to make it clear there is a Treaty partnership relationship, it is wrong. Bill English supported M~aori development organisations that formed Treaty partnership relationships around New Zealand. He supported the memorandum of understanding between Ng~ai Tahu and the Health Funding Authority, which is a Treaty partnership relationship. When National members were in Government they supported that particular direction, but now they are in Opposition they say it is wrong. It is that sort of cant that New Zealanders do not believe in.

I remind the House what John Luxton said---a former Minister of M~aori Affairs. It is worthwhile repeating the sorts of things that Mr Luxton said when he was a Minister. In respect of the Waitangi Day

protest of 28 February 1995, Mr Luxton said: ``We can then address other issues of underachievement in our society, as we are required to do under article 3 of the Treaty of Waitangi, in relation to those lower socio-economic parts of our society.'' It was also Mr Luxton who said there was a need for the Government to continue down the track that it was following to address those outstanding grievances, and to move on to the wider issues under article 3 of the Treaty of Waitangi. He went on to say: ``That is exactly what this Government is doing, and intends to continue doing, despite the concerns that have been raised by others.''

That is what Mr Luxton said. He was very brave in 1995. He said the Government did not care what other people said, it knew it was on the right track, and it would follow that track. Now that those members are in Opposition, that track is wrong. What has changed? The only thing that has changed is those members are sitting there and we are sitting here. The Labour Party in Opposition supported every part of those changes. We supported the need to close the gaps between M~aori and other New Zealanders. We know that those gaps exist in health. Look at the statistics that exist for M~aori people: they do not live as long as other New Zealanders. We need to change that.

12 Oct 2000, Hansard Question Supplement, Vol 45, p3836
Written Question

Hon KEN SHIRLEY to the Minister of Health: What are the ``principles of the Treaty of Waitangi'' referred to in Clause 4 of the New Zealand Public Health and Disability Bill?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: The Treaty principles of partnership, participation and protection have guided the development of Ma~ori health policy for a number of years. These principles are still considered useful and relevant as we move forward, as are other principles such as good faith, reasonableness, mutual co-operation and trust, articulated by the Privy Council and other authorities.

7 Nov 2000, 46th Parliament, 1st Session, Hansard Vol 588, p6313
Answers to Oral Questions – New Zealand Public Health and Disability Bill – Treaty of Waitangi

1. Rt Hon. JENNY SHIPLEY (Leader of the Opposition) to the Minister of Health: Will she promote an amendment to remove any reference to the Treaty of Waitangi in the New Zealand Public Health and Disability Bill; if not, why not?

ANSWER :

Hon. ANNETTE KING (Minister of Health): No. The New Zealand Public Health and Disability Bill is before the Health Committee. I am aware that the overwhelming majority of the submissions on the clause were in favour of its inclusion in the bill.

Rt Hon. Jenny Shipley: Why is the Minister ignoring the advice of the Race Relations Conciliator, who recommended the removal of the

Treaty clause because it could be unduly divisive and would not promote positive race relations in New Zealand?

Hon. ANNETTE KING: These matters are still before the select committee, and no doubt will be reported to us in due course. I remind the member that it was also the Race Relations Conciliator who found a problem with the hepatitis B programme---a programme put in place by a National Government.

John Tamihere: Is the Minister aware of any work undertaken in the health sector that includes working in Treaty relationships with M~aori; if so, when were those arrangements undertaken and why?

Hon. ANNETTE KING: Yes. The National Government claimed to be committed to improving M~aori health, and signed co-purchasing agreements and memorandums of understanding with iwi as part of a Treaty relationship. I think that the National Party, and in particular Mrs Shipley, would do well to remember what her predecessor, Jim Bolger, said---that there were no votes for National in M~aori bashing.

Hon. Richard Prebble: Would the Minister explain how the country can ever have fair, full, and final settlements of Treaty claims if the Government is intending to introduce permanent grievance clauses into legislation?

Hon. ANNETTE KING: The member is wrong. That is not what this Government is doing. We are determined to ensure that there is not preferential treatment for any New Zealander, other than that based on need. We are determined to ensure that people's health is improved, and we will go a long way to do that. We will support the work that was started by National in that respect, and I urge New Zealanders to support it, because otherwise the health status of New Zealanders---particularly M~aori---will continue to deteriorate.

Rt Hon. Jenny Shipley: Can the Minister give the House a categorical assurance that if a clause requiring more favourable treatment for M~aori goes into the New Zealand Public Health and Disability Bill, it will not mean that we are subject to judicial interpretation in relation to what the Treaty might mean?

Hon. ANNETTE KING: There will be no such clause. This Government is not about giving preferential treatment. There will be no preferential treatment, although the member would like that to happen. I remind New Zealanders that she is the member who saw Pacific Islanders coming through the windows of New Zealanders.

Ron Mark: How can the Minister reconcile her previous answer, in which she said that there was no preferential treatment other than that based on need, with the speeches made in this House post-Budget in which the Labour Party highlighted $1.3 billion of social spending orientated around closing the gaps between M~aori and non-M~aori?

Hon. ANNETTE KING: I am astounded by that question, because I should have thought that member would know that there is huge need on the part of M~aori and Pacific Island people in New Zealand, that in fact we do need to improve the diabetes status of M~aori, and that we need to improve their health status in a whole lot of areas. If the member cannot see that, then he will never see that gap closed for M~aori.

14 Nov 2000, 46th Parliament, 1st Session, Hansard Vol 588, p6503
Answers to Oral Questions – New Zealand Public Health and Disability Bill – Treaty of Waitangi

2. Rt Hon. WYATT CREECH (Deputy Leader---NZ National) to the Minister of Health: Was the Associate Minister of Health, Hon Tariana Turia, included in discussions to remove references to mana whenua from the New Zealand Public Health and Disability Bill?

ANSWER :

Hon. ANNETTE KING (Minister of Health): Yes.

Rt Hon. Wyatt Creech: Did she agree with its removal; if so, did she agree with the comment from her colleague John Tamihere MP: ``Mana whenua in the bill simply perpetuates a historic and feudal anachronism.''?

Mr SPEAKER: No, the member cannot ask whether the Associate Minister agreed with that particular matter, but the first part of the question was in order.

Hon. ANNETTE KING: The caucus and Cabinet agreed to these changes. I would not expect all politicians to agree with all issues at all times, but what I can say is that my associate and I agree far more often than Bill English did with Neil Kirton.

Judy Keall: Can the Minister confirm that the Government listened to the submissions to the select committee, and to the concerns of the public; if so, can she detail the purposes of the changes?

Hon. ANNETTE KING: Yes. I can confirm that the majority of the committee did listen to the submissions. The majority of the submissions---three to one, in fact---dealt with the Treaty clause. Those that dealt with it supported its inclusion. But there was a need to remove any confusion, and the Government has taken the opportunity to clarify the Treaty provision to ensure that it is clear that there is no preferential treatment in the delivery of health services. We have also clarified the issue of mana whenua, to ensure that M~aori groups have a relationship with district health boards, and to make it clearer to M~aori that they are involved in that process.

Hon. Ken Shirley: Could the Minister tell the House why it is necessary to have any race-specific clauses in this bill, and why special appointment procedures based on race are in the bill?

Hon. ANNETTE KING: If the member is talking about the Treaty of Waitangi, I do not agree with him. What this bill does have in it is a requirement for district health boards to address health inequities. If the member were aware of the health inequities in New Zealand, he would know that some of the great health inequities are amongst M~aori people and Pacific Island people. We want to ensure that we address those issues---as did the previous National Government, as stated in its documents. It is the right move for this Government to take.

Rt Hon. Wyatt Creech: As the Minister agreed to the changes because so many submissions were in favour of them, why did she agree to the removal of the mana whenua clause, when the overwhelming majority of M~aori submissions were in favour of retaining the mana whenua clause too?

Hon. ANNETTE KING: Something like 19 submissions were in favour, six were opposed, and many were all over the place. What came through to the select committee, I understand, was that there was confusion about who would be interpreted as being mana whenua. So as to make the legislation clearer, the clause was removed. I would have thought that was a good select committee process.

15 Nov 2000, 46th Parliament, 1st Session, Hansard Vol 588, p6578
Answers to Oral Questions – New Zealand Public Health and Disability Bill – Treaty of Waitangi

7. Hon. TONY RYALL (NZ National---Bay of Plenty) to the Associate Minister of Health: Who are the people she described in an interview on the New Zealand Public Health and Disability Bill as being like guests who are being given hospitality by tangata whenua?

ANSWER :

Hon. TARIANA TURIA (Associate Minister of Health): The words I used were ``mana whenua''---all of those who are not mana whenua of that tribal area. That includes the member and myself, in Wellington.

Hon. Tony Ryall: Does the Minister honestly believe that if one is not mana whenua in a particular area, then one is a guest in one's own country?

Hon. TARIANA TURIA: I was very clear when I was talking about tribal boundaries that when one is the mana whenua one is the host within one's tribal boundary, and all others are guests.

Mita Ririnui: Was she referring to P~akeh~a as being guests of M~aori?

Hon. TARIANA TURIA: Regardless of people's age, gender, ethnicity, sexual orientation, religious beliefs, and income level, we are guests of mana whenua within their tribal area if we are not from that tribe.

Hon. Ken Shirley: Are the guests in New Zealand referred to by the Minister in her interview the same guests in New Zealand that she referred to in her introductory speech to the New Zealand Public Health and Disability Bill on 17 August?

Hon. TARIANA TURIA: I do not recall referring to guests in New Zealand. I was very clear in saying that I was referring to those who were guests of the hosts within a tribal area.

Rt Hon. Winston Peters: Would the Minister confirm that the concepts she is now seeking to transport across to public policy are totally inappropriate, and that they belong, with respect, to cultural boundaries amongst M~aori and others in a cultural context, but do not belong where taxpayers' money is concerned in a country that wishes to be one country?

Hon. TARIANA TURIA: I am more than happy to maintain that the values, culture, and beliefs of my people have as much place in this society as all others.

Hon. Tony Ryall: Should guests and hosts have different rights?

Hon. TARIANA TURIA: In certain situations, yes.

