

Working Paper 2023/03

# Appearances of the Treaty/te Tiriti in New Zealand Legislation

<b>Title</b>	<p><i>Working Paper 2023/03 – Appearances of the Treaty/te Tiriti in New Zealand Legislation</i></p> <p>This paper forms part of the Institute’s CivicsNZ project.</p>
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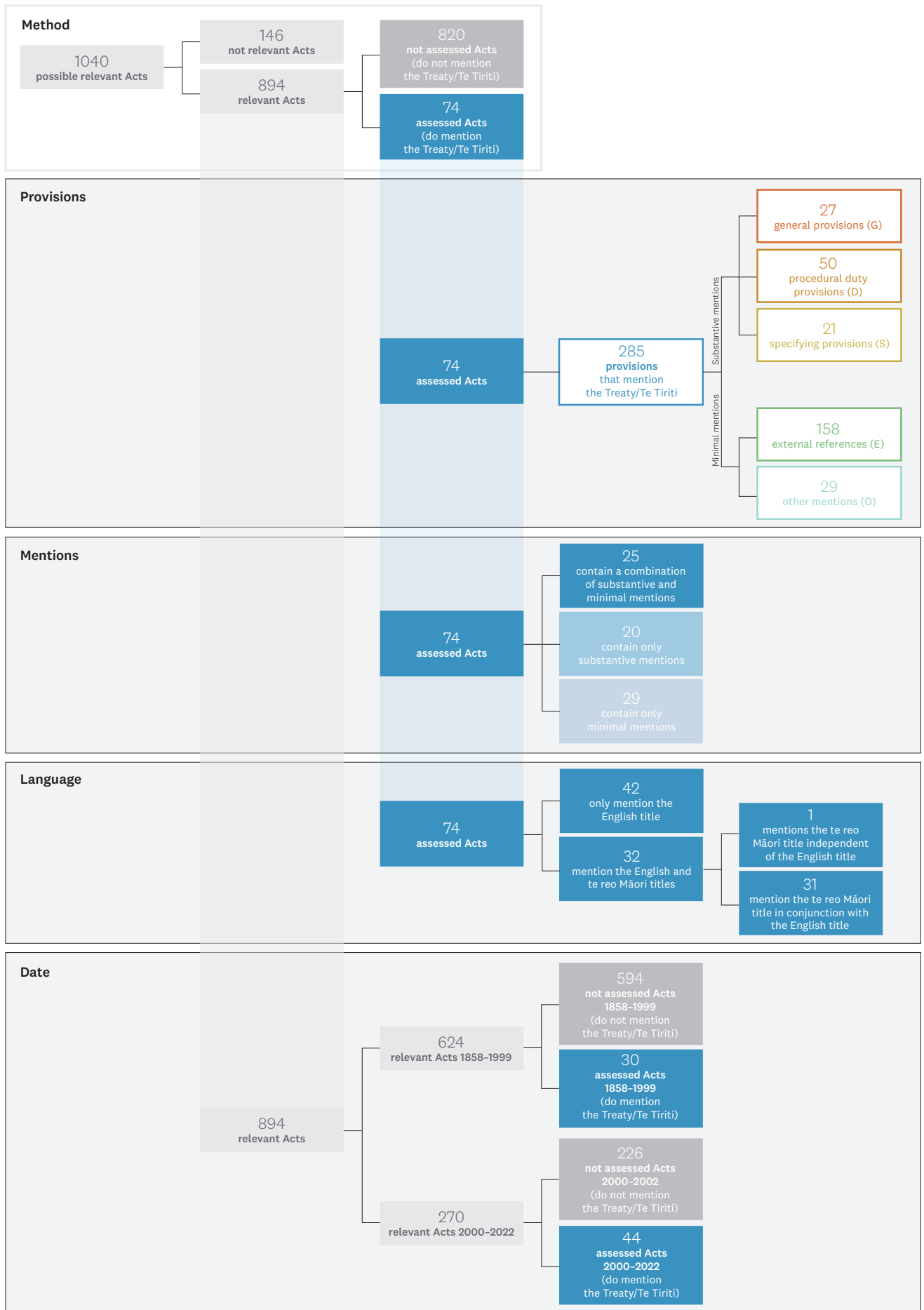
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Figure 1: Overview of observations



# 1.0 Introduction

## 1.1 Purpose

This research aims to contribute to a broader analysis of the strength of democracy in Aotearoa New Zealand. The scope of this research is drawn from Proposal 2 of the Institute’s Think Piece 40 (October 2022), which examines the strength of the oath system for Members of Parliament (MPs) and Ministers of the Crown in New Zealand, and suggests modifications to this to improve governance in modern Aotearoa New Zealand.

This paper draws a basic picture of the appearance of the Treaty of Waitangi/te Tiriti o Waitangi in New Zealand legislation. Through high-level term searching, this research assesses the various appearances of the terms ‘Treaty of Waitangi’ and ‘Tiriti o Waitangi’ in Acts that do not directly concern Treaty settlements, and classifies these by degree and nature of inclusion. Finally, some observations about these appearances are made.

## 1.2 Background and context

Despite being an important source of New Zealand’s constitution, the Treaty of Waitangi/te Tiriti o Waitangi is not codified as a binding part of New Zealand law. While it is included in schedule 1 to the Treaty of Waitangi Act 1975, it is given no effect as a document itself.<sup>1</sup> Instead, it can only be given effect to when legislation explicitly refers to it.<sup>2</sup> The style of such references vary, from simple reference to the historical narrative of the Treaty, to obligation to act in accordance with its principles in the application of legislation.<sup>3</sup>

Part of the Institute’s Think Piece 40 discusses the 2016 attempt to allow MPs to choose to state in their Oaths of Allegiance that they will perform their duties in accordance with the principles of the Treaty of Waitangi.<sup>4</sup> The amendment was not adopted, with Hon Chris Finlayson KC suggesting that this commitment was implied in the current Oath of Allegiance taken by members through the phrase ‘according to law’.<sup>5</sup>

This investigation aims to contribute to discussions responding to the proposition that adherence to Treaty principles is implied in the phrase ‘according to law’. The Oath is the formal commitment to New Zealanders made by those who constitute membership of government’s core democratic institution. While perhaps easy to disregard as ceremonial, the Oath of Allegiance codifies a responsibility shared by all MPs and therefore its suitability is important.

Further, the security and nature of the inclusion of the Treaty of Waitangi/te Tiriti o Waitangi in our nation’s law and constitution remains in question. This working paper seeks to offer preliminary observations surrounding this legislative status, and suggest further avenues for investigation to add to nationwide conversations along the road to the bicentenary of the signing in 2040.

