37th ILANZ Conference *'Ignite – Taku ahi tūtata'*

Tāku ahi tūtata, tāku mata kikoha. Tāku ahi mamao, tāku mata kiporo.
"When you are close to the fire, you have the ability to keep your blade sharp and ready for action. In other words, fighting for a cause close to one's heart"

Introduction

As part of my presentation today I wish to focus to three matters that have been brought to focus in the process of reform since the Coalition Agreements between the National Party and New Zealand First and the the National Party and ACT.

Today, we're going to explore an important and often overlooked aspect of Aotearoa's legal landscape: *tikanga Māori*. Specifically, we'll be looking at how *tikanga Māori* is the first law of Aotearoa and if time permits its relationship with the criminal justice system.

Tikanga Maori

I will walk you through the key principles of *tikanga Māori*, explaining how they shape Māori society and justice practices, and how, under the current Western legal system, these principles have been sidelined, sometimes to the detriment of Māori and our society as a whole."*

Case Examples of Reform Processes since Coalition Agreements

I wish to turn to some specific examples of litigation that I have been involved in since the Coalition Agreements were cemented in September – November 2023 to give the context of reforms; the Maori , indeed as the Treaty Principles Bill exposed, the overwhelming New Zealand/Aotearoa outrage to the process of reform to review the inclusion of Te Tiriti/the Treaty references in specific pieces of legislation and to conclude with some questions for inhouse lawyers to contemplate in the way they provide advice and analysis on issues of deep constitutional significance.

Finally, honour Te Tiriti and the institutions giving force to it

I wish to briefly pay homage in this introduction to Te Roopu Whakamana I Te Tiriti/ the Waitangi Tribunal which has now been operational for 50 years and is a forum that I have participated in for a significant part of my life in practice. Since its establishment, the Waitangi Tribunal remains one of Aotearoa's most significant - yet contested - institutions. Born out of struggle, it has amplified Māori voices, documented breaches, and reshaped the nation's understanding of its colonial past. Since the advent of the Coalition Government in 2023, the Tribunal has once again become a political football. It is facing accusations of "activism" and scrutiny over appointments, with calls for a full review of its powers. It is deserving of much more respect because as the Court of Appeal confirmed in the s 7 AA case Skerrett-White it is a significant part of the constitutional apparatus of our legal framework.

Signposting #1: What is Tikanga Māori?

“First, let’s begin with a fundamental question: What is tikanga Māori?

Tikanga Māori is often translated as Māori law, but it is so much more than that. It is a system of values that govern all aspects of Māori life, including ethics, customs, responsibilities, and relationships. It is a living, evolving system, passed down through generations. In its core, *tikanga Māori* is about balance and harmony—between people, the environment, the spiritual world, and ancestors.

What’s essential to understand is that *tikanga Māori* is fundamentally relational. This means that it governs how individuals interact with each other and the world around them. It’s not a set of rules isolated from life but a framework that shapes every interaction in a community. Unlike Western law, which often emphasizes individual rights and state-enforced rules, *tikanga Māori* centers relationships and collective responsibility.

Signposting #2: Key Principles of Tikanga Māori

*“Now, let’s look at the key principles that underpin *tikanga Māori*. These principles—whanaungatanga, mana, tapu and noa, utu and ea, and manaakitanga—are interconnected and vital to how justice is understood and practiced within Māori society.

We will explore each of these principles, one by one, and how they contrast with the approach of the Western criminal justice system.”*

Principle 1: Whanaungatanga – The Importance of Relationships

*“The first principle is *whanaungatanga*, which is all about relationships. In Māori society, relationships are central to every aspect of life. This includes relationships with family (whānau), tribe (hapū), and iwi (nation).

Whanaungatanga is also connected to *whakapapa*, or genealogy, which binds people across generations. Our rights and responsibilities are not based solely on individual desires but are deeply embedded in the collective.

This idea of collective responsibility challenges the individualism often seen in Western law. For example, when an offense is committed, it’s not just about the individual who committed it, but about how the entire community is affected. Justice in *tikanga Māori* is about healing the relationships that have been harmed, not just punishing the offender.