23 Nov 2000, 46th Parliament, 1st Session, Hansard Vol 588, p6854
New Zealand Public Health and Disability Bill (Second Reading)

Tariana Turia (Acting Min of Health) states –

> Much of the debate on the bill has concerned the Treaty of Waitangi clause in the legislation, and the unfortunate myth that grew around this clause that it was somehow intended to give preferential health treatment on the basis of race. I was very disappointed that the people who were giving credence to the myth were members of the Opposition, who now claim that the bill's intentions, in terms of M~aori health, have been watered down

and that the Government has had to back down. Nothing is further from the truth. This Government never had any intention of giving preferential health treatment to any group on the basis of race. The Opposition knew that, but was happy to raise unwarranted fears on this issue. The previous Government recognised the need for specific health programmes to target particular health needs faced by wh~anau, hapu, iwi, M~aori, and other groups, but members of the Opposition have now cynically suggested that our Government's recognition of the same need disguises an apparently sinister agenda.

The bill now makes it very clear that there is an essential difference between health programmes and health treatment services. It removes any confusion that there may have been in the original version---confusion that the Opposition created to suit its own ends. No one will receive preferential health services solely on the basis of race. But specific health programmes, such as immunisation, must continue to be targeted towards groups whose needs have not been met in the past. I am proud that the Treaty of Waitangi remains an integral part of the bill. Key principles for involving M~aori include partnership, participation, and protection. This Government is committed to ensuring that these principles are acknowledged and actioned.

Wyatt Creech states –

The Minister talked about the Treaty clause and made a point of trying to blame it all on National Party politicians. The problem with the Treaty clause as introduced was caused, she said, by ``you people on that side of the House''. I say to the Minister, Tariana Turia, that she should consider that one of the most telling submissions on the Treaty clause came from the Race Relations Conciliator Rajen Prasad. I do not believe that he was ill-motivated at all.

Judy Keall: But he's happy with the changes.

Rt Hon. WYATT CREECH: Judy Keall says that he is happy with the changes, and that is the case. But I wanted to make the point that it is totally and completely unreasonable to try to blame all of that on the National and ACT parties.

I also want to make a further point to Tariana Turia---and to Willie Jackson, John Tamihere, and some other M~aori members who are intervening now---every M~aori submission to the select committee was very positive about the progress made by M~aori groups over the last 10 years. They gave us credit for it. Ng~ati Porou said it wanted to be a separate district health board. They said: ``Whatever else you do, we don't want to be under the Tairawhiti Area Health Board. We want to be our own health board.'' That arrangement was set up by me when I was Minister of Health. They said to me afterwards: ``If you could keep in place what you have done, that is what Ng~ati Porou really wants.'' Before we get a lot of criticism of the National Party, I would like to get some credit for the fact that some very positive contributions were made in that area.

Sue Kedgley says Green Party supports the new rewritten Treaty clause.

Ken Shirley states –

I would like to move on to the Treaty clauses in this bill. [Interruption] I know that Mr Willie Jackson is certainly

looking forward to that! This is the first legislation in this country in which we have introduced Treaty reference clauses into social policy. We hear Government members clapping over there. I suspect that a few years down the track they will say to themselves: ``What on earth did we do?'', because they do not know what they are doing. They clearly do not know what they are doing.

We have the mana whenua clause. Wonderful stuff was introduced, and what happened? Labour member Mr John Tamihere came along to the select committee and said that he did not want that clause in the bill. The select committee heard that many iwi groups were totally confused. They did not know how it would work. They saw it as a recipe for disaster, and appropriately so.

Then there is the reference to the principles of the Treaty. I have put down written questions to the Minister of Health, asking what these principles of the Treaty are. All that I have got back is amazing flimflam. It seems that the Royal Commission on Social Policy, which reported in 1985---a huge great document---came out with some principles of the Treaty. We then had Lord Cooke of Thorndon, bless his heart, come out with some principles of the Treaty. We then had the Doug Graham principles of the Treaty. They were all different, and no one knows what is being referred to here. It is like the emperor's clothes: we have to have it because it makes us feel good, but what is it? When we strip it away, no one knows what we are talking about.

The Treaty of Waitangi is based on three very clear and very good articles. If we are talking about those articles, then that is fine, but I do not believe we are talking about them. Article 1 is all about clear, single sovereignty in the new nation of New Zealand, as it was in 1840---one common sovereignty. Article 2 is all about property rights, and the protection of property rights. There have been abuses, and the Crown is now addressing those abuses, and appropriately so. Article 3 is all about commonality before the law. We all share common rights, responsibilities, and privileges, and no one should be discriminated against, either positively or negatively, on the basis of race, but that is what this bill is doing. It clearly is doing that.

I know that there are M~aori leaders out there who are consistently saying that this reference to the Treaty is an article 2 issue, that it is all about article 2. I would like the Government to try to clear that up, and to explain it to the House, because it is certainly not clear in the bill as it is written. Are we saying that health is a property right issue, and what are the ramifications of that? They are enormous. It is not clear, and unclear legislation is very bad legislation.

The Race Relations Conciliator gave a very good report to the select committee. He said that in his view the bill was in breach of the New Zealand Bill of Rights Act, and that it breached international conventions that this country had responsibilities to uphold. That was an extraordinarily clear submission.

I would like to ask a question of the Attorney-General. We know that there is a requirement under section 7 of the New Zealand Bill of Rights Act for a report to be tabled in this House before a second reading if the Minister believes that there may be inconsistencies with the New Zealand Bill of Rights Act. My question to the Attorney-General is why we do not have a report. The wording in section 7 is ``if the Minister believes'', so there is discretion there, but we had a situation in which the Race Relations Conciliator

believed that this was racist legislation and that those references were inappropriate, yet the Attorney-General ignored commissioning a report. I ask her why. I ask her to take a call.

I would also like the next Government speaker to tell us why the Minister of Health has not taken a call in this debate, because she has championed this bill. There may be a good reason for not taking a call, but I want to know why the Minister of Health has not taken a call in this debate. It has been speculated that she may be going to withdraw the Treaty reference. She could be up in her room, working on the withdrawal of it. I do not know, but I want someone from the Government benches to get up to tell the House why the Minister is not here to give us her views on the recommendations of the select committee in this second reading debate.

Mita Ririnui states –

My comments on the bill will be very brief and will cover the same issues that Mr Ken Shirley covered in relation to the Treaty clauses. Of the 115 clauses in the bill, the most contentious were clauses 4 and 18. Mr Shirley commented about the principles of the Treaty. Yes, there was some confusion about exactly what those principles were. I do agree with him that in this case we are talking about the principle of equity and article 3, the rights of citizenship---no problem whatsoever. However, I do have a problem with clause 18. Even though it has been said that the majority of the submissions that we heard were in favour of that clause, the majority of submissions from M~aori groups were opposed to it. They opposed it because of a lack of clarity.

I will refer to a lot of the comments that were made to me in relation to clause 18. M~aori, by and large, wanted the Treaty to be incorporated into the legislation, because that is basically how M~aori become involved in the legislative debate, and is how M~aori are ensured equity. Clause 18 attempted to define, by legislation, a relationship between the Crown and M~aori---no problem. But it also attempted to define a relationship between M~aori and M~aori---big problem. That is not something that M~aori give over willingly to the Crown to determine. We will debate our relationships and we will determine how we consult and communicate with each other.

I have a quotation that was left to me by my forefathers, and it simply goes like this---koia nei r~a te k~orero: waihotia m~a te tiriti an~o hei k~orero ~ona ritenga, ehara m~a te ture, ehara m~a te tangata. N~a runga i t~enei, me p~enei r~a. Kia ora t~atou.

I will translate for you, Mr Speaker. The quotation merely says that from time to time we should let the Treaty speak for itself and should not allow the law and mankind to do the speaking for it, because quite often we do not get it right.

Dr Paul Hutchison states **–**

As a new member of Parliament, I regarded it as a great privilege to be part of the select committee that heard the submissions dealing with the Treaty and the debate surrounding the bill. To me, those submissions were incredibly sincere and passionate, yet they did hold diametrically opposed views. To my mind this part of the debate is extremely important for New Zealand, and it reflects our maturity and our willingness to discuss Treaty issues. But we must not lose sight of the goal that we want to achieve in the long run: a healthy,

harmonious society. We do not need legislation that might be divisive, as the Race Relations Conciliator suggested that the first version of this bill would be. The debate surrounding what the Treaty principles mean is clearly undefined. It seems to me that making reference to them in the legislation is inappropriate---certainly at this stage. What is agreed by everyone is that successive Governments must continue to put every effort into improving M~aori health and the health of all other groups with poor health parameters. Fundamentally, the delivery of health care should be based on need, and our legislation should clearly reflect that principle.

John Tamihere states –

In moving on to address clauses 4 and 18 of the bill in the first instance, I point out that I, along with my M~aori colleagues, am delighted that the mischief has been laid to rest over Opposition allegations about preferential treatment for M~aori in this legislation. Those allegations have been laid to rest because, in reporting the bill back, we have clearly stated in black and white that the Treaty clause is not about preferential treatment. The Treaty clause is about the right to equality of opportunity that was accorded to M~aori people under the auspices of the foundation document of this country. That is what it is about; it is not about preferential treatment. Anyone in this country who wants health care to be delivered and who is heavily embedded in the M~aori community is in great difficulties. If members want to know who is at the back end of waiting lists up and down this nation, it is people from M~aori communities. That is unacceptable in a democracy of our sort in the year 2000, and that is why the Treaty clause is there: to signal clearly to health authorities that M~aori should be a forethought, rather than an afterthought, in terms of waiting lists and the like.

The other point I want to make relates to clause 18. Clause 18 is not about the mana whenua relationships. I am pleased to say that wisdom has prevailed and that M~aori communities will be able to operate within their district health board areas where the relationships lie on the ground. A lot of us know that relationships have crystallised on the ground and that they are clear. We should not be entertaining any form of different status for mana whenua. To that extent, I commend the committee on its report back. Kia ora.

Georgina Te Heuheu on Maori health and on the Treaty clause –

I come to the matter of M~aori and the health sector. I want to repeat something that I said during the introduction of this bill to the House. I am quoting someone else; I do not apologise for that. He happens to sit on the Government side of the House. But I would like to quote his comment because I think it is a very telling and intelligent description of the developments that have occurred in M~aori communities over the last 9 years. The words are: ``A sea change has occurred in M~aori communities.'' Of course, I agree with that because that is true. I also said that under the National Government a systemic structural change occurred that recognised the vibrancy of M~aori communities, their desire to have input into and participate in their own health improvement, their desire to develop themselves, and their capacity to design and develop health solutions that would see them influencing their health status rather than

leaving it in the hands of bureaucrats and politicians. We are about to see all that change, and I think it is a huge disappointment and a shame.