## 1.3 Te Tiriti and the Treaty

The Treaty of Waitangi Act 1975 in its Preamble acknowledges the discrepancies between the English and te reo Māori texts of the Treaty, and establishes the Waitangi Tribunal to ‘make recommendations on claims relating to the practical application of the principles of the Treaty’.<sup>6</sup> In its 2022 Stage 2 Report on the Te Paparahi o Te Raki Inquiry, the Waitangi Tribunal clarifies that the principles of the Treaty/te Tiriti are not legislatively defined and it is instead left to the Tribunal itself to develop, apply and decide such principles.<sup>7</sup> This shows that the Treaty remains a single legal instrument and its principles are relevant, rather than either the te reo or English texts individually.

This is explained on the website of the Waitangi Tribunal:

### A Treaty of two texts

The Treaty of Waitangi/te Tiriti o Waitangi has two texts: one in te reo Māori and one in English.

Under the Treaty of Waitangi Act 1975, the Waitangi Tribunal is tasked with determining the meaning and effect of the Treaty for the purposes of inquiring into Māori claims. However, the Māori text is not an exact translation of the English text. For this reason, the Treaty of Waitangi Act requires the Tribunal to ‘decide issues raised by the differences between them’.

[General guide to the meaning of the Treaty texts omitted.]

### How the Tribunal has interpreted the Treaty

Each Tribunal panel is constituted to determine the meaning and effect of the Treaty based on the claims before it. Readers interested in the Tribunal’s interpretation of the Treaty and its principles are directed to the Tribunal’s reports themselves.

The approach to Treaty interpretation set down in the *1987 Report on the Orakei Claim* has influenced many Tribunal inquiry panels.

It is reasonable to apply to the interpretation of the Treaty of Waitangi the general principles of treaty interpretation as applicable to municipal law.

Relevant principles are:

- a) The primary duty of a tribunal charged with interpreting a treaty is to give effect to the expressed intention of the parties, that is, their intention as expressed in the words used by them in the light of surrounding circumstances.
- b) It is necessary to bear in mind the overall aim and purpose of the treaty.
- c) In relation to bilingual treaties neither text is superior.
- d) Given that almost all Māori signatories signed the Māori text, considerable weight should be given to that version.
- e) The *contra proferentem* rule that in the event of ambiguity such a provision should be construed against the party which drafted or proposed that provision (in this case the Crown) applies.
- f) The United States Supreme Court ‘indulgent rule’ that treaties with indigenous people (American Indians) should be construed ‘in the sense which they would naturally be understood by Indians’ supports the principle (d) above.
- g) Treaties should be interpreted in the spirit in which they were drawn taking into account the surrounding circumstances and any declared or apparent objects and purposes.<sup>8</sup>

Notably, Te Arawhiti (Office for Māori Crown Relations) has guidance to policy-makers on providing for the Treaty in legislation and policy design. This guidance makes no reference to any important distinction in meaning between the te reo Māori and English titles.<sup>9</sup> A 2019 Cabinet Office circular identifies both language versions of the Treaty as relevant in guidance to policy-makers despite simple reference to ‘the Treaty’.<sup>10</sup>

The Institute acknowledges the possibility of differences in interpretation depending on whether the title ‘Treaty of Waitangi’ or ‘Tiriti o Waitangi’ is mentioned. However, this research is not intended to evaluate or imply such differences. This research aims solely to identify appearances of these terms in legislation, taking the mention of each or either title as referring to the principles rather than the particular texts.

In terms of this working paper, the purpose of searching for both terms (i.e. ‘Treaty of Waitangi’ and ‘Tiriti o Waitangi’) was to find all appearances of the Treaty/te Tiriti in legislation, in order to ensure the most complete results possible. Although it wasn’t the intention, searching for both terms also highlighted the evolution of legislation over time, which has moved from using the term ‘Treaty of Waitangi’ independently, to using ‘Tiriti o Waitangi’ in conjunction with ‘Treaty of Waitangi’. See Section 4.2.

## 2.0 Methodology

### 2.1 Terminology

Given the discussion in Section 1.3, it is important to note that for the purposes of this paper, we have used the term ‘the Treaty/te Tiriti’ to refer to the two texts (English and te reo Māori) that together make up the Treaty/te Tiriti.

The following definitions were used in undertaking this research:

Type of provision (code)	Meaning
General provision (G)	<p>Reference to the Treaty/te Tiriti (and principles) that has general application across interpretation, effect, or purpose over the whole Act.</p> <p>E.g. State-Owned Enterprises Act 1986, s 9 Treaty of Waitangi: <i>‘Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.’</i></p>
Procedural duty provision (D)	<p>Provision applicable to a specified body or individual requiring procedural fulfilment of purpose or functions related to the Treaty/te Tiriti (and principles).</p> <p>E.g. Crown Pastoral Land Act 1998, s 84 Matters to be taken into account by Commissioner: <i>‘In acting under this part, the Commissioner must (to the extent that those matters are applicable) take into account ... (b) the principles of the Treaty of Waitangi.’</i></p>
Specifying provision (S)	<p>Provision specifying features of the legislation that (often) ‘recognise and respect the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi’, or similar.</p> <p>E.g. Local Government Act 2002, s 4 Treaty of Waitangi: <i>‘In order to recognise and respect the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi ... Parts 2 and 6 provide principles and requirements for local authorities ...’</i></p>
External reference (E)	<p>Provision containing the term ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ in context of reference to other legislation, claims, or a ministerial portfolio. (Commonly: Treaty of Waitangi Act 1975; Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; Minister for Treaty of Waitangi Negotiations, etc.)</p> <p>E.g. Public Works Act 1981, s 42A Solatium payment for loss of opportunity to purchase: <i>‘Where-(a) a recommendation made or deemed to have been made by the Waitangi Tribunal under section 8A of the Treaty of Waitangi Act 1975 ...’</i></p>
Other miscellaneous mention (O)	<p>Other reference to ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’. (Commonly: preamble, in historical context, etc.)</p> <p>E.g. Te Ture Whenua Māori Act 1993 Maori Land Act 1993, Preamble: <i>‘Whereas the Treaty of Waitangi established the special relationship between the Maori people and the Crown ...’</i></p>



**Appearance:** refers, separately or collectively, to the existence of the term ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ in legislation.

**Substantive mentions:** distinct from *minimal mentions*; provisions in which the term has been *substantively* referred to. Refers collectively to provisions that are classed as G, D or S (see above).