Principle 2: Mana – Authority, Status, and Respect

*“The next principle is *mana*, which refers to authority, status, and respect. Everyone possesses *mana* because it comes from the gods. However, *mana* can also be earned or diminished by an individual’s actions.

The actions we take don't just affect our own *mana*, but the *mana* of our families, communities, and even the wider environment. So, *mana* is inherently relational—it's about the respect we show others and how we uphold our collective dignity.

In the context of the criminal justice system, when an individual's *mana* is harmed, it affects everyone connected to that person. The criminal justice system must take this into account. It's not just about punishing the wrongdoer; it's about restoring *mana* to both the victim and the offender.

Principle 3: Tapu and Noa – Sacred and Ordinary

*"Now, let's talk about *tapu* and *noa*, two complementary forces that regulate what is sacred (tapu) and what is ordinary (noa). *Tapu* is a state of being restricted, special, or sacred, while *noa* is the everyday state of being ordinary or unrestricted.

In *tikanga Māori*, certain places, people, and objects are considered *tapu*, meaning they need to be treated with respect and care. When *tapu* is transgressed, it creates imbalance, which can lead to consequences that affect the wider community.

On the other hand, *noa* represents the ordinary world where balance is restored.

The concept of *hara*—wrongdoing—arises when *tap* is broken, disrupting the balance. A violation must be corrected through restorative practices, to return things to *noa*—to the normal, balanced state.

This is a stark contrast to Western systems of criminal justice, which tend to emphasize punishment rather than balance. Instead of retribution, the Māori approach is focused on restoring balance."*

Principle 4: *Utu* and *Ea* – Reciprocity and Resolution

*"The next principle is *utu*, which is often misunderstood as 'revenge'. However, it's better understood as *reciprocity*—the need for balance when something wrong has been done. When harm occurs, *utu* ensures there is an appropriate response to restore balance.

The end goal of *utu* is *ea*, which is a state of resolution. Without *ea*, the imbalance continues, and the harm lingers.

In the criminal justice context, *utu* shifts the focus from punishment to healing. It requires all parties to take action to restore balance, and *ea* represents the final resolution where peace and harmony are restored.

Principle 5: Manaakitanga – Care and Obligation to Others

*"Finally, we have *manaakitanga*, which is the obligation to care for others. This principle is about nurturing, protecting, and supporting people and communities. It goes beyond kindness—it's about ensuring dignity and respect for all, even for those who have caused harm.

Manaakitanga reminds us that justice is not just about the offender but about the well-being of the whole community, including the victim, their whānau, and the offender's whānau.

This is crucial because it challenges the current punitive systems that often disregard the importance of community support in the process of justice.

Signposting #3: Tikanga Māori vs. Western Legal Systems

*"Now that we've covered the principles of *tikanga Māori*, let's discuss how this system of law compares with Western legal systems.

In Western systems, the focus is typically on individual rights, punishment, and retribution. In contrast, *tikanga Māori* focuses on collective responsibility, balance, and restorative justice.

I'll leave you with this question: How can we incorporate aspects of *tikanga Māori* into our criminal justice system to make it more restorative and less punitive?"*

Reform Examples and Responses

The context to the present process of reform: The never-ending story of denial and invisibilisation of preexisting rights obligations and duties possessed by Maori.

For as long as the Principles of the Treaty of Waitangi have been enshrined in legislation, the Crown has manipulated the concept to serve its own implacable sense of entitlement. The Crown has always sought to enforce an interpretation of the principles that gives effect to a watered-down version of the English-language document (the Treaty) and that turns the Māori-language document (Te Tiriti o Waitangi) on its head.

The new coalition agreements cemented to create the present government continues that pattern of behaviour. What sets it apart from earlier efforts is that this time the Crown can't even be bothered trying to mask its true intentions by hiding behind protestations of good faith. This time, the Crown is explicitly—indeed, proudly—pursuing an interpretation of the principles that flies in the face of advice from anyone with relevant expertise, including its own officials.

It has long been my view that an air of confusion has been quite cynically fostered concerning the true meaning of Te Tiriti o Waitangi, when in fact its meaning is very simple.