Because this Government makes so much of its so-called flagship closing the gaps policy, it is also a shame that one year after it has come into Government, we still see no evidence that it actually knows what it is doing in implementing that policy. That has been demonstrated over the last week by the questions that have been asked of both the chief executive of Te Puni K~okiri and the Minister himself. No other Ministers on the Government side of the House have given me any assurance that they know what their ministries or departments are doing to close any gaps. I will say this, especially to the member for Rotorua: the Government cannot get any improvement in any area of social policy unless it gets buy-in from the people whose health it says that it wants to improve. That is what the previous National Government had in the last 9 years. We got a buy-in from M~aori communities that this Government will struggle to get.

Why is that? It is because the Government has created a huge monster that will take away the ability of M~aori to properly participate in a sector that---as Opposition members have been telling us and telling New Zealand---was, in their view, a huge improvement over previous years in terms of the ability of M~aori to participate in the health sector. Government members should take note of that. Again, the member for Rotorua scoffs. She knows very well how hard health professionals worked in the last 9 years, and what opportunities there were for M~aori to participate. M~aori are absolutely worried that those opportunities are now going to slip away. Because I was personally involved in the health sector myself from 1992 to 1996 in this House, I will be looking to the Government to make sure that the gains that M~aori have made over the last 9 years do not slip away.

I want to make one further comment. The inexperience of this Government in Treaty matters was shown very clearly in the back-down on the Treaty clause. I personally am pleased that the Government saw fit to reconsider what it was doing with this bill and the Treaty provision. But I am deeply disappointed that the Government raised M~aori expectations, only to dash them at the last minute. I hope that the M~aori members, especially, will think clearly before they do these things in the future. I want the M~aori members, especially, to think about that.

I commend Mita Ririnui for the whakatau~aki that he quoted in this Chamber and what he said about the Treaty. The Treaty has stood, clear and out there, for 160 years. I want the Government to think, before it starts sticking the Treaty everywhere and poking the Treaty all over the place, as if it is something common, because it is not common. M~aori regard the Treaty as tapu. If we start poking it everywhere, as this Government has signalled that it intends doing, then I ask the M~aori members to consider what that will do to the status of the Treaty. In my view, it will start to render it noa or common---completely meaningless. I want M~aori members to consider that point, because I do not know whether their colleagues in the House are capable of appreciating it; I hope that they are. But if the Treaty that our t~ipuna signed 160 years ago is tapu, then what is this Government doing by starting to poke it into every piece of legislation that it is intending to promote?

The Government was clearly shown to be inexperienced in Treaty matters in this bill. Twelve months on from the election, we are

nearly to the point of its first anniversary in office, and the Government has shown that it has no experience whatsoever in Treaty matters. Only one substantial matter has come into this House, in the form of the Pouakani claim settlement, and I would not be feeling at all proud about any so-called achievement of anybody on the Government side of the Chamber.

28 Nov 2000, 46th Parliament, 1st Session, Hansard Vol 589, p6891
Answers to Oral Questions - New Zealand Public Health and Disability Bill – Treaty of Waitangi

New Zealand Public Health and Disability Bill---Treaty of Waitangi

11. Hon. ROGER SOWRY (NZ National) to the Associate Minister of Justice: Has she asked her colleague, Hon. Tariana Turia, whether her speech to the M~aori Nurse Educators Conference intended to assert that the Race Relations Conciliator's submission on the New Zealand Public Health and Disability Bill was based upon ``an intellectual inability to comprehend the historical context of the Treaty, the history of this country, and of us as whanau, hapu and iwi'', ``a denial of that history and a lack of interest in justice, truth and reconciliation'' and ``hypocrisy and scaremongering''; if not, why not?

Hon. MARGARET WILSON (Associate Minister of Justice): No, I have not considered that such an inquiry of my honourable colleague is necessary, because it is obvious from her speech that the comments did not refer to the Race Relations Conciliator.

Hon. Roger Sowry: How does she respond to those New Zealanders who did see the Hon. Tariana Turia's statement as nothing more than a cold-blooded and calculated attack on the Race Relations Conciliator, using intemperate and inflammatory language?

Hon. MARGARET WILSON: No other New Zealander besides the member has made such an assumption.

Tim Barnett: What degree of independence does the Race Relations Conciliator have?

Hon. MARGARET WILSON: The Race Relations Conciliator has an independent advisory function as well as statutory functions. The Government of the day normally considers the advice from the conciliator but does not necessarily always have to take that advice. I note that my predecessor, Mr Ryall, is on the record last year as acknowledging the statutory independence of the office, and I follow the same position.

Hon. Richard Prebble: Would she be willing to pass on to the Associate Minister Tariana Turia the ACT party's strong support for her to set out and speak on this Government's true agenda as she is so clearly doing?

Hon. MARGARET WILSON: I am sure the honourable member is capable of speaking directly himself to the honourable member rather than having to go through me.

Hon. Roger Sowry: Has the Minister checked with the Hon. Tariana Turia's prime ministerial - appointed minder, the Hon. Steve Maharey, to see whether he vetted the speech before it was given?

Hon. MARGARET WILSON: I am sorry I was unaware that the honourable member had a minder, though any of us would be desirous of one as handsome as my honourable colleague! I would merely note, however, that I have subsequently read the speech of the honourable member and have noted that the input of her speech is to encourage debate on a

very important issue. I think she is to be commended for that.

28 Nov 2000, 46th Parliament, 1st Session, Hansard Vol 589, p6894
New Zealand Public Health and Disability Bill (In Committee)

Wyatt Creech -

Part 1 Preliminary Provisions

Rt Hon. WYATT CREECH (Deputy Leader---NZ National): I expect there will be a fairly substantial amount of debate on Part 1 because this is the part that introduced the controversial Treaty clause and saw the controversial Government back-down, which the Government says is not a back-down---that it was all someone else's fault for going around and saying that this was to be representative of something, and that it was not. That was interesting because the select committee had a lot of submissions stating that people were not at all happy with this provision, including one from Dr Prasad. The Government has now moved by shifting its closing the gaps policy away from favouring any particular group to favouring everyone who is disadvantaged.

Hon. Richard Prebble: Is the member sure they have changed the closing the gaps policy?

Rt Hon. WYATT CREECH: They say that they have.

Hon. Richard Prebble: In writing?

Rt Hon. WYATT CREECH: They have not done anything in writing, but I think that political convenience has got the better of them in that regard.

[...]

I want to focus my comments in this first 5 minutes that I have on the Treaty clause issue, because it is one that is very serious and one around which there has been a lot of public debate. The National Party position on these clauses from the start---and clauses 3 and 4 are both affected---was that it did not support their inclusion in social legislation. In clause 3 the Government had a reference to the Treaty following the purposes clause. After realising the extent of public concern about it, the Government has removed that reference to the Treaty completely. That reference has gone completely.

Hon. Tariana Turia: Who raised the concerns? Not us.

Rt Hon. WYATT CREECH: No, not us. I am getting puzzled by this business of the Government blaming the National Party and Opposition parties because the public raised concerns. I can tell Tariana Turia, and I mean this sincerely, that a lot of concern was raised about this issue---not because we went out and encouraged it; it came piling back. One of the criticisms I would have of the way in which the Government handled this is that there was only a month for submissions and a lot of people said they did not have a chance even to get a submission in.

The concern from Dr Prasad did not reflect things that the National Party said at all. What he said was that his office was being inundated by concern coming from the public about the nature of this clause. He recommended to the Government that it be wound back. The Government has wound it back, but I am sure that it now has another problem. No matter what might be said publicly, I do not really believe that Tariana Turia would agree with that winding back.

I think she would have preferred it to remain as it was and for mana whenua to be recognised in those later clauses. That is what I genuinely believe her view is. I do not believe that she wanted it wound back, and I do not intend this to be an attack on her, but, unfortunately, a lot of M~aori came to our select committee pleased to see the original provision in the bill and they will be disappointed. I have spoken to some of them. I do not think they are surprised. They do not expect a lot. They have told me that this has happened too much before---that ``We're getting kind of used to it.'' But they do feel let down, and anybody who does not believe that did not listen to what was said at that committee.

Ken Shirley –

Clauses 3 and 4 certainly require much debate because this bill is the first time in social policy that we have put the Treaty clauses into legislation, and that is certainly a very backward step because it is done in a very confused way. We have reference to the principles of the Treaty of Waitangi. We all know that the Treaty of Waitangi---a very good document---is three articles. There is no reference to principles. The principles were talked about through the 1980s by the Royal Commission on Social Policy, Lord Cooke of Thorndon, Doug Graham, and others, and they all came out with different principles. I have written to the Minister. I have asked her to tell us what principles are referred to in this bill, and I ask her here in the Committee stage to get up and tell the Committee what are the principles that this is referring to.

Judy Keall: It's in the report from the committee.

Hon. KEN SHIRLEY: So it is partnership, protection, and participation. Judy Keall, the chairperson, has just told us that it is the principles of the Royal Commission on Social Policy---participation, partnership, and protection. I put it to the Committee that certainly former Labour Governments have never accepted the partnership. David Lange was always at pains to say that the Treaty was not about partnership. How can one be in partnership with oneself? What article 1 of the Treaty was all about was single sovereignty, and what article 3 was all about is that we are all common before the law. We all share the same common rights, privileges, and responsibilities. But, according to the chairperson of the select committee, for the first time we are saying that the partnership concept is going to be legislated.

There is no other legislation where we have legislated for partnership. I know that various Government departments have all run around promoting policies of partnership, but I challenge any member to say where there is any legislation that stands on the statute book that enshrines partnership. This is the first piece of legislation in New Zealand where we are legislating for partnership. I just say to the Committee to think long and hard about that, because I do not believe that this Government has. This is certainly very serious, if that is what we are doing. If this is the interpretation of the Royal Commission on Social Policy, then we certainly---

Hon. Richard Prebble: It was a doorstop.

Hon. KEN SHIRLEY: Indeed, it was the biggest doorstop of all time. It stood about 4 feet high, all wrapped up in cellophane. Who was it who said that once they put it down they could not pick it up again? It seems that we are embarking on some pretty serious pathways here. The principles are confused. My amendment proposes that we address

the health needs of all groups, regardless of their ethnicity.