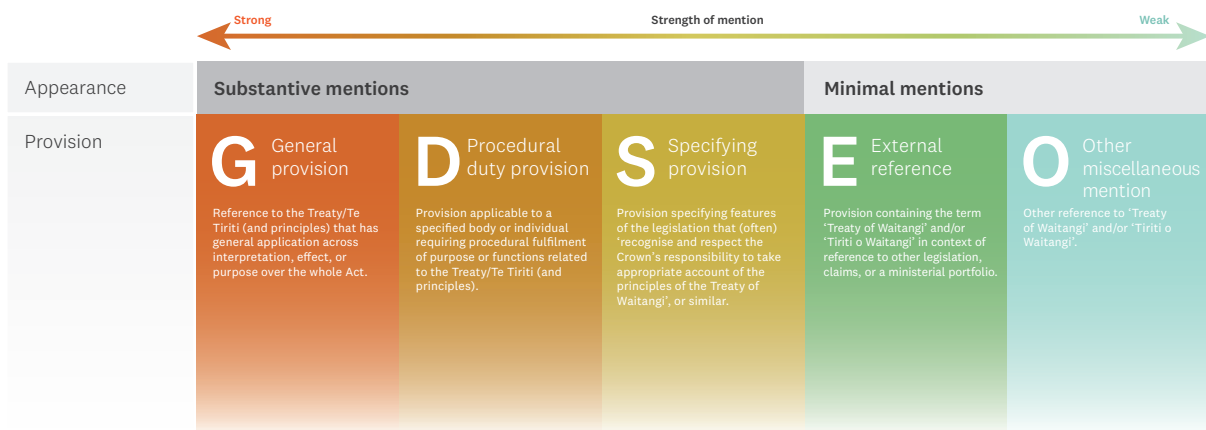
**Minimal mentions:** distinct from *substantive mentions*; provisions in which the term has been *minimally* referred to. Refers collectively to provisions that are classed as either E or O (see above).

**Assessed Acts:** refers to the 74 Acts identified after manual refinement of search results in which the search terms appear, excluding settlement- and claim-specific Acts, bilingual duplicates, and renamed Acts (see 2.2 Method, Step 3).

**Relevant Acts:** refers to the 894 Acts refined after blank content and title search (2.2 Method, Steps 1–2).

**Provision:** an identified part of the Act; commonly including a section, schedule, clause in a schedule, part, or subpart.

Figure 2: Types of appearances and provisions within Acts



## 2.2 Method

Note: the ‘Treaty of Waitangi’ term search and recording process was carried out first, followed by the ‘Tiriti o Waitangi’ term search and recording process. Legislation was searched up to 31 December 2022.

### Step 1: Find possible legislation [found 1040]

We used the New Zealand Parliamentary Counsel Office (PCO)’s website [www.legislation.govt.nz](http://www.legislation.govt.nz) as the source of legislation.

- Bills, secondary legislation, and other instruments were excluded, meaning only Acts were assessed. The searches were refined further by type and status.
- The type of Acts was refined to exclude local, private, provincial and imperial Acts, leaving just public Acts (Acts that are of general application; most Acts are public Acts).<sup>11</sup>
- The status of Acts was refined to exclude Acts not yet in force, amendment Acts in force, as-enacted Acts and repealed Acts, to leave principal Acts in force searchable.

A blank title and content search with these exclusions provided 1040 total results.

### Step 2: Find possible relevant Acts [refined from 1040 to 894]

These results were further manually refined to provide a final total of 894 Acts, dating from 1858 to the present (31 December 2022).<sup>12</sup> This is the total number of relevant Acts.<sup>13</sup> There was a total of 624 Acts dated 1858–1999. There was a total of 270 Acts dated 2000–2022.

### Step 3: Search relevant Acts for 'Treaty of Waitangi' [found 74] and 'Tiriti o Waitangi' [found 32]

The initial lists of legislation were found through separate content searches for the terms 'Treaty of Waitangi' and 'Tiriti o Waitangi', organised by year (oldest to newest).

A content search for 'Treaty of Waitangi' found 172 results, and for 'Tiriti o Waitangi' found 102 results.

Note: As one Act may include appearances of both the terms 'Treaty of Waitangi' and 'Tiriti o Waitangi', there is considerable overlap between dataset 1 and dataset 2.

#### Dataset One: 'Treaty of Waitangi' set [refined from 172 to 74 Acts]

The 172 Acts were further refined through manual assessment, and the following were removed:

- 77 settlement-specific results
- 14 claim-specific results
- 3 bilingual duplicates<sup>14</sup>
- 4 renamed Acts (as encountered).<sup>15</sup>

This left a total of 74 Acts to assess.

#### Dataset Two: 'Tiriti o Waitangi' set [refined from 102 to 32 Acts]

The 102 Acts were further refined through manual assessment, and the following were removed:

- 57 settlement-specific results
- 8 claim-specific results
- 3 bilingual duplicates
- 2 renamed Acts (as encountered).

This left a total of 32 Acts to assess. Note: All 32 were included in the prior dataset, so are a subset of dataset 1 above.

Of the 74 Acts to be assessed there were 30 up to and including 1999. 44 were from 2000 onwards.

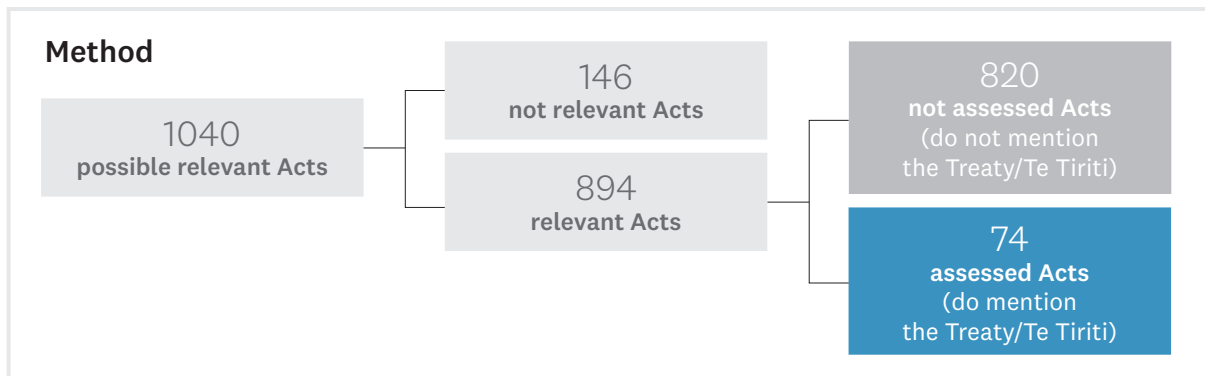
### Step 4: Review each dataset to understand how 'Treaty of Waitangi' and 'Tiriti o Waitangi' have been used in legislation

The 'Treaty of Waitangi' set was analysed first, as a preliminary review of each set indicated that 'Tiriti o Waitangi' appeared primarily in conjunction with the English (see iii below), meaning the existence and classification of the phrase in provisions would be the same as for 'Treaty of Waitangi'.

- i. The terms 'Treaty of Waitangi' and 'Tiriti o Waitangi' were used in the 'search within this Act' function to identify the provision locations and provision content related to the term in each Act.
- ii. A classification key was developed (see Section 2.1) to identify types of ways the terms 'Treaty of Waitangi' and/or 'Tiriti o Waitangi' were used in text.
- iii. Where both terms were used together, this was labelled 'in conjunction' (i.e. 'Treaty of Waitangi/Tiriti o Waitangi').

This term searching found a total of 285 provisions within the 74 Acts in which the term 'Treaty of Waitangi', 'Tiriti o Waitangi' or both terms (either in conjunction or independently) appeared.