Te Tiriti, written in te reo Māori, was signed by over 500 rangatira and by Governor Hobson. It reaffirmed the supreme political authority (te tino rangatiratanga) of the rangatira but delegated kāwanatanga to the Crown so that it could regulate the conduct of British citizens who were living in Aotearoa. In effect, the rangatira were stipulating that the Crown take responsibility for its own people as a condition for being allowed to remain here.

The English-language Treaty was signed by just 39 people, I suspect by accident more than by design. It stated that the rangatira ceded sovereignty to the Crown in return for a promise to uphold their property rights and to accord them the rights and privileges of British citizens. There has never been any suggestion that the implications of the term sovereignty were mentioned, let alone explained to the rangatira who signed this document.

While it's plain that the Crown intended to acquire sovereignty in 1840 that intention was not communicated to any Māori signatories. The Waitangi Tribunal has rightly concluded that the

meaning and effect of the 1840 agreement can only be found in what Britain's representatives clearly explained to the rangatira, and the rangatira then assented to. The agreement's meaning and effect is not to be found in Britain's unexpressed intention to acquire sovereignty (Te Paparahi o te Raki, Stage 1 report, p 528). The truth of the matter is that the English-language document, the Treaty, is not worth the paper it was written on.

The Crown has long tried to fudge the fact that it never legitimately acquired sovereignty, utilising whatever tools have come to hand. Over the past 50 years, the Principles of the Treaty have proven to be as useful a tool as any, as amply demonstrated by this latest attempt to make Te Tiriti mean whatever the Crown says it means.

Case Studies

The Treaty Principles Bill sought to rewrite the Te Tiriti/the Treaty;

- **Principle 1** as described in the Bill represents a flagrant breach of Te Tiriti, unilaterally replacing the delegated authority granted to the Crown by rangatira in 1840 with a self-proclaimed supremacy. The Crown is giving itself a free hand to exercise sovereign authority unfettered by Te Tiriti obligations.
- **Principle 2** strips the heart out of tino rangatiratanga, transforming it from the supreme political authority that it was and that it should be to a grudging acceptance of the shamefully paltry entitlements conceded as part of the so-called "settlement" of historical grievances.
- **Principle 3**, with its facile promotion of "equality" merely serves to lock-in and accentuate the social, political and economic disparities brought about by 185 years of the Crown's abuse of kāwanatanga.
- The Crown has not acquired the ability to behave with such reckless disregard for truth or decency because it is stronger or cleverer or in any way superior. The Crown occupies its current position of privilege by virtue of the fact that it lied, cheated and infected its way to dominance during the decades immediately following Te Tiriti o Waitangi. While the precise detail of the process by which the Crown acquired dominance may vary from iwi to iwi, the general pattern is depressingly consistent.
- Despite the fervour with which the Crown has sought to control the national Te Tiriti narrative, the Principles of the Treaty have played their part in shifting that narrative over the past 50 years. This is due in large part to the intellectual rigour and bravery displayed by members of the Waitangi Tribunal. Its report on this Bill is a perfect example of this and I commend it to you. The Tribunal has worked hard to educate the nation, reaching beyond Crown obduracy to influence public opinion. This despite chronic under-resourcing and an endless succession of governments intent on ignoring or minimising its findings and recommendations wherever possible.
- Whatever progress has been achieved since 1975, however, would be erased with the passage of the Bill. The Bill epitomises what many regard as lowest common denominator politics. It panders to the basest of colonial instincts, incentivising those who have benefited from the immoral conduct of their forebears to support an interpretation of Te Tiriti that guarantees the preservation of their ill-gotten gains at our expense. The Treaty of Waitangi Principles Bill seeks to cultivate greed,

arrogance, ignorance and insecurity in order to achieve its goals. As I have stated in my written submission, no one with a shred of integrity or intellect would wish to have any association with it.

- Unsurprisingly Maori and Tangata Tiriti, Pakeha; Asian, Pasifika mobilised to the select committee and out on the streets in a unique show of unity and force to onstrate a measure of both—of integrity and intellect—by rele gating this Bill to the dustbin of history where it rightfully belongs. And, as others have said, by reminding the Crown that its energies would be better spent coming to terms with the urgent need for constitutional transformation, as so ably foreshadowed by Matike Mai Aotearoa, by the Paparahi o te Raki Waitangi Tribunal report, and by the work of many others.