Georgina Te Heuheu –

Hon. GEORGINA TE HEUHEU (NZ National): The context within which National raised the issue of the Treaty when the bill was introduced to the House was that the form it was in would raise uncertainty. Also, that it was open to too much interpretation, so that the focus of improving the status of M~aori health---which, hopefully, is meant to be the focus of all Governments---would be lost in a broad framework of when and where references to the Treaty might be applicable. The National Party raised those matters as real concerns, and, at the time, urged the Government to reconsider what it was doing. It raised them also in the context that in the last 9 years so much had been achieved in terms of M~aori health development and M~aori participation in the health sector. All that was achieved without taking this House or New Zealand into uncharted waters.

Those were some of the sentiments and thoughts expressed when the bill was introduced into the House. As I say, they were made with good intent and real concern. It does not behove the honourable Minister to start flinging blame across the Chamber and say that it is because of National that the Government now has to bring in a major back-down. We have seen the way this place works, and if Governments are committed to what they believe and to what they want to do, then they will do it, regardless of what any Opposition might say---and sometimes regardless of what the New Zealand public says. So the back-down is entirely on the part of Government members. It has nothing to do with the legitimate concerns that were raised by members on this side of the Chamber, particularly by me, regarding the insertion of the Treaty clause into health legislation.

A major back-down has occurred, and since then a number of M~aori health providers around the country have been in touch with me, saying: ``Well, Georgina, what do you think about this?'' I told them that we raised legitimate concerns when the bill was introduced, and that they had to make up their own minds. They worry whether, with this back-down, there will also be a filtering out, or a minimising, of the gains they have made---gains they made without any statutory or mandatory conditions being placed on any of the health organisations. They were made because the previous Government committed to relationships. After all, that is what will get an improvement in health not just for M~aori but for all New Zealanders. There must be a commitment to relationships that matter---relationships that recognise the common sense and capacity of communities to engage with health authorities, as they did with the Health Funding Authority, to get some real participation and, in time, real gains.

All of that is now at risk, and there is nothing that is being done, either in what remains after the back-down or in the whole bill, that guarantees that those gains made over the last 9 years by M~aori providers, and by M~aori people in the health sector, will remain and continue to grow strong.

It has been said that the insertion of the clause into the bill shows the commitment of this Government. Frankly, where is that commitment in terms of the negative feedback from, probably, some of its own voters? Let us face it, that is the real reason there has been a back-down here. It has nothing to do with the Opposition; it has everything to do with where the votes come from, and with some

real unease among middle New Zealanders about where the Government is taking the country. It demonstrates quite clearly something I think I said in my opening speech, which I will refer to later.

Dr Lynda Scott –

It is unfortunate that the Treaty clause overrode people's focus and concern on the rest of this bill. Because it was the first time that Treaty legislation had been put into social legislation, that was why there was so much concern. That was why the newspapers ran story after story after story, because it was the first time the Treaty had been included in social legislation. Of course that would cause an outcry, of course people would write about it, of course people would talk about it. That is why it happened. There has been a considerable backdown---[Interruption]
Anybody who has been involved in the health sector in this country knows that over the past 10 years National has made a significant difference to M~aori health. Ask any M~aori development organisation---which did not exist when the Labour Party was last in power---what National has done. Huge amounts of work were carried out. We made a significant difference and that is why we had submission after submission concerned about this bill.

The people understand the need to settle Treaty claims, but they did not understand the need for this clause to be included in social legislation. The clause is still there. It has been changed considerably, but the back-down is maybe a little like reverse psychology: if something is put in at the beginning that people consider to be worse, and it is then modified, it is still there.

Also, there is talk about section 73 of the Human Rights Act that allows for affirmative action.

Judy Keall: What's wrong with that?

Dr LYNDA SCOTT: The concern is that no one has had a chance to debate it. No one has had a chance to make a submission.

Ken Shirley –

I have already asked why on earth we are importing Treaty clauses into social policy. It is a first. It is a bad step. It achieves nothing. It is apparent window dressing for the Labour Government, but it is very bad in that it implies preference on the basis of race.

Judy Keall: It is not.

Hon. KEN SHIRLEY: It is wrong in principle. I would like to turn to some of the aspects of the bill. The chair of the Health Committee is interjecting, trying as ever to do the Government's bidding, but as usual getting it wrong. We already know, from a confession from the chairperson of the select committee, that the interpretation of the principles of the Treaty clause will include the policies of the Royal Commission on Social Policy of partnership, protection, and participation. I put it to members that protection is somewhat patronising, but partnership is perhaps the most dangerous concept of all, because it has never been accepted by any Government that the Treaty is about partnership. It has never been accepted prior to tonight that that is part of the Treaty, but that is what this Government appears to be doing at this point in time, somewhat inadvertently and without thinking it through.

I have a number of other amendments. I refer the Committee specifically to clause 3, ``Purpose''. Clause 3(1)(b) states that one

of the purposes is ``to reduce health disparities by improving the health outcomes of Maori and other population groups:''. Sure, I want to improve the health outcomes of M~aori; I think there are some very severe problems there, but why have legislation that states that the purpose is to improve the ``health outcomes of Maori and other population groups:''? Why not just have it state, as my amendment does: ``to reduce health disparities by improving the health outcomes of any ethnic population group reflecting poor health''? That would be the way to do it. We know that in the New Zealand context it would mean we had to have programmes to improve M~aori health---and we need them, and I support them---but we should not do it by introducing racist legislation. That is what this bill does, and I think that is indeed regrettable.

I now turn to clause 5(3)(a), which is about the structures of the proposed district health boards. Clause 5(3)(a) states we will ``have boards that include members elected by the community and have an equitable representation of M~aori:''. How will that be achieved? I ask the Minister in the chair to take a call and explain it to the Committee. Let us walk through it. We will have a maximum of 11 members on the proposed district health boards. Seven are to be elected, and up to four appointed. I take as an example Northland, where the M~aori population is perhaps over 50 percent of the total population. If the population elects only non-M~aori to the elected positions, how on earth will equitable representation be achieved through four appointments? Is the Government intending to fiddle with the community's democratic decision? What is the answer to that?

That is what this legislation states. We already have massive confusion. Government members simply have not thought it through. They have not even checked it. The chairperson of the select committee, it would seem, has not even thought it through and checked those sorts of problems.

I turn to clause 5(3)(c), which lists the objective of ``reducing health disparities by improving health outcomes for Maori''-again---``and other New Zealanders:''. Why not have it state ``reducing health disparities by improving health outcomes for all New Zealanders:'', as my amendment states? We know that would achieve the objective. Why spell it out in race-based terms?

Annette King (Min of Health) –

One of the major aspects of this part of the bill that was raised by National's first speaker is in relation to the Treaty clause and the changes made at the select committee. Mr Creech described that as a back-down. Is it not interesting that when amendments are made to clauses, and we accept the changes to them, it is seen as a back-down? It is never seen as improving legislation and making it work better in a parliamentary sense.

[...]

I believe that the debate on the Treaty of Waitangi clause was nothing more than a red herring. We addressed that issue by amendment at the select committee to make it clear that this Government was not talking about preferential treatment. It was talking about partnership and working together to improve the health status of people in New Zealand.

Winston Peters -

Rt Hon. WINSTON PETERS (Leader---NZ First): I have to tell the Committee that I do not agree with the Minister when she says that the reordered legislation proposal from the select committee has changed the Waitangi Treaty clause. Superficially, it looks that way. In fact, it has not. The select committee has put in a clause that says there will not be any preferential treatment on the basis of race. That stands in direct contrast to clause 4 in Part 1, which states that it will recognise and respect the principles of the Treaty of Waitangi. It then goes on to talk about issues in clauses 3 and 5 and the equitable distribution of representation of the M~aori people.

Frankly, what principles of the Treaty of Waitangi is the Government talking about? In the last 15 years---but 12 in particular---since Labour went down this path first, and then National, as I asked back in those days of people like Koro Wetere and Geoffrey Palmer, and then Doug Graham to whom they gave a knighthood on this issue, where have they ever outlined the principles of the Treaty of Waitangi about which they speak? They never have, and they never will, because they never can.

The second issue is partnership. In the last 13 years they have been asked on countless occasions when that partnership idea first came up in terms of our history. We have never had an answer, and we will never get one, because there is no answer to that.

Therefore, I ask why it is, for example, that the ACT party---of all people---is having to recommend the changes to clause 5(3)(c) and clause 5(3)(a) on equitable representation of M~aori. Does that mean M~aori who are half-M~aori? Does that mean M~aori who are three-quarters M~aori, or M~aori who are one part in 512? That is the latest dilution they can be. Tariana Turia can laugh, but what do they mean?

[***Peters*** here makes a big deal of the definition of the word Maori]

I want to come back to my point that I am putting to those Ministers over there, whether they be of European background or M~aori, because it is their legislation. I ask them: ``Why have you got a Treaty of Waitangi clause in here?''. Over the last 6 weeks I thought that the closing the gaps policy was meant to be for everybody. I know when this legislation started off it was to be for M~aori, but now apparently it is for everybody. Well, is not the issue of health disparity an issue for all New Zealanders, or are we to try via the back door to get in policy that the public will not stomach at the front door? That is the question for the Labour Party tonight.

I cannot agree with the Minister when she says that to get around the clause that they originally had they have redefined it to include no preferential treatment of access to services on the basis of race. But more particularly I put it to Committee members that if they look back on this country's history, when did we ever concede that this legislation would be where we would be at in the year 2000 heading into the 21st century? Why on earth would those members have these measures in the Act if they had confidence in their policy, the public servants, the electoral process, and the democratic process by which they mean to deliver it?

Can one for example imagine people like John A. Lee or Peter Fraser putting a clause like this in legislation in 1935 or 1938? No members cannot. They actually attended to the interests and needs of

people on the basis of need. But today in this Parliament we have parties, the old parties in particular, following a segmented, sectarian approach towards public policy. It is still based on race, and they cannot deny it.

So I am asking those members to get up and try to justify this. It is hopeless to put in these sorts amendments from the ACT party and other parties that say ``Let's make reference to all ethnic groups.'' That goes from the sublime to the ridiculous. Everybody on earth belongs to some ethnic group. What are they talking about? Those are absolutely nonsensical amendments trying to combat nonsensical public policy from the Government.