Figure 3: Method



## 2.3 Limitations

The refined scope of the legislation to which analysis was applied means a significant set of legislative instruments have been excluded from this assessment. The exclusion of bills, secondary legislation and other instruments, and the limited type and status of Acts included, was deliberate but offers scope for further investigation. The assessment also depends on the search function on the [legislation.govt.nz](https://legislation.govt.nz) site.

The exclusion of claim- and settlement-specific legislation offers a particular lens through which to review the presence of the search terms ‘Treaty of Waitangi’ and ‘Tiriti o Waitangi’ in legislation. Because settlement legislation and Acts giving purpose to such settlements depend on particular Treaty claims, reference to the phrase is inevitable. This assessment excluded those legislative instruments in order to provide information on the frequency and nature of the presence of the Treaty/te Tiriti elsewhere.

In substance, this analysis does not attempt to reconcile other expressions of Treaty/Tiriti principles in legislation. The classification key provides a degree of substantive assessment of the presence of the terms themselves, but based solely on explicit reference to the Treaty/te Tiriti. The simple content search approach and analysis aims to provide only a baseline, surface-level indication of the prominence and nature of this instrument in Aotearoa New Zealand’s legislation.

## 3.0 Results

### 3.1 Combinations of provision types within Acts

As discussed in Section 2.1, a provision is ‘an identified part of the Act; commonly including a section, schedule, clause in a schedule, part, or subpart’.

Some provisions (general provisions [G], procedural duty provisions [D] and specifying provision [S]) contain substantive mentions of the terms ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’, while others (external references [E] and other miscellaneous mentions [O]) contain only minimal mentions.

Of the 74 Acts analysed, 25 contain both substantive and minimal mentions (see Table 1), while 20 contain only substantive mentions (see Table 2) and 29 contain only minimal mentions (see Table 3). See the list of all 74 Acts in Appendix 1.

**Table 1: Acts that contain both substantive and minimal mentions [25]**

(Provision types G, D, S, E and O)

Abbreviation	Provision types	Number of Acts
GE	General provision, External reference	4
GO	General provision, Other miscellaneous mention	5
GEO	General provision, External reference, Other miscellaneous mention	1
GDE	General provision, Procedural duty provision, External reference	4
GDEO	General provision, Procedural duty provision, External reference, Other miscellaneous mention	1
GDSE	General provision, Procedural duty provision, Specifying provision, External reference	1
GDSE	General provision, Procedural duty provision, Specifying provision, External reference	1
GSEO	General provision, Specifying provision, External reference, Other miscellaneous mention	1
DO	Procedural duty provision, Other miscellaneous mention	1
DEO	Procedural duty provision, External reference, Other miscellaneous mention	1
DSE	Procedural duty provision, Specifying provision, External reference	1
DSEO	Procedural duty provision, Specifying provision, External reference, Other miscellaneous mention	1
SE	Specifying provision, External reference	2
SEO	Specifying provision, External reference, Other miscellaneous mention	1
<b>Total</b>		<b>25</b>

Table 2: Acts that contain only substantive mentions [20]

(Provision types G, D and S)

Abbreviation	Provision types	Number of Acts
G	General provision	2
GD	General provision, Procedural duty provision	1
GS	General provision, Specifying provision	1
GDS	General provision, Procedural duty provision, Specifying provision	2
D	Procedural duty provision	5
DS	Procedural duty provision, Specifying provision	5
S	Specifying provision	4
<b>Total</b>		<b>20</b>

Table 3: Acts that contain only minimal mentions [29]

(Provision types E and O)

Abbreviation	Provision types	Number of Acts
E	External reference	22
EO	External reference, Other miscellaneous mention	3
O	Other miscellaneous mention	4
<b>Total</b>		<b>29</b>

# 4.0 Observations

## 4.1 Primary observations

### Step 2 results [894 relevant Acts]

The terms ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ appear in 74 (8.28%) of the total of 894 relevant Acts (see Figure 4). Over time there has been an increase in appearances of the terms (see Figures 5 and 7).

Figure 4: Mentions of ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ in legislation, 1858–2022 [894]