S 7AA Repeal Oranga Tamariki Act

Background- Skerrett White v Minister of Children

The coalition agreement between National and ACT resolved to repeal s 7AA of the Oranga Tamariki Act 1989, which imposes a number of duties on the Chief Executive of Oranga Tamariki in order to "recognise and provide a practical commitment to the principles of the Treaty of Waitangi (te Tiriti o Waitangi)".

Three claims were submitted to the Waitangi Tribunal alleging that the intended repeal of s 7AA, and the absence of consultation with Māori about it, are in breach of the Crown's obligations under the Treaty of Waitangi. The tribunal granted leave to 29 parties to participate as interested parties and granted urgency to the matter (against the opposition of the Crown).

On 28 March 2024, the tribunal posed a series of questions directed to the Minister for Children, Karen Chhour, explaining that it was necessary to direct its questions to the minister personally as information central to the inquiry was held primarily at the political and not the departmental level.

On 5 April 2024, the Crown filed a memorandum confirming that Cabinet, on 2 April 2024, had considered and agreed to repeal s 7AA. The Crown provided the Cabinet paper (signed by the minister) addressing the reasons for the repeal and a Regulatory Impact Statement. The Crown advised it would call the chief executive and the two deputy chief executives but not the minister, submitting that evidence from the minister was not necessary.

The tribunal disagreed with that assessment and invited the minister to reconsider her decision on 9 April 2024, referring to its power to summons witnesses but indicating a preference for "constructive engagement voluntarily".

On 10 April 2024, the Crown responded, confirming it would not call the minister as a witness and submitting that she should not be summonsed. The Crown raised the constitutional principle of comity, arguing that a summons would likely breach Cabinet collective responsibility and confidentiality, as the repeal policy now reflected a collective decision of Cabinet. The Crown advised that urgent judicial review proceedings would be launched if the tribunal proceeded to summons the Minister.

On 11 April 2024, the tribunal issued a further memorandum, reiterating its view that it was entitled to ask the minister (who it described as "the primary mind behind this policy") for

information and clarifying that it was not expected that the minister would breach Cabinet confidentiality. The tribunal then formally issued the summons, requiring the minister to attend the tribunal on 26 April 2024.

The hearing of the tribunal's inquiry took place on 12 April 2024. Officials from Oranga Tamariki gave evidence.

The Crown commenced judicial review proceedings in the High Court. On 24 April 2024, Isac J granted the judicial review application and set aside the summons. This judgment was immediately appealed.

Following the High Court judgment, on 26 April 2024 the Crown filed a further memorandum in the tribunal, attaching a letter from the minister addressing the questions posed by the tribunal.

On 29 April 2024, the tribunal released an interim report. On 10 May 2024, the tribunal issued its urgent inquiry report, reserving leave for the parties to apply for further directions following the release of the Court of Appeal judgment.

A unanimous Court of Appeal decided that the Minister was wrong to refuse to comply with the Tribunal's summons. But subsequent events, including most recently the Government's introduction into Parliament today of a Bill to repeal s 7AA of the Oranga Tamariki Act 1989, have meant the Court of Appeal made no orders against the Minister in the circumstances.

Result

Ngāti Pikiao who were represented by Matthew Smith , Hannah Yang and myself were delighted with the Court of Appeal's decision, which can be noted for:

- Confirming the constitutional importance of Te Tiriti o Waitangi. Quoting from [41] of the decision: "It is also important context here that the current Cabinet Manual continues to recognise the Treaty as one of the 'major sources of the constitution'".
- Confirming the constitutional importance of the role of the Waitangi Tribunal: at [2(a)], [36], [84]. Quoting from [36] of the decision: "the role [the Tribunal] fulfils is an important way in which the Treaty is recognised as a major source of this country's constitutional makeup".
- Agreeing with Ngāti Pikiao's position that it was legitimate for the Tribunal to consider that the Minister might be able to provide more information both relevant and necessary to the Tribunal's urgent inquiry: at [2(b)], [96]-[103]. Quoting from [36] of the decision: "That the policy to repeal was a political decision is, of course, a position the Crown is entitled to adopt. However, it should not foreclose the ability of the Tribunal to inquire into the issues raised — namely whether the policy would prejudicially affect Māori claimants as required under s 6(1) — and to seek an understanding of whether the policy choice made had a proper factual foundation".
- Agreeing with Ngāti Pikiao's position that no legal rule of "comity" prevented the Tribunal from requiring the Minister, as an actor with Tiriti obligations, from giving evidence that the Minister did not want to volunteer: at [2(d)], [110]-