I think this Parliament and the people of New Zealand deserve an answer. Why are these provisions scattered throughout this legislation, and what on earth do they seek to improve and justify? They have already done it with a bill introduced by the member for Eastern M~aori. He came in with a bill and said: ``There will be two M~aori as of right on all local health committees.'' As of right! Competent? No, he did not say that. Able? No, he did not say that. Committed? No, he did not say that. Unlike Sir Graham Latimer? No, he did not say that. Unlike the operations of Tainui? No, he did not say that. All he said was: ``They've got to be M~aori.'' Well, what good is that to the M~aori people if that is the kind of service that they seek to deliver by way of public policy?

Those members can smile and laugh. But there are M~aori out there who are legion because of the new ``Browntable'' in M~aoridom who are sucking at the State's teat with all four feet in the trough with no benefit in the improvement of their people. Tariana Turia and her colleagues are writing policy just like that.

I do not see anything in this legislation that talks about the commitment to uplift and improve the health interests of all New Zealanders regardless of background, geography, and above all the size of their or their parents' purse. I see anything but that.

Rodney Hide -

RODNEY HIDE (ACT NZ): I find it very disappointing that the Minister in the chair would launch an attack on the ACT party for not following parliamentary procedure. The Committee stage gives us an opportunity to question the Minister, which I did. The Minister rose, following my speech, but she failed to answer any one of my questions. I put it to her again: what is this Government's intention with regard to paragraphs (c) to (h) in clause 6(1)? How does she square that with clause 6(1)(c), which in subparagraph (c) refers to ``the impartial selection of suitably qualified persons'', yet if we turn over the page we discover that there is an intention there for affirmative action?

I would like the Minister to take a call to explain what the legal impact of that clause is, and also to explain to us what she intends, because, to be quite frank, it does not make sense to me that one would employ people in recognition of the aims and aspirations of M~aori. The point here is that any political process always favours majority interests and the minority miss out. That is the whole point of the political process. We should be striving towards a process where M~aori and other groups have their own money and resources and can control it for themselves as they best see fit, rather than trying to gerrymander political processes in order to get some predetermined results.

I pick up on a point made by the Rt Hon. Winston Peters. What amazes me about this bill is that it shows that in the year 2000 the Government has finally found a use for the 1986 Royal Commission on Social Policy. Members will remember that huge document that Michael Cullen famously said was one of those documents that once one put it down one could not really pick it up again. It was a doorstop all around Wellington and was considered to be a great waste of time, but it is referred to here.

I draw the attention of the Committee to clause 4, which talks about the Treaty of Waitangi. Why is it that we use these weasel words and always talk about the principles of the Treaty? What is wrong with the Treaty itself? Why do we not just say: ``In order to recognise and respect the Treaty of Waitangi''? Whenever we go anywhere we find that the principles of the Treaty are whatever one thinks they are. If one uses the principles of the Treaty the words are: ``The world is your oyster.'' It means nothing more than what the person asserting it has said.

I draw the Committee's attention to page 3 of the commentary. The Rt Hon. Winston Peters, who I know takes an interest in these matters, will be fascinated by this. The commentary states: ``The principles underpinning this are partnership,''. Where does the Treaty of Waitangi talk about partnership? What does partnership mean in terms of a public health and disability bill? It goes on to refer to ``participation''. Where does the Treaty of Waitangi state anything about participation? What does participation imply? Yet we have it because we have clause 4 stating that, suddenly, the principles of the Treaty are partnership and participation. I shall continue. The next word referred to is ``protection''.

I would like the Minister in the chair to take the call to explain to this Committee what is meant by the principles of the Treaty, because here we are passing it. I see that clause 3(3) states: ``To avoid any doubt, nothing in this Act---(a) entitles a person to preferential access to services on the basis of race;'', yet we have the principles of the Treaty of Waitangi that are all about partnership, participation, and protection. I find it mutually incompatible, and I would like the Minister to take a call to explain exactly what this Government intends. I would like to know what legal advice the Government has had on it.

I go back to page 3 of the commentary, which states: ``... as defined by the 1986 Royal Commission on Social Policy.'' It has taken 14 years, but, finally, a Government has found a use for the Royal Commission on Social Policy.

Donna Awatere-Huata –

However, I want to say a few words about the Treaty of Waitangi clause. I should be in favour of this clause, but, unfortunately, I am not. The reason is that I do not support the comments made by the Attorney-General on the Treaty of Waitangi where she talked about collapsing article 2 rights into article 3 rights. Yes, she has. The honourable member shakes her head, but I am afraid I have seen those quotations, and she has made that statement. I do not agree that property rights should be subsumed under closing the gaps or equity issues. It is wrong of her to make those statements, and it is wrong of her to rewrite the Treaty.

I am afraid that putting in that Treaty of Waitangi clause---with the Attorney-General's attitude towards article 2 and 3 of the Treaty

of Waitangi---will open up a can of worms. We do not need those worms slithering around our courts, having activist judges redefining the Treaty of Waitangi for us. For that reason I do not support clause 4 including the words ``Treaty of Waitangi''. But normally I would do so, because to me the Treaty is a sacred document; although I worry that when we shove it here and there, it loses it sacredness.

PART 3

Ken Shirley –

We know, too, that we have another confusion that imports itself into Part 3, in terms of the definition of the principles of the Treaty. We have learnt they are actually the principles from the Royal Commission on Social Policy: partnership, participation, and protection. This is the first time ever that a Government has said that M~aori are in partnership with the Crown. David Lange assiduously denied that, as did Douglas Graham. But, through the back door, this Government is saying that M~aori are in partnership with the Crown. That is actually a breach of article 1 of the Treaty. The Treaty is all about common sovereignty: we are one country, one sovereign nation, with one law. Article 3 says that we are all common before the law. These provisions in Part 3 of the bill are in breach of the Treaty.

Doug Kidd –

Hon. DOUG KIDD (NZ National): I will address my remarks to clause 5 of schedule 3, on page 102 of the bill as reported back. Just to acquaint the Committee with the purpose of the clause, it deals with elected or appointed members of a district health board---and forget about those who are appointed, because the Minister will decide the shape, colour, and qualifications of who he or she may appoint. However, I am dealing here with elected members---namely, those who offer themselves to the public and are chosen by the public. If those people are not already familiar with the obligations and duties expected of members of the board, or are not familiar with M~aori health issues, Treaty of Waitangi issues, and M~aori groups or organisations in the district of the district health board concerned, then the obligation is on the board to ensure that these elected members undertake and complete training approved by the Minister relating to those matters.

We have had a universal rule in this country: people offer themselves for election and they are either elected or rejected. When they get there they are not required to submit to training as to what they think. But under this bill we have one of the most insidious provisions I have seen in legislation in New Zealand. Look at clause 5(2), folks. It states: ``Any such board must keep an up-to-date record of the following matters: (a) the name of each member of the board: (b) the date on which each member of the board most recently came into office as a member of the board: (c) any familiarity each member of the board has at that date...''---so presumably it has to be done more than once during a 3-year term. Can the Minister in the chair say how often it will be done? Will it be done yearly, 6-monthly, or once during the term? The board will also have to keep records of any familiarity that a member has with M~aori health issues, Treaty of Waitangi issues, M~aori groups or organisations in

the district of the district health board concerned. This is a kind of thought control, and a direction and control process that I have never in my life seen imported into a democratically elected organisation.

Who will do this? Will the chief executive of the board report into a register and to the Minister as to what the chief executive or another staff member thinks of a board member's knowledge of the Treaty of Waitangi or of M~aori issues? The Minister will appoint two M~aori, and I assume they will be competent people who surely can advise their fellow board colleagues on such issues, because they will have a unique advantage, skill, and background to do so, and that is great. I have no objection to that, although some people do. But there is a requirement to write up a list so that people who top the poll, those elected by a huge number of people, will be reported on from time to time as to whether they have, with regard to the Treaty of Waitangi, listened carefully to, completed, and from time to time done further work on those issues. Those people might say: ``Look, the public sent us here to get after this health issue, and that health issue, and keep this hospital open, and get that service. What the hell has the Treaty of Waitangi got to do with that?''. That is what they will say, because they are elected people like us, and their special and only interest is in the health of their district, and the board has the benefit of at least two M~aori members, who, I assume will be competent and contribute everything that is required in terms of those issues---and rightly so.

I ask the Minister what is going on in respect of clause 5 of schedule 3. Bear in mind also that this provision has not been significantly changed, whereas clause 3 of the bill had the Treaty reference removed in the select committee, and we have adopted that here. Clause 4 of the bill had the reference to the Treaty limited only to Part 3, which includes the appointment of M~aori members, and, as I said, that is fine by me. But clause 5 of schedule 3 is now out of context with the bill, as progressed so far. As well, it now imposes pressures and controls on individual members who are answerable to the public, because they were elected by the public, not with the approval of the Minister. They may get up and say they are implacably opposed to the Minister.

7 Dec 2000, 46th Parliament, 1st Session, Hansard Vol 589, p7236
New Zealand Public Health and Disability Bill (Third Reading)

Ken Shirley commenting on the Treaty references in the principal Act –

The structural aspects of this legislation are deeply worrying because they are going in the wrong direction for our health system, but some of the social aspects are perhaps more worrying. I refer specifically to the Treaty clauses. This is the first time we have seen them imported into social policy in this way. Clearly, the Government is flagging that it intends to apply Treaty clauses progressively across the board, to all social policies.

One of the more worrying aspects is that the legislation still refers to the principles of the Treaty of Waitangi. Those principles, we are told---and this is now written into the interpretation part of the legislation---are protection, partnership, and participation. I draw the House's attention to the principle of partnership. This is the first time any Government in this country has said that the

Treaty is all about partnership. The ramifications of that are huge. I do not think this Government has thought it through, but it will be challenged by it. It will come and bite the Government in the proverbial in the not too distant future, because if we are saying that health is a partnership, who is in partnership with whom?

We should be talking about the health of all New Zealanders. If we look at the Treaty we see that article 1 provides for a single sovereignty---common governance---article 2 provides for clear property rights, and article 3 provides for all New Zealanders to share equal rights and responsibilities as common citizens under one sovereignty. They are three very good principles. If we throw partnership into that, what are we saying?

More particularly, I contend that the specific race references that are still in this legislation are in breach of article 3 of the Treaty of Waitangi. They breach the Treaty rather than confirm it. We already have leaders in M~aoridom saying that health is an article 2 issue. They are out there now, publicly claiming that it is a property rights issue under article 2. Inevitably, we will now see the grievance industry stepping in with all sorts of claims in relation to health, based on this legislation and the ill-thought-through concepts and structures that it is putting into place.