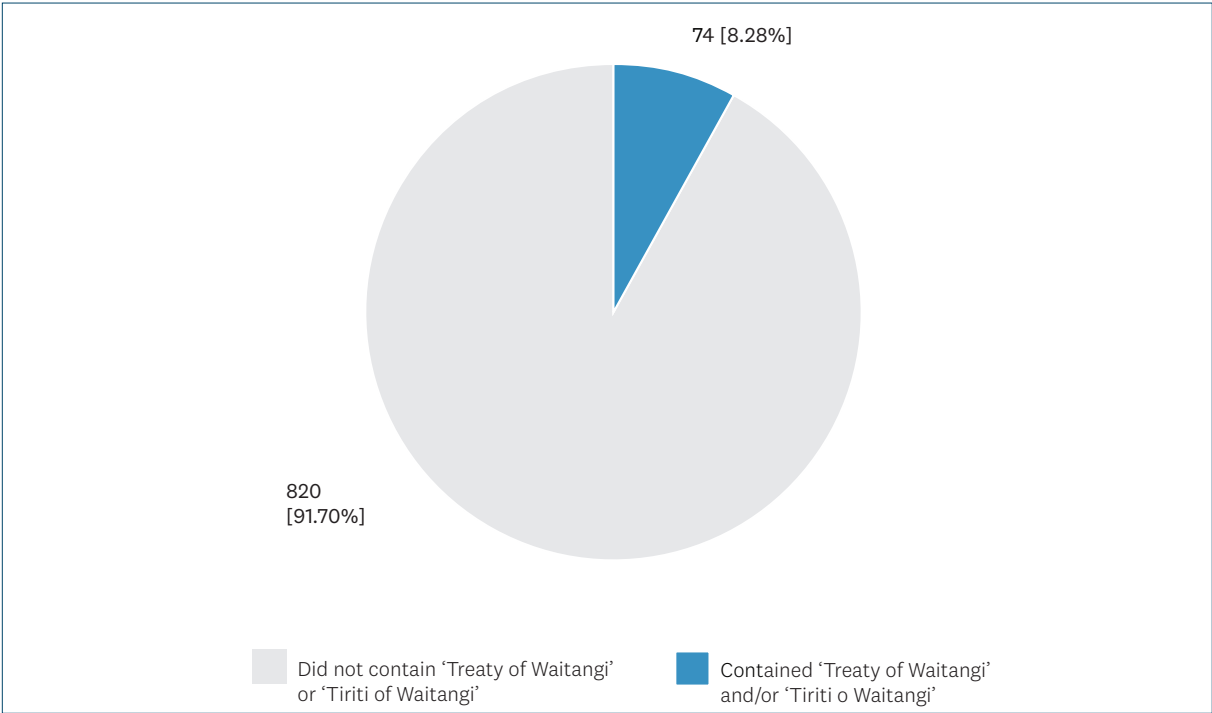
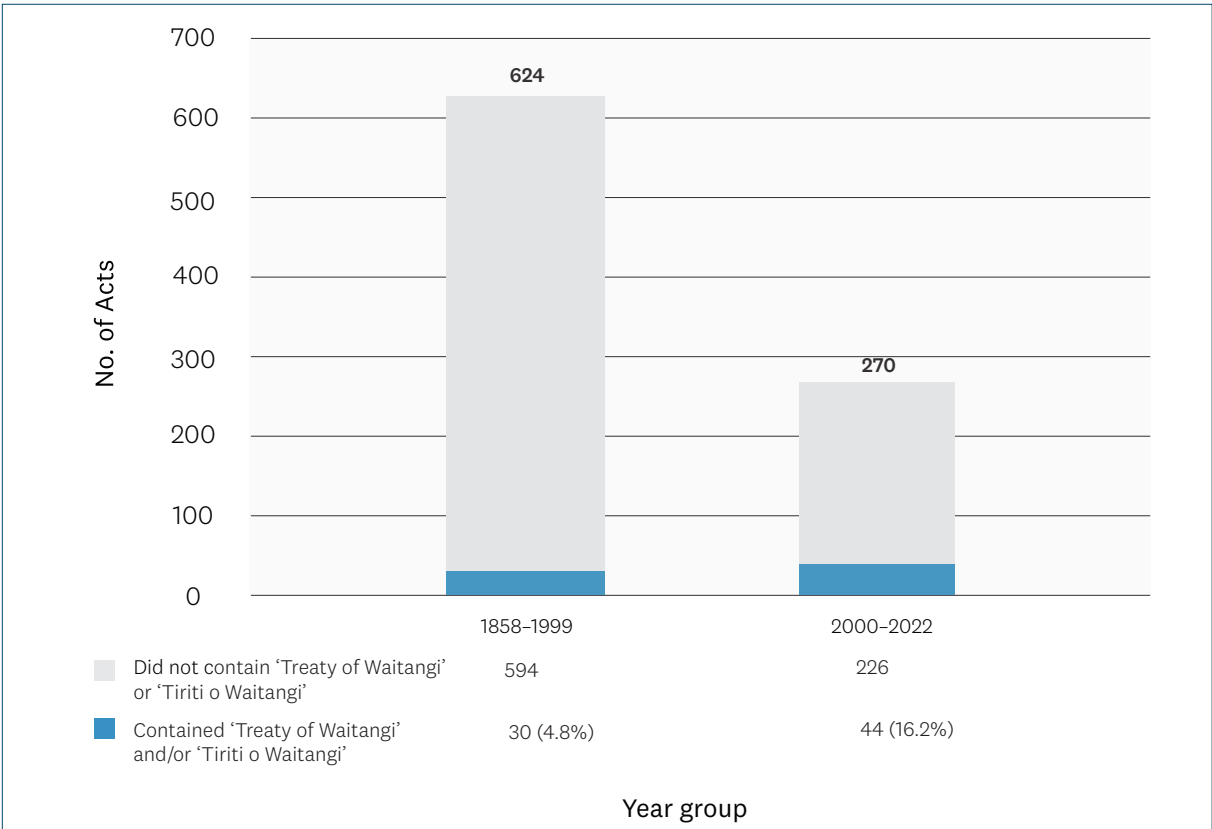


Figure 5: Mentions of ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ in legislation by year group [894]



### Step 3 results [74 assessed Acts]

#### (i) By provision types

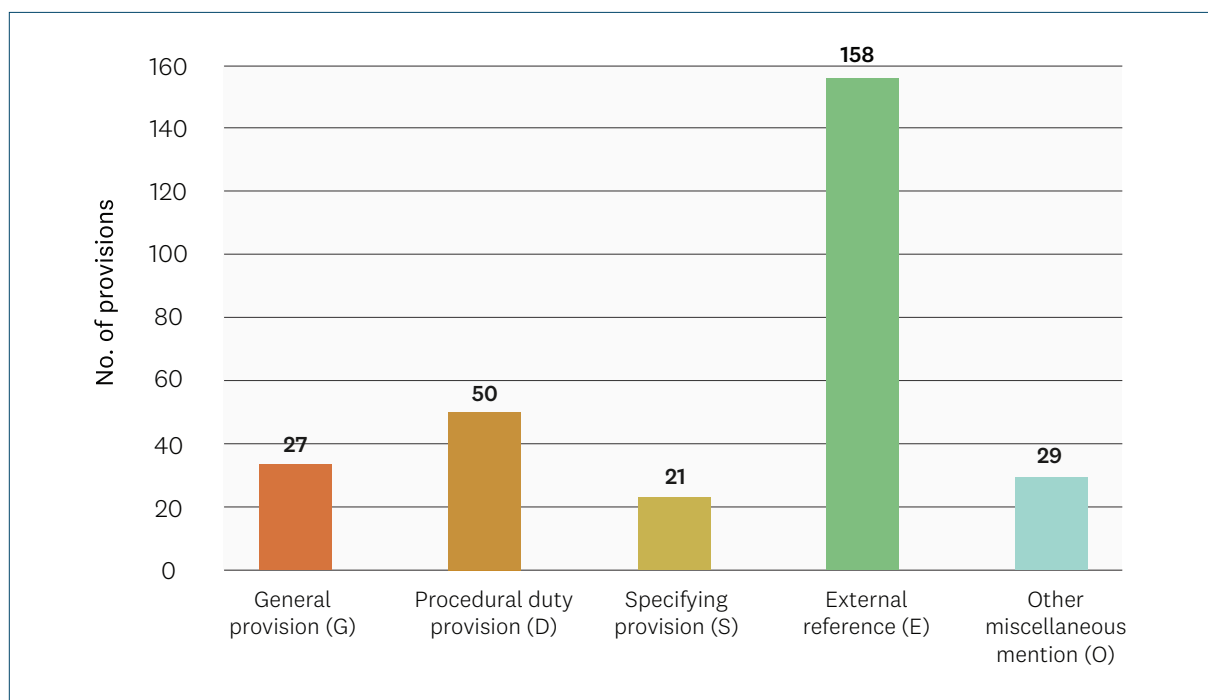
Across the 74 assessed Acts, there are five types of provisions (see Figure 2), resulting in 24 combinations of provisions (see Tables 1–3).

- In 25 Acts, provisions include both substantive and minimal mentions.
- In 20 Acts, provisions include substantive mentions only, i.e. types G, D, or S (either individually or in combination with each other).
- In 29 Acts, provisions include minimal mentions only, i.e. types E or O (either individually or in combination with each other).

In total, there were 285 provisions found in which the search terms appeared either in conjunction with each other or independently (see Figure 6). Of these 285, there were:

- 27 (9.47%) general provisions (G),
- 50 (17.5%) procedural duty provisions (D),
- 21 (7.37%) specifying provisions (S),
- 158 (55.4%) external references (E), and
- 29 (10.2%) other miscellaneous mentions (O).