> [117]. Quoting from [114] of the decision: “It is not clear to us why the constitutional relationship between the Crown and the Tribunal should prevent the Tribunal from asking for information that would, in its view, assist it to carry out the Inquiry. The question of the relevance of evidence from the Minister was properly one for the Tribunal”.

The judgment is an important re-emphasis of the fundamental significance of Te Tiriti, the rule of law and the Waitangi Tribunal to Aotearoa New Zealand: the Minister is not above the law, and she has very important legal obligations to discharge as a Tiriti partner.

Case Study Example Number 3 RMA Process Upholding Treaty Settlements

Modern Treaty Settlement Process

The modern Treaty settlement process, which was set up to acknowledge and settle the Crown’s historical breaches of te Tiriti o Waitangi/the Treaty of Waitangi, provides redress for the injustices that the Crown perpetrated against iwi and hapū. This redress is intended to acknowledge the past, and settlements as a whole look ahead to a renewed relationship between the Crown and iwi and hapū.

As set out in the recent Auditor General’s Report on how the Crown is monitoring its obligations arising out of these settlements. Today, about 150 public organisations have about 12,000 individual contractual and legal commitments under about 80 settlements. To date, $2.738 billion of financial and commercial redress has been transferred through settlements.

The Auditor General was monitoring how effective the public sector arrangements for Treaty settlement commitments are, and to provide assurance about whether public organisations were well positioned to fulfil the settlements as intended.

Not unsurprisingly key findings highlight that public sector arrangements do not adequately support public organisations to meet commitments or fulfil settlements’ overall intent. Every one of the public organisations with commitments that were audited had difficulties meeting some of them as the settlements intended. There were issues with how public organisations were planning, prioritising, and monitoring work to meet settlement commitments. Some public organisations also had limited access to support and advice.

A framework establishing oversight arrangements for settlement implementation, called He Korowai Whakapapa, was established in December 2022. This included arrangements for guidance, support, and advice, as well as monitoring and annual reporting requirements.

This has led to improvements, but more work is needed. The lack of adequate monitoring and reporting means that there is not enough information for Ministers, Parliament, and the public to fully understand the risks associated with failing to provide redress, whether for an individual settlement or for settlements generally, or its impact on the Māori–Crown relationship.

There has been little effective accountability. The lack of adequate monitoring and reporting also means that Ministers, Parliament, and the public do not have enough information to hold public organisations to account for their settlement responsibilities.

The Report concluded public organisations need to make a significant shift in the way they manage settlement commitments to realise the potential and purpose that Cabinet and Parliament stipulated in deeds of settlement and settlement Acts. The public sector needs to understand that settlements are the basis for long-term relationships with iwi and hapū, and that it needs to manage them accordingly.

Recommendations of the Report

The report includes nine recommendations aimed at strengthening the settlement system's leadership and improving its integrity. We intend to follow up on the progress that public organisations have made on these recommendations in due course.

To improve accountability for fulfilling Treaty settlements, we recommend that:

- all public organisations with settlement commitments review how they plan to meet and monitor their commitments **(Recommendation 2);**

- all public organisations with settlement commitments improve the information that their annual reports provide about their progress in meeting their commitments, including by clearly explaining:

  the types of commitments that they are responsible for (for example, what proportion are land redress or relational redress); what different status updates mean; and their achievements and any significant settlement issues (**Recommendation 7**);

- responsible Ministers, the Public Service Commission, and the governing bodies of Crown entities, local authorities, and other non-core Crown agencies with settlement commitments strengthen expectations on public organisations about meeting their commitments in performance agreements with chief executives and in other relevant mechanisms **(Recommendation 3);** and