18 Oct 2002, Hansard Question Supplement
Written Question

Hon KEN SHIRLEY to the Minister of Health: Could she please advise, in succinct terms, what the principles of the Treaty of Waitangi are, as referred to in the New Zealand Public Health and Disability Act 2002?

ANSWER :

Hon ANNETTE KING (Minister of Health) replied: As I replied in my reply to the member's oral question on 13 March 2002, the New Zealand Public Health and Disability Act requires the Treaty of Waitangi to be recognised and respected.

In respect of its implementation, it requires Ma~ori to be represented on district health boards at board level. In practice, it requires district health boards to establish and maintain relationships with local iwi and Ma~ori communities, and also to ensure that Ma~ori contribute to decision-making.

LOCAL GOVERNMENT ACT 2002

4 Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Maori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Maori in local authority decision-making processes.

18 Dec 2001, 46th Parliament, 1st Session, Hansard Vol 597, p14126
Local Government Bill (First Reading)

Sandra Lee (Min of Local Government) on desired outcomes of the Bill, states -

> Early on in the process of the review of local government we set out the desired outcomes that we want to achieve ... We want to clarify the relationship between the councils and the Treaty of Waitangi, which has been an ongoing vexatious issue on which certainty has been sought by both local government and the M~aori community.

Alec Neill outlines National party opposition to Bill –

> The third reason we will not be supporting this bill relates to Treaty of Waitangi issues. Hidden in the back of this very substantial bill, in Part 13, is a provision---section 19Z in new Part 1A---that states that territorial authorities or regional councils may resolve to establish M~aori wards or M~aori constituencies. That matter has been heavily canvassed in the last 8 months, particularly in the debate on the Bay of Plenty Regional Council (Maori Constituency Empowering) Bill, and in the debate on the legislation that is now the Local Electoral Act 2001.
>
> The consultation document raised the issue of Treaty of Waitangi issues. First, the consultation document correctly observed that local authorities are not directly involved in Treaty settlement processes. The parties are the Crown, represented by central government, and M~aori. Indeed, any obligation that arises under the Treaty rests with central government, at least in the first instance. Central government can request the involvement of local government, or it can pass legislation requiring it to take certain actions. Secondly, the consultation document was on sound ground when it noted that the general aim of local government is to provide for a degree of self-governing, for the benefit of all communities, including M~aori. Thirdly, it is appropriate to ask whether there are any impediments to participation in local government by M~aori or other groups. The focus here should be on the removal of unjustified, policy-induced impediments, if any, not on the provision of special treatment for a particular group.
>
> A position paper was prepared by the New Zealand Society of Local Government Managers and by Local Government New Zealand. That position paper contains a number of suggestions. It states that the special status of M~aori as tangata whenua and the Treaty partner generates an obligation on Parliament to ensure that M~aori are effectively represented in local government. The position statement notes that certain non-electoral arrangements, such as the appointment of iwi and hap~u representatives to council committees, are effective consultation and may be successful. Some of the proposals on M~aori representation, such as the proposal to provide separate representation for M~aori, are undemocratic.
>
> The position statement refers to the partnership between the Crown and M~aori as the motivation for its proposal. That is ambiguous and debatable. The Chen and Palmer report of 1999 stated: ``At this point in time it has been firmly established that the Treaty is a partnership and that the Crown is responsible for that partnership.'' In 1996 the Rt Hon. Sir Douglas Graham said in his paper Trick or

Treaty?: ``In many cases today, both in the courts and at tribunal, there is reference to Treaty partnership and Treaty partners. The Crown is not in partnership with M~aori in running the country, and it would be totally unacceptable in my view if this concept were pursued. It implies some sort of joint management with veto rights vested in each party. That cannot be the case. The Crown represents all New Zealanders living in this country, including M~aori New Zealand. It is a democracy, and, as a democracy, majority carries the day. Certainly, the Crown has duties to M~aori which are unique and not shared with other New Zealanders, but joint management there is not.'' The view that the Crown is in partnership with M~aori endures. It does not require or justify separate representation for M~aori on the councils. As Sir Douglas Graham noted: ``The majority carries the day in democracy. This fundamental democratic principle is compatible with the proposition that M~aori, or any other group, should not be given preferential representation on councils. There should be one rule for all citizens.''

The dangers of alternatives---namely, tyranny of the majority or minority---are apparent from the deplorable experiences in countries such as Fiji, Bosnia, and South Africa. The implications of the Treaty of Waitangi for local government are a significant policy issue and should be examined carefully. I strongly recommend that if this matter proceeds to the select committee, the submissioners examine the bill carefully, particularly the provisions that have been slipped into Part 13 that would give specific seats to M~aori and M~aori constituencies.

Gerrard Eckhoff states –

I wish to pick up on a couple of points the Minister made in her opening remarks. She said the Local Government Bill was hopelessly out of date, it is so old. A few minutes later she went on to talk about the Treaty of Waitangi---which to my understanding is 160-odd years old, yet we adhere to it like there is no tomorrow. How is it that some legislation is just a few years old and can be redundant, yet the Treaty of Waitangi, which is 160 years old, is the absolute pinnacle of what drives this Government in trying to gain representation for everybody, or especially for M~aori in this country?

Keith Locke speaking for the Green Party, states –

We are particularly concerned to see that the clauses on the Treaty of Waitangi, and consultation with M~aori, are closely looked at, because the consultative document that was circulated contains no proposals on those aspects. Therefore, this bill has not had wide community consultation on Treaty matters. Many have argued that the Treaty is between the Crown and M~aori, and therefore local government is not bound by it. We say that is constitutional nonsense, in the sense that the power given to local government to govern and to levy rates comes from legislation passed in this House. Central government has devolved many powers to local government. If we are to devolve those powers to local government, then local government has the duty---and we must impose that duty on local government---to deal with M~aori as a Treaty partner.

Eric Roy states -

The provisions of the Treaty of Waitangi also give me some considerable concern. I was at the local government conference and I heard the Minister of Local Government, the Hon. Sandra Lee, say in very vague terms that the Government was looking for a response from local government about precisely how the Government should fit this in. I am not sure that she got that mandate from local government. I was at the local government Christmas party the other night. I talked to the representatives of Local Government New Zealand. No one raised with me the issue of having separate constituencies for M~aori and for the rest of New Zealand. If that is the Minister's understanding of ``recognise the diversity of'', in clause 3, then I have to say that the people in the Bush ward, and the Bush Community Board in Makarewa, will be gravely concerned about the implications, as are a number of local authorities.

Brian Donnelly expresses general support by NZ First for the Bill, but goes on to state –

We have, however, some areas of concern with regard to the bill, and I will explain them in a dispassionate way. We have concerns about some of the references to M~aori, as they seem to be made in a somewhat uncritical fashion. They really raise questions about the relationship of the Treaty and M~aori. I will give members an example of that. The example I will use is really that of clause 63(1), which states: ``A local authority must---(a) establish and maintain processes to provide opportunities for M~aori to contribute to the local authority's decision-making processes; and (b) consider ways in which it may foster the development of M~aori capacity to contribute to the local authority's decision-making; and (c) provide relevant information to M~aori for the purposes of paragraphs (a) and (b).''

The question that immediately springs to mind is which M~aori are we actually talking about here? Are we talking about particular iwi or hap~u? When the chiefs secured their decision-making powers in 1840 through article 2 of the Treaty, I am sure they were not talking about the rights of taurekareka to be involved in decision making---or tauiwi, to use the more precise sense of that term rather than the more modernised sense. The difficulty we have is that these things are being put into legislation without any critical thought behind them. There is almost a patronising view that there is a singular M~aori world view, yet we know that that is not true and that there is a wide range of viewpoints. If, for example, this provision is coming about as a result of a Treaty obligation, then the question has to be what happens if, for example, somebody from Ng~ati Porou has moved into Ng~apuhi territory? Does local government have to consult and to go through all these processes with that person or those people, etc.? Our lack of comfort is with the uncritical inclusion of some of these matters into the legislation. I think it is time for us to do some critical thinking about the issues concerning that.

I personally believe that the Treaty of Waitangi is the founding document of our nation, and that there is no getting away from that. Some of the difficulties are over what one might call the judicial interpretation of what that actually means. I remind members of the House about the Prendergast decision of 1877, Wi Parata v The Bishop of Wellington, Bishop Selwyn. The Treaty was referred to by a judge as ``a simple nullity'', and that became the legal status of the Treaty for almost 100 years. So when we have the legal interpretation

based around concepts like principles, then we have the potential for a huge amount of divisiveness of our nationhood. That is our concern with that element of the Treaty in this particular bill.

28 Mar 2002, 46th Parliament, 1st Session, Hansard Vol 599, p15430
Answers to Oral Questions - Treaty of Waitangi – Local Government

Treaty of Waitangi---Local Government

9. Hon. BRIAN DONNELLY (NZ First) to the Minister of Local Government: Has she commenced any initiatives to put in place policies requiring adherence to Treaty of Waitangi obligations within the Local Government portfolio; if so, what specific principles do they address?

Hon. SANDRA LEE (Minister of Local Government): Yes. The specific principles of the Treaty of Waitangi are enshrined in the articles of the Treaty itself and provide for a partnership of two peoples within one nation. Of course, that member knows that the Treaty and its principles have come to represent more than simple principles. I quote his leader, Winston Peters, at Waitangi in 1991: ``Is it any wonder that the M~aori, now helplessly outnumbered, began to see the Treaty as a touchstone, a basis of understanding, and the defence and protection of their interests?''.

Hon. Brian Donnelly: If partnership, protection, and participation are three of the principles upon which the Government relates to M~aori, does this mean that those principles do not apply to the Crown's relationship with all other social groups in New Zealand; and, if those principles do apply to all others, why do we need Treaty of Waitangi principle clauses in legislation?

Hon. SANDRA LEE: There has been a long tradition of providing principle clauses in legislation, which pre-dates this Government. Furthermore, the Cabinet Office Manual requires all Governments, whatever their political colours, to have regard to the Treaty against the legislation they create. In terms of specific service delivery, Governments over time have tried to provide that service, cognisant of Treaty principles. The former Minister Winston Peters, in his speech, described M~aori health, in terms of the health of M~aori young people, as ``providing for greater participation of M~aori in the health sector, the development of culturally appropriate practices, funding and provision of services, and the allocation of resources based on M~aori health needs and perspectives''. That is a direct quotation from the member's own leader.