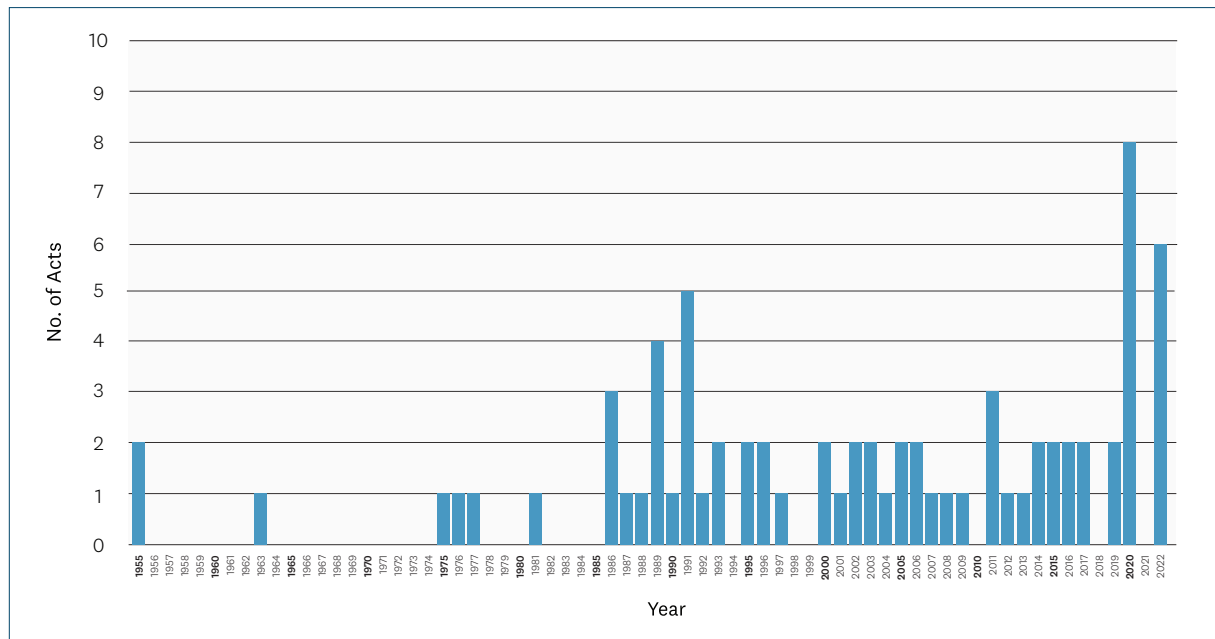
Figure 6: Provisions found within all Acts by type [285]



#### (ii) By date

Of the 74 assessed Acts, 30 are dated 1858–1999 and 44 are dated 2000–2022 (see Figures 5 and 7). This means the terms ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ appeared in 4.8% of all relevant Acts 1858–1999, increasing to 16.2% of all relevant Acts 2000–2022. The terms are substantively mentioned in 14 (2.24%) of all relevant Acts 1858–1999, and in 31 (11.5%) of all relevant Acts 2000–2022. This reflects an increase in the appearance and substantive mentions of the terms in legislation post-2000.

Figure 7: Acts containing 'Treaty of Waitangi' and/or 'Tiriti o Waitangi' by year [74]



(iii) By substantive mentions and minimal mentions by Act

In terms of the broader categories distinguishing between substantive mentions and minimal mentions (see Section 2.1), the Treaty/te Tiriti is:

- substantively mentioned (in some form) in 45 Acts (60.8%) (see Tables 1 and 2), and
- minimally mentioned in 29 Acts (39.2%) (see Table 3).

Notably, specifying provisions (S) are present only from 2002 onwards. See Figure 9.

Figure 8: Acts containing 'Treaty of Waitangi' and/or 'Tiriti o Waitangi' by year and by substantive mentions and/or minimal mentions [74]

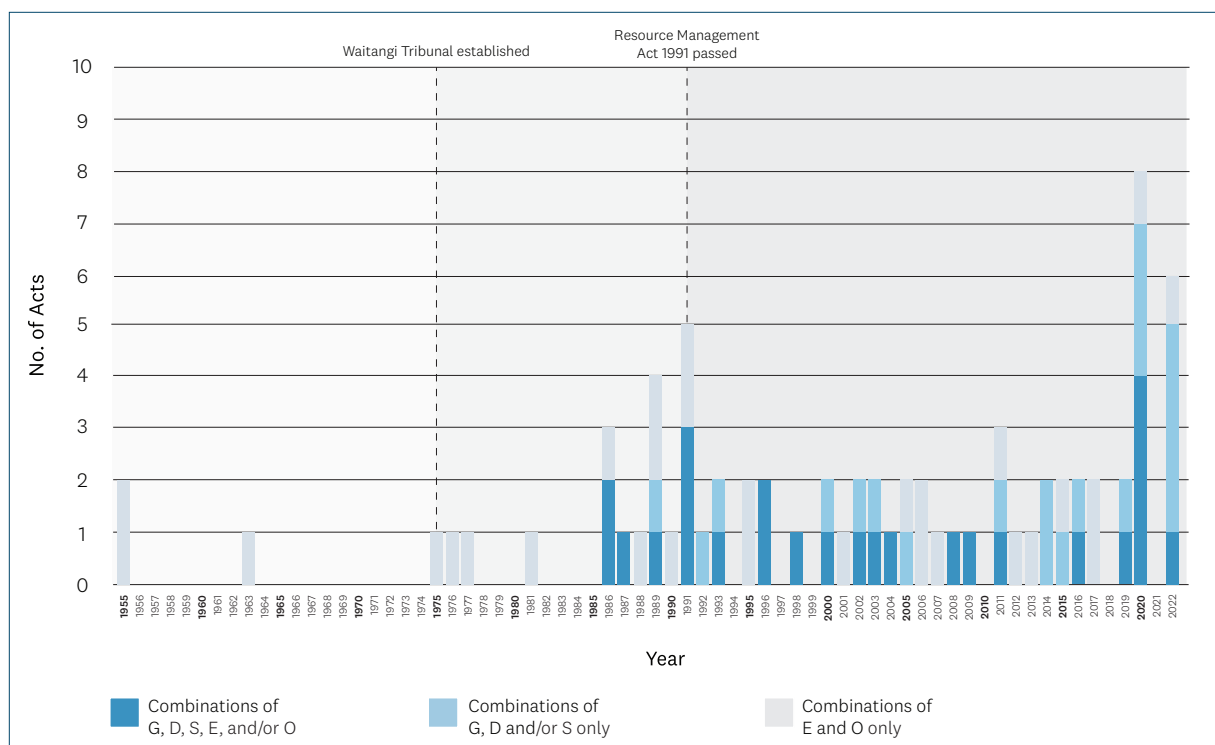
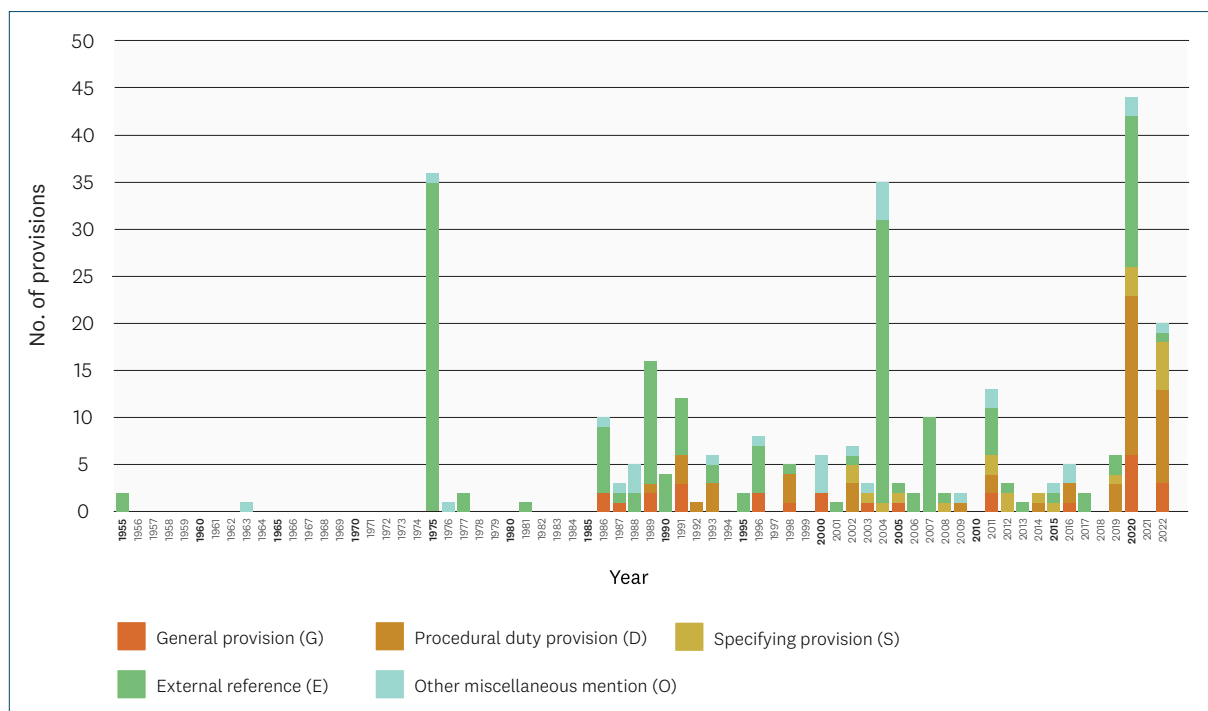