- the Public Service Commission and the governing bodies of Crown entities, local authorities, and other non-core Crown agencies strengthen ongoing development for chief executives so that they can lead their organisations to effectively meet settlement commitments (**Recommendation 5).**

- To strengthen system leadership and improve the overall integrity of the Treaty settlement system, we recommend that:

- Te Puni Kōkiri, working with other public organisations as appropriate, develop a framework to guide public organisations to achieve settlements' holistic intent (**Recommendation 1**);

- Land Information New Zealand works to ensure that there is a system in place so that right of first refusal memorials are correctly placed on land titles (**Recommendation 4**);

- Te Puni Kōkiri consider improvements to the quality and accuracy of the information that Te Haeata collects and reports (**Recommendation 6**);

- Te Puni Kōkiri and the Public Service Commission work together, and with others as needed, to consider how to extend He Korowai Whakamana to relevant Crown entities, local authorities, and other non-core Crown agencies, to ensure that:

    those agencies have adequate advice, guidance, and support to meet their commitments; and Te Puni Kōkiri collects information about the status of those agencies' commitments (**Recommendation 8**); and

- Te Puni Kōkiri regularly assess the public sector's progress with meeting settlement commitments, whether it is achieving each settlement's holistic intention, and any significant risks and achievements, and:

    regularly report that assessment to the Minister for Māori Crown Relations and other responsible Ministers; and report on those matters annually to the Māori Affairs Select Committee (**Recommendation 9**).

Te Ture Whenua Māori Legal Reform

The last attempt to reform the Te Ture Whenua Act was about a decade. Given that it was almost 40 years before the principal statute Te Ture Whenua passed from the proposal in the NZMC Brown Paper authored by the late Dr Ranginui Walker and Dr Patu Hohepa until its passage Maori always take a deep breath when reform of Maori land in the colonising context raises its head.

It’s rare — once a decade, if we’re lucky — that Māori communities and legal practitioners get a genuine opportunity to comment on this vital piece of legislation. TTWM is more than just a land law. It is one of the few legislative spaces where tikanga Māori is explicitly embedded in its purpose and operation. But the proposed amendments are, at best, paternalistic. They tinker around the edges. They don’t confront the deep structural issues Māori face when trying to develop, retain, or govern whenua in a way that reflects whānau and hapū aspirations. They do not resource the system, reform decision-making at the scale needed, or deal with the entrenched Crown oversight that continues to control Māori land development.

This is happening while the Māori Land Court remains underfunded, under-resourced, and outdated in its systems. Māori landowners are still burdened with legal complexity, compliance hoops, and overlapping titles that make it near impossible to develop papakāinga or respond to climate events quickly. The reforms do not address these barriers in a transformational way. Instead, they offer minor efficiencies while keeping the core power structures intact. We still see a system where Māori must seek permission from the Crown to exercise rangatiratanga over their own whenua. That is not partnership. That is managed autonomy — and it limits the potential of whenua Māori to be a foundation for Māori prosperity and intergenerational wellbeing.

By contrast, environmental law is heading in the opposite direction. The third wave of Resource Management Act (RMA) reform has gutted key Treaty clauses and diminished the influence of mana whenua in local decision-making. Tikanga is not just being sidelined — it’s being erased. Councils are no longer required to actively protect Māori interests, and central government is pushing ahead with an extraction-focused agenda. This sharp turn undermines the spirit of partnership under Te Tiriti and ignores the fact that Māori

relationships to land are not just cultural — they are legal, constitutional, and intergenerational. TTWM and RMA once existed in tension but were at least aligned in their formal acknowledgment of Māori rights. That alignment is now fractured. Māori landowners trying to build papakāinga or restore whenua are trapped between two systems that increasingly speak past each other.

The deeper problem is that none of these reforms stand alone. The rollback of Māori-centred approaches in the RMA, the soft-touch amendments in TTWM, and parallel reforms in education and social policy all signal a coordinated re-centralisation of power. Whether it's proposed cuts to Kura ā Iwi funding or continued Oranga Tamariki interventions, the pattern is clear: reduce Māori autonomy, increase Crown discretion. This approach treats tikanga as an optional add-on — not as a source of legal authority. But tikanga is not sector-bound. You can’t meaningfully reform land law without looking at environmental governance, whānau wellbeing, and the infrastructure that supports Māori development. The current piecemeal approach creates legal fragmentation and forces Māori to navigate contradictory systems that were never built to serve their aspirations.