Willie Jackson: How does the Minister see local government working with M~aori?

Hon. SANDRA LEE: I see local government working in good faith with M~aori as tangata whenua of Aotearoa. I also believe that good faith shall permeate all aspects of local government, but it also requires early engagement, open dialogue, and due respect for the views that are presented. I hope that this Local Government Bill will do just that.

Alec Neill: Has the Minister received any reports or advice that Local Government New Zealand and its members, while acknowledging the Treaty clause in the Local Government Bill, do not support Part 13, which provides for the ability to establish separate M~aori wards or constituencies; and will she accept their advice and consent to the removal of this part of the bill?

Hon. SANDRA LEE: I would have thought that the member, who is a lawyer, would read Part 13 more carefully. In fact, it does not provide for specific M~aori seats; it provides for local authorities and their communities to determine whether they want M~aori seats, rather than the decision being this Parliament's, far removed, and at considerable cost to the taxpayer as Opposition members beat out these issues.

Jeanette Fitzsimons: Does the Minister agree that if the Crown delegates the powers of Government decision-making to local authorities, it must also delegate a responsibility to honour te tiriti in the exercise of those delegated powers?

Hon. SANDRA LEE: The issue of the relationship with the Treaty for local government has been a vexed one for a long period of time---one on which local government has long sought specific clarification. The bill seeks to achieve that. But fundamentally, of course, in local government structure the important thing is to develop good relationships and good consultation and participation practices. I believe that the long overdue new local government legislation will achieve exactly that for M~aori as tangata whenua and for other New Zealanders in their communities, as well.

17 Apr 2002, 46th Parliament, 1st Session, Hansard Vol 599, p15544
Questions for Oral Answer - Treaty of Waitangi – Local Government Bill

Treaty of Waitangi---Local Government Bill

4. Rt Hon. WINSTON PETERS (Leader---NZ First) to the Minister of Local Government: Specifically what principles is she referring to in clause 4 of Part 1 of the Local Government Bill, which requires local authorities, ``To recognise and respect the principles of the Treaty of Waitangi...'' and what is the authority for her answer?

Hon. MATT ROBSON (Acting Minister of Local Government): Clause 4 of Part 1 of the Local Government Bill is an acknowledgment by the Crown that the Crown has obligations under the Treaty of Waitangi.

Rt Hon. Winston Peters: I raise a point of order, Mr Speaker. That is plainly ridiculous. I have asked him specifically: what are the principles and what is the Minister's authority? That was an attempt to evade totally any answer at all. It is ridiculous, and it demeans this House. I am asking for an answer to the primary question.

Mr SPEAKER: The Minister answered it in the way that he chose to answer it. I will, however, be allowing the member supplementary questions, and he may start.

Rt Hon. Winston Peters: Minister, why cannot you specifically tell me---

Mr SPEAKER: No, why cannot the Minister, specifically---not me.

Rt Hon. Winston Peters: My question to the Minister is: Minister, why cannot you specifically tell me? What is wrong with that?

Mr SPEAKER: Nothing, but the member has---

Rt Hon. Winston Peters: Well, why are you objecting? I will ask the question, you make sure he answers it, and everything will be fine here.

Mr SPEAKER: And I will make sure it does not refer to me.

Rt Hon. Winston Peters: OK. Why will the Minister not specifically answer the question, which is specifically: what principles was she referring to in clause 4 of Part 1 of the Local Government Bill, which requires local authorities: ``To recognise and respect the

principles of the Treaty of Waitangi, . . . '', and what is the authority for the answer?

Hon. MATT ROBSON: I know that the member has made most of his career on traffic cases in the Manukau court---

Mr SPEAKER: No. I am not going to ask the Minister to leave, because I want him to come to the question, and answer it properly.

Rt Hon. Winston Peters: I raise a point of order, Mr Speaker. That last answer raises an alarming matter. There is no traffic court at Manukau, which shows what a bum lawyer he is---and the Minister for Courts he should not be.

Mr SPEAKER: I think that was tit for tat. I will now ask the Minister to answer the question.

Hon. MATT ROBSON: The point is, for the member's edification, that the issues on the Treaty of Waitangi are set out in this Local Government Bill. They are set out in a number of bills and a number of statements. Eventually, questions in relation to the Treaty of Waitangi are determined by the courts of this country and by the Waitangi Tribunal.

Alec Neill: Has the Minister received any advice that the Waitangi Tribunal and the courts have advised the Crown that it cannot evade its obligations under the Treaty by conferring authority on some other body, as to do so would be inconsistent with the Crown's Treaty obligations, and is this new clause a cunning attempt to devolve to local government the Crown's responsibilities?

Hon. MATT ROBSON: If it was a cunning attempt, the member is on to it. I would suggest that he put down a question for the Minister, because I have received no reports.

Georgina Beyer: Why is the Treaty of Waitangi referred to in the Local Government Bill?

Hon. MATT ROBSON: Because this Government, unlike some members, does not want to wind the clock back 20 years to the days of land occupations and conflict between M~aori and P~akeh~a. There are a number of press statements. One I have here is from the honourable member of this Chamber, Mr Winston Peters, and it has the headline: ``New Zealand First will oust the Treaty''. The honourable member may wish to live in the past of racial strife, but this Government does not.

Stephen Franks: Why does the Government wish to leave a decision on the principles---[Interruption]

Mr SPEAKER: I am going to be asking a member to leave if there is any more interjection. I want to hear Mr Franks. He is at the other end of the House, and I expect to be able to hear him.

Rodney Hide: I raise a point of order, Mr Speaker. I think the difficulty is over here, and it happens every time. I do not think you hear it. Members call out, and they put other members off.

Mr SPEAKER: I do not need the member's assistance. I heard comments from two or three parts of the House. I was specifically looking at and listening to Mr Franks, and it was in my range of vision.

Stephen Franks: Why does the Government leave it to the courts and judges, whom people have no opportunity to remove, to decide on principles that they cannot tell this House?

Hon. MATT ROBSON: There is a place for Parliament. There is a place for the courts. The Government makes the legislation, and sets out very clearly what it means by that. Ultimately, the courts make final decisions on interpretation.

Nandor Tanczos: Does the Minister support the obvious implications

of the primary question asked by the Rt Hon. Winston Peters, and a number of questions he has already asked in the House, that it is the text of the Treaty of Waitangi that is pre-eminent rather than any principles that the Crown, through courts or Parliament, as one signatory may decide to define?

Hon. MATT ROBSON: No, the Government does not accept the underlying premises of what Mr Peters has asked this House. We find that they are divisive and backward looking.

Rt Hon. Winston Peters: I raise a point of order, Mr Speaker. You have allowed, and the Clerk's Office has allowed, a number of questions this year on this issue. The end of the Minister's answer was plainly derogatory. He is further embarrassed by the fact that not once has he given me an answer to my question, but, nevertheless, he said that I am being divisive. I have asked him and his colleagues, the Prime Minister included, what those principles are. It is a simple, straightforward question. We are now on question No. 27, and we are getting no answers.

Mr SPEAKER: The last comment made by the Minister was totally unnecessary. I would now like the Rt Hon. Winston Peters to ask another supplementary question.

Rt Hon. Winston Peters: How on earth does the Minister expect local government and local bodies to interpret the principles of the Treaty of Waitangi when neither he nor any other Cabinet Minister is able to tell us on one day for one question what those principles are?

Hon. MATT ROBSON: I have not noticed that most local governments have problems with the Treaty of Waitangi. Many work in positive partnerships with M~aori. There has been a long tradition of providing principle clauses in legislation that predates this Government, and any Government that that member has been part of. Furthermore the Cabinet Office Manual requires all Governments, whatever their political colours, to have regard to the Treaty against the legislation they create. I am glad the honourable member holds the core principles of the Treaty in such high regard.

19 Nov 2002, 47th Parliament, 1st Session, Hansard
Questions for Oral Answer - Treaty of Waitangi – Article Three

1. Hon. BILL ENGLISH (Leader---NZ National) to the Prime Minister: Does she stand by the statement in the Speech from the Throne in December 1999 that Article Three of the Treaty of Waitangi implies equality in the rights of citizenship; if so, why?

ANSWER :

Rt Hon. HELEN CLARK (Prime Minister): Yes. That article states that M~aori are to be extended all the rights and privileges of British subjects. I am advised that in modern New Zealand that equates to an undertaking to ensure that M~aori have the same rights and duties of citizenship as other New Zealanders.

Hon. Bill English: Can the Prime Minister explain to the House why she supports legislation, the Local Government Bill, that will allow councils to determine separate representation for M~aori, and which sets out a whole raft of additional means by which M~aori can participate in local government?

Rt Hon. HELEN CLARK: It is important that the Treaty's principles around consultation and participation are respected in the

legislation, and that local government should do its very best to include M~aori in its decision making. In respect of the issue of M~aori representation on local authorities, there was a long debate in this House about the Bay of Plenty Regional Council request to have such representation. The Local Government Bill provides that in future there will be procedures for local government itself to come to such decisions.

Mahara Okeroa: What reports, if any, has the Prime Minister seen on the rights of citizenship?

Rt Hon. HELEN CLARK: I have seen a report of a quite extraordinary speech given this morning by the Leader of the Opposition in which he seems to be competing with the leader of New Zealand First to see who can attack the Treaty the most.

Rt Hon. Winston Peters: Could the Prime Minister help this Parliament, every local government agency, every governmental agency, every school, and every hospital by telling us precisely what those principles are that she so gaily speaks about when she talks about the Treaty of Waitangi; can we have today the definition of those principles that she is asking everybody else to abide by, but apparently she cannot describe herself?

Rt Hon. HELEN CLARK: As I have advised the member before, the courts and the Waitangi Tribunal have commented from time to time on what the principles are understood to be. However, the courts' guidance on this matter suggests that such principles as commonly understood would include a principle of partnership, a principle of act of protection, and a principle of redress. Clearly, the first understanding is relevant to local government.

Stephen Franks: In view of the policy and the Treaty statement of the same rights and privileges, how does discrimination and privilege written into rules as diverse as the Trade Marks Bill, the funding formula for public health organisations, as well as the Local Government Law Reform Bill (No 2), differ from naked racism?

Rt Hon. HELEN CLARK: I would think by drawing on the understanding that the courts and the tribunal have reached, as indicated in my previous answer. I must say that the general understanding is that the Treaty sets up a balance for the Crown that it should strive to protect the unique place and taonga of M~aori, while respecting the need for all citizens to be equal.