Figure 9: Types of provision containing ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ by year [285]



## 4.2 Observations on the use of the te reo Māori and English titles in legislation

As mentioned in Section 1.3, there was increased use of the te reo Māori term ‘Tiriti o Waitangi’ compared to the English title ‘Treaty of Waitangi’ over time.

### Summary of results:

- 74 Acts were assessed.
- All 74 assessed Acts mention the English title at some point.
- 32 (of the 74 assessed Acts) mention the te reo Māori title at some point.
- 31 (of those 32 Acts) mention the te reo Māori title in conjunction with the English title.
- One (of the 32 Acts) mentions the te reo Māori title independent of the English title (see discussion on the Education and Training Act 2020 below).

### Key historical dates:

- 1955: The English title first appears in the Maori Reserved Land Act 1955.
- 1991: It is not until the Resource Management Act 1991 that the te reo Māori title, appearing in conjunction with the English, is first included in the original version of an Act. The te reo Māori title does not appear even in the Treaty of Waitangi Act, despite its provisions acknowledging the textual discrepancies and the te reo Māori text being included in Schedule 1.
- 2019: A provision including the te reo Māori title is inserted into the Oranga Tamariki Act 1989 Children’s and Young People’s Well-being Act 1989 in 2019. It is the oldest Act to include the te reo Māori title.
- 2020: The te reo Māori title first appears in a piece of legislation independent of the English title. The Education and Training Act 2020 does mention the English title, but only in the form of the titles of existing Acts (e.g. Treaty of Waitangi Act 1975).

## 5.0 Concluding remarks

### 5.1 Conclusions

This paper presents only surface-level analysis of the appearance of the titles ‘Treaty of Waitangi’ and ‘Tiriti o Waitangi’ in legislation. However, several important observations are apparent.

- The terms ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ appear in 8.28% of all public principal Acts in force.
- These terms are substantively mentioned in 4.92% of all such Acts.
- The number of times that the terms ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ appear in legislation has increased since 2000.
- Provisions that substantively mention the terms make up 34.3% of provisions in which the terms appear in total.
- 45 of 74 assessed Acts substantively mention the terms, meaning 29 Acts in which the terms appear only minimally mention the terms. Of the 45 Acts, 25 also minimally mention the terms, and 20 contain substantive mentions only.
- 54 of 74 assessed Acts minimally mention the terms, meaning 20 Acts in which the terms appear only substantively mention the terms. Of the 54 Acts, 25 also substantively mention the terms, and 29 contain minimal mentions only.
- The proportion of provisions where ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ are substantively mentioned rather than only minimally mentioned has increased in post-2000 legislation.

These observations indicate that substantive mentions of the ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ are increasing and are therefore likely to continue to increase. Notably, substantive mentions of these terms tend to refer to the ‘principles’ of the Treaty.<sup>16</sup>

### 5.2 Areas for further investigation

In guidance to policy-makers considering provision for the Treaty/te Tiriti in legislation, Te Arawhiti says: ‘Treaty clauses are part of an ongoing constitutional dialogue. Our understanding of the Treaty and its principles is evolving with legal and policy developments. Taken together, and over time, Treaty clauses also impact on our understanding of the Treaty and its place in the legal system.’<sup>17</sup>

The trends seen above reflect the rising social debate regarding the security and protection of the Treaty/te Tiriti in New Zealand’s legal and constitutional spheres. Commentary on a final manifestation of this ranges from entrenchment of the Treaty/te Tiriti<sup>18</sup> to comprehensive constitutional reform.<sup>19</sup> Discussion of such topics must continue as we progress toward 2040, but goes far beyond the scope of this paper.

This working paper’s assessment of term inclusion in current legislation aims only to offer empirical insight into the status of the appearance of Treaty/te Tiriti in law.

Particularly, these observations may be drawn on to discuss and evaluate the claim that ‘according to law’ implies adherence to Treaty principles in the context of MPs’ Oath of Allegiance. In one sense, it is evident that such principles appear in the text of law. However, to what extent *do* and *should* these appearances effectively bind MPs in their conduct? With such proportionally low rates of substantive mention, can it

really be claimed that this constitutes effective legal protection? Or is the wider constitutional landscape a better realm in which to consider pursuit of security and protection of the Treaty/te Tiriti through to 2040?