For in-house lawyers, this is more than a sector update — it’s a constitutional reckoning. Te Ture Whenua Māori may seem far removed from your daily workflows, but it speaks to fundamental questions about who holds power, who makes decisions, and whose knowledge counts. If we accept reforms that marginalise tikanga in land law, while also watching its removal from environmental, educational, and child protection frameworks, then we’re not just observing change — we’re participating in a legal culture that privileges uniformity over plurality, and discretion over accountability. We need to be sharper in our analyses. Every contract, policy, and internal legal review should carry the same critical question: how does this uphold or undermine tikanga Māori as a source of law? Not a cultural consideration. Not a procedural checkbox. A source of law.

This matters not only because of the Treaty, but because the current legal direction is strategically unsustainable. You cannot promise rangatiratanga while stripping back the systems that enable it. You cannot centre whānau wellbeing in policy while ignoring the role of whenua in economic, social, and cultural resilience. And you cannot train the next generation of lawyers to think critically about equity and justice without naming the structural shifts that are weakening Māori legal authority right now. TTWM, in its current form, still holds space for Māori collective governance. But that space is shrinking — through regulatory under-resourcing, inconsistent implementation, and policy incoherence across the wider system.

The legal profession must step up. In-house lawyers are uniquely placed to notice the disconnects — between policy and practice, legislation and lived experience, principle and procurement. Whether you're working for a council, a corporate, an iwi entity, or a government agency, you play a role in how these reforms take shape on the ground. That includes resisting changes that sideline tikanga Māori, and advocating for alignment between legal obligations and Tiriti-based commitments. The path forward must not be passive. It must be deliberate, principled, and anchored in the constitutional promise of partnership. Otherwise, we risk becoming mere technicians in a system quietly closing its doors on one of the few frameworks that speaks to intergenerational justice. These reforms because they will lead to ‘better outcomes’—but these outcomes consistently centre the Crown and its institutions, not whānau and hapū.

At the heart of these proposed changes lies a simple but dangerous idea: that the Crown knows best when it comes to managing Māori land. This assumption flies in the face of our right to self-determination, and it undermines the integrity of Māori land law.

These changes are an attack on our ability to govern our land according to tikanga Māori. They weaken the protections for Māori land and diminish the authority of whānau and hapū to make decisions about their whenua. If we allow these reforms to go unchallenged, we risk further erosion of Māori rights and the centralisation of power in Crown-controlled institutions.

Conclusion

Lastly, I want to address the policy process itself. The Crown has been unable to comply even with its own Treaty guidance from Cabinet or “best practice” requirements for giving policy and making legislation, let alone the ACT Party’s proposed principles for regulatory responsibility.

Coalition Agreements reached through political horse-trading by minority parties to secure three years in government aim to fundamentally change the constitutional foundations of Aotearoa, especially if ACT’s coalition partners cave and allow this to go to a binding referendum that would be very hard to undo. The Crown’s evidence shows that Cabinet is about to make a decision on these policies without advice from officials that address their complexities and their implications, with minimal advice from Crown Māori agencies and none from Māori outside of government. We do need to be bilingual and bicultural in our laws. We do need to accept the Treaty as the foundation for our constitution. And there has to be some shedding of power for that to work. It can’t just be that the government, as currently constituted, and the judges, as currently appointed, become the people who decide what these things mean all by themselves.

It’s always going to be a struggle for an Indigenous minority to have a significant impact on power and authority. Māori are a minority, and they exist within a system that we call democratic, which usually says that everything must be decided by democratically elected representatives.

But those democratically elected representatives, once they’ve been elected, have to then put in place policies that are true to our constitutional heritage and history, with the te Tiriti o Waitangi/Treaty of Waitangi as the source for the legitimacy of the power now wielded by those representatives.

Annette Sykes
8 May 2025