Nandor Tanczos: Does the Prime Minister think that her Government is meeting its obligations under article 3 of the Treaty of Waitangi, given that the New Zealand living standards 2000 report states: ``M~aori living standards are on average lower than most New Zealanders. One in two M~aori families and one in two M~aori children live in hardship.''?

Rt Hon. HELEN CLARK: No New Zealander can take pride in those figures, and that is why this Government has pursued a programme of reducing inequalities.

Hon. Bill English: What specifically are the reasons that the Government is promoting separate representation for M~aori in local government?

Rt Hon. HELEN CLARK: The Government is not promoting it. The Government has set out legislation that enables local government itself to promote it if it wishes. I realise the Leader of the Opposition is totally destabilised by coming a poor third, but he will never out-compete the leader of the New Zealand First on M~aori bashing.

Rt Hon. Winston Peters: I raise a point of order, Mr Speaker. I

will not sit by while this Prime Minister accuses me of M~aori bashing. Firstly, in real terms I happen to have more M~aori members of Parliament in New Zealand First than any other political party ever; and, secondly, I thought you would have risen to your feet instantaneously when the Prime Minister was out of order, or do we have two rules here?

Mr SPEAKER: I think the member has raised a valid point of order. The last comment of the Prime Minister was unnecessary.

Rt Hon. Winston Peters: I raise a point of order, Mr Speaker. I know it is unnecessary. Is she going to be asked to withdraw and apologise like everybody else?

Mr SPEAKER: Yes. I will ask the member to withdraw and apologise for the last comment.

Rt Hon. Helen Clark: I withdraw and apologise.

Hon. Bill English: I raise a point of order, Mr Speaker. Of course the comments were directed at me as well as Mr Peters and I seek a withdrawal and apology as well.

Mr SPEAKER: No. I remind the honourable leader that a withdrawal and apology is to all members of the House.

Rt Hon. Winston Peters: Having regard to my first question to the Prime Minister in respect of the principles of the Treaty of Waitangi, are those principles she outlined the principles of this Government and her administration, or merely of the courts and she has no idea whatsoever, and if that is so, how come, if nobody in the English-speaking world was in partnership with Queen Victoria on 5 February 1840, the M~aori people were the day after that, on 7 February 1840?

Rt Hon. HELEN CLARK: They are not the principles of the Government. They are what the courts understand to be the principles of the Treaty.

17 Dec 2002
Local Government Bill (In Committee)

17 Dec 2002
Local Government Bill (Third Reading)

Legislation Containing Treaty References Not Amounting to a Direction to Act

FISHERIES ACT 1996

An Act---

(a) To reform and restate the law relating to fisheries resources; and

(b) To recognise New Zealand's international obligations relating to fishing; and

(c) To provide for related matters

[13 August 1996

Act contains various references to the fisheries settlement and specifically to the Treaty of Waitangi Fisheries Commission.

PART IX

Taiapure-Local Fisheries and Customary Fishing

174. Object---The object of sections 175 to 185 of this Act is to make, in relation to areas of New Zealand fisheries waters (being estuarine or littoral coastal waters) that have customarily been of special significance to any iwi or hapu either---
(a) As a source of food; or
(b) For spiritual or cultural reasons,---
better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi.

6 Dec 1994, 44th Parliament, 1st Session, Hansard Vol 545, p5389
Fisheries Bill (Introduction)

Doug Kidd (Min of Fisheries) states –

> Clause 3 of the Bill states that the Act should be interpreted in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act. This reference is included to protect the spirit, the intent, and the legal status of the settlement with Maori. I look to the select committee to hear debate on this Treaty reference to make sure that we have it right.

31 Jul 1996, 44th Parliament, 1st Session, Hansard Vol 557, 14030
Fisheries Bill (In Committee)

Jim Sutton states -

> Hon. JIM SUTTON (Timaru): I will not speak long on this part at all, but I want to refer to clause 5(b) whereby this Bill has to be consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This is where we reconcile our ambitions for the fisheries management and this Bill, with our obligations to the Maori Treaty partner. There were some complications. Not all New Zealanders, unfortunately even today, accept in the spirit intended, the Treaty of Waitangi fisheries claims settlement, or indeed the Treaty itself.
> Various rather belligerent statements were made in the course of hearing evidence that this one or that one would not tolerate Maori being treated any differently from other New Zealanders in respect of fishing rights and so on. I would just like to say that, so far as this member of Parliament is concerned, there is a clear and complete distinction between the role of Maori in terms of the Treaty settlement and the role of everyone else except the Crown. To me the settlement means that Maori own a proportion of the fisheries. Everyone else who has a quota or annual catch entitlement or whatever do not own the resource. They have a property right to exploit it for the time being, but they do not own it in the way that a sovereign nation owns it.

To me the settlement means that Maori have in this case 20 percent ownership. That is on all fours with the Crown's ownership of the resource. The Crown and Maori went to the Treaty and negotiated as equal partners and got a deal that had them as equal partners. No one else involved in the fishery has that same status. To me, all those arguments about whether it was right about Maori aggregating quota, the Treaty of Waitangi Fisheries Commission aggregating quota, and so on, failed to understand that basic concept that Maori are the co-owners of the resource. Everybody else has a quota entitlement to exploit for the time being. It is like being the tenant or the owner of a property.

I think that if New Zealanders can see it in that light then they will find it easier to accept the structure that we have here and, indeed, the Treaty fisheries settlement itself. I hope that is so, but I would like the Minister to confirm that the Government's view is as I have given it myself.

LOCAL LEGISLATION ACT 1989

An Act to confer powers on certain public bodies and to authorise and validate certain transactions and other matters.

3. Otago Harbour Board: Validating unlawful reclamations---(1) The actions of the Otago Harbour Board in reclaiming the land described in subsection (3) of this section are hereby validated and deemed to have been lawful; and the land is hereby deemed to have been lawfully reclaimed.

(2) Nothing in subsection (1) of this section affects the validity of, or affects or prevents the making of, any claim under the Treaty of Waitangi or based on a right arising or alleged to arise out of the Treaty (whether under the Treaty of Waitangi Act 1975 or otherwise).

(3) The land comprises first the parcel of land shown marked ``A'' on S.O. plan 21911 lodged in the office of the Chief Surveyor at Dunedin and containing 2700 m[sup2], more or less, and secondly the parcel of land shown on that plan marked ``B'' and containing 1100 m[sup2], more or less.

9 Nov 1988, 42nd Parliament, 1st Session, Hansard Vol 493, p7784
Local Legislation Bill (Introduction)

Dr M Bassett (Min of Local Government) states that reference to Treaty of Waitangi Act in s3(2) was included on the advice of the Department of Maori Affairs.

TE TURE WHENUA MAORI ACT; MAORI LAND ACT 1993

Preamble:

Na te mea i riro na te Tiriti o Waitangi i motuhake ai te noho a te iwi me te Karauna: a, na te mea e tika ana kia whakautia ano te wairua o te wa I riro atu ai te kawanatanga kia riro mai ai te mautonu o te rangatiratanga e takoto nei i roto i te Tiriti o Waitangi: a , na te mea e tika ana kia ma rama ko te whenua he taonga tuku iho e tino whakaaro nuitia ana e te iwi Maori, a, na te ra he whakahau kia mau tonu taua whenua ki te iwi nona, ki o ratou whanau,

hapu hoki, a, hei whakama ma i te nohotanga, i te whakahaeretanga, i te whakamahitanga o taua whenua hei painga mo te hunga nona, mo o ratou whanau, hapu hoki: a, na te mea e tika ana kia tu tonu he Koti, a, kia whakatakototia he tikanga hei awhina i te iwi Maori kia taea ai enei kaupapa te whakatinana:

Whereas the Treaty of Waitangi established the special relationship between the Maori people and the Crown: And whereas it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be reaffirmed: And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu: And whereas it is desirable to maintain a Court and to establish mechanisms to assist the Maori people to achieve the implementation of these principles:

12 Nov 1992, 43rd Parliament, 2nd Session, Hansard Vol 531, p12236
Maori Affairs Bill (Report of Maori Affairs Committee on Bill)

I Peters mentions some of the history of the Bill and states that after restructuring of Ministry of Maori Affairs, Te Puni Kokiri recommenced work on the Bill. Says that with permission of the Select Committee, Te Puni Kokiri undertook limited consultation with those involved in the original drafting of the Bill, namely judges of the Maori Land Court, the Maori Lawyers Association and national Maori bodies. Specifically mentions and thanks Te Puni Kokiri officials Ben Paki and Cath Nesus and ministerial advisers Annette Sykes, Joe Williams, and Whai Dewes. Says the Bill is founded on recommendations of New Zealand Maori Council to revise Maori Affairs legislation, as requested by Government in early 1980s. On the amended preamble, states -

> I should now like to move through specific parts of the Bill and to mention significant amendments that have been made by the committee. The preamble has changed. The principles of the Bill have their foundation in the Treaty of Waitangi. The preamble has been amended to emphasise that land is a taonga tuku iho of special significance to the Maori people. It reinforces the twin principles of the retention of Maori land in the hands of owners; and the occupation, development, and use of that land for the benefit of owners, their whanau and hapu. The preamble also declares it desirable to maintain the Maori Land Court and to establish mechanisms so that Maori can retain, develop, and use their land for collective benefit.

K Wetere also mentions specific persons who helped in drafting of the Bill, Judge McHugh, Tom Woods, John McSoriley, Cath Nesus, Mr Jeff Barnett, Philippa McDonald, Ben Paki, Whaimutu Dewes, Joe Williams, Annette Sykes, and Roger Barker.

18 Nov 1992, 43rd Parliament, 2nd Session, Hansard Vol 531, p12405
Maori Affairs Bill (Second Reading)

K Wetere mentions the phrase “taonga tuku iho”, saying that it represents the main purpose of the Bill, but gives no indication of its origin –

> I believe that this Bill survives because of one simple ambition,

and that is the identification of our people wherever they might be. The question of taonga tuku iho will always be the main purpose of the Bill. It does not matter how small the interest in the land might be; it is not the value that matters, but the ability to relate to that land. The Bill goes back to the original purpose of Maori land ownership, which is not shareholding as we might understand it in the sense of a company, but the establishment of beneficial interest so that one can identify with a parcel of land.