Broader questions raised by this research include:

- Is the current approach to inclusion of the Treaty/te Tiriti effective?
- Should there be a reworking of the approach to inclusion to promote uniformity across legislation?
- Is one type of mention more effective or appropriate than another?
- Are other complementary or alternative tools available such as including ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ in the MP oath for all members of the Legislature (given they make the laws by proposing and debating Bills)?
- Should the terms ‘Treaty of Waitangi’ and/or ‘Tiriti o Waitangi’ not be in legislation at all (as suggested recently by a few politicians)?<sup>20</sup>

This analysis may provide a bare starting point from which some of these questions can be further explored.

## Appendix 1: Appearances of provision types in assessed Acts

No.	Act	Number of times mentioned in each Act					Provision types by specific Act		
		Substantive mentions			Minimal mentions		Both substantive and minimal	Substantive only	Minimal only
		G	D	S	E	O			
1	Maori Reserved Land Act 1955				1			1	
2	Housing Act 1955				1			1	
3	Queen Elizabeth the Second Postgraduate Fellowship of New Zealand Act 1963					1		1	
4	Treaty of Waitangi Act 1975				35	1		1	
5	Waitangi Day Act 1976					1		1	
6	Remuneration Authority Act 1977				2			1	
7	Public Works Act 1981				1			1	
8	Constitution Act 1986				1			1	
9	State-Owned Enterprises Act 1986	1			6		1		
10	Environment Act 1986	1				1	1		
11	Conservation Act 1987	1			1	1	1		
12	Treaty of Waitangi (State Enterprises) Act 1988				2	3		1	
13	Oranga Tamariki Act 1989 Children's and Young People's Well-being Act 1989	1	1					1	
14	Public Finance Act 1989	1			2		1		
15	Crown Forest Assets Act 1989				10			1	
16	Local Legislation Act 1989				1			1	
17	New Zealand Railways Corporation Restructuring Act 1990				4			1	
18	Māori Purposes (Wi Pere Trust) Act 1991				1			1	
19	Resource Management Act 1991	1	2		2		1		
20	Crown Minerals Act 1991	1	1		1		1		
21	Harbour Boards Dry Land Endowment Revesting Act 1991	1			1		1		
22	Ministry of Maori Development Act 1991				1			1	
23	Crown Research Institutes Act 1992		1					1	
24	Te Ture Whenua Maori Act 1993 Maori Land Act 1993		1		2	1	1		
25	Human Rights Act 1993		2					1	
26	Finance Act 1995				1			1	
27	Department of Justice (Restructuring) Act 1995				1			1	
28	Hazardous Substances and New Organisms Act 1996	1				1	1		

No.	Act	Number of times mentioned in each Act					Provision types by specific Act		
		Substantive mentions			Minimal mentions		Both substantive and minimal	Substantive only	Minimal only
		G	D	S	E	O			
29	Fisheries Act 1996	1			5		1		
30	Crown Pastoral Land Act 1998	1	3		1		1		
31	Hauraki Gulf Marine Park Act 2000	1				4	1		
32	Energy Efficiency and Conservation Act 2000	1						1	
33	Public Audit Act 2001				1			1	
34	Climate Change Response Act 2002		1	1			1		
35	Local Government Act 2002		2	1	1	1	1		
36	Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003	1				1	1		
37	Land Transport Management Act 2003			1				1	
38	Maori Fisheries Act 2004			1	30	4	1		
39	Public Records Act 2005	1		1				1	
40	Overseas Investment Act 2005				1			1	
41	Insolvency Act 2006				1			1	
42	Evidence Act 2006				1			1	
43	Income Tax Act 2007				10			1	
44	New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008			1	1		1		
45	Local Government (Auckland Council) Act 2009		1			1	1		
46	Marine and Coastal Area (Takutai Moana) Act 2011	2		1	4	2	1		
47	Legal Services Act 2011				1			1	
48	Environmental Protection Authority Act 2011		2	1				1	
49	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012			2	1			1	
50	Inquiries Act 2013				1			1	
51	Heritage New Zealand Pouhere Taonga Act 2014			1				1	
52	Children's Act 2014		1					1	
53	Hawke's Bay Regional Planning Committee Act 2015				1	1		1	
54	Environmental Reporting Act 2015			1				1	
55	Te Ture mō Te Reo Māori 2016 Māori Language Act 2016	1				2	1		
56	Senior Courts Act 2016		2					1	
57	Contract and Commercial Law Act 2017				1			1	

No.	Act	Number of times mentioned in each Act					Provision types by specific Act			
		Substantive mentions			Minimal mentions		Both substantive and minimal	Substantive only	Minimal only	
		G	D	S	E	O				
58	Land Transfer Act 2017				1			1		
59	Kāinga Ora–Homes and Communities Act 2019		2	1	2		1			
60	Criminal Cases Review Commission Act 2019		1				1			
61	COVID-19 Response (Requirements For Entities– Modifications and Exemptions) Act 2020				1			1		
62	Mental Health and Wellbeing Commission Act 2020		1	1			1			
63	COVID-19 Recovery (Fast-track Consenting) Act 2020	1	5		4		1			
64	Education and Training Act 2020	3	8	1	5		1			
65	Public Service Act 2020	1						1		
66	Urban Development Act 2020	1	1		6	1				
67	Infrastructure Funding and Financing Act 2020						1			
68	Taumata Arowai–the Water Services Regulator Act 2020		2	1				1		
69	Income Insurance Scheme (Enabling Development) Act 2022			1				1		
70	Pae Ora (Healthy Futures) Act 2022	1	4	1				1		
71	Data and Statistics Act 2022	1	1	1				1		
72	Appropriation (2022/23 Estimates) Act 2022							1		
73	Plant Variety Rights Act 2022		1	1				1		
74	Water Services Entities Act 2022	1	4	1	1		1			
	<b>Total</b>	<b>27</b>	<b>50</b>	<b>21</b>	<b>158</b>	<b>29</b>	<b>25</b>	<b>20</b>	<b>29</b>	
	<b>COMBINED TOTAL</b>						<b>285</b>			<b>74</b>

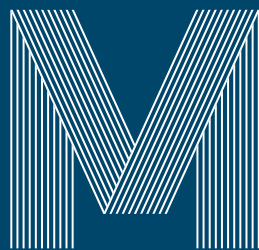
# Endnotes

- 1 See Treaty of Waitangi Act 1975, schedule 1. Retrieved 18 November 2022 from [www.legislation.govt.nz/act/public/1975/0114/latest/DLM435834.html](http://www.legislation.govt.nz/act/public/1975/0114/latest/DLM435834.html)
- 2 See Ministry of Justice. (2020). Te Tiriti o Waitangi - Treaty of Waitangi. Retrieved 23 November 2022 from [www.justice.govt.nz/about/learn-about-the-justice-system/how-the-justice-system-works/the-basis-for-all-law/treaty-of-waitangi](http://www.justice.govt.nz/about/learn-about-the-justice-system/how-the-justice-system-works/the-basis-for-all-law/treaty-of-waitangi)
- 3 For example: Brief reference as in the Hauraki Gulf Marine Park Act 2000, Preamble which records that ‘the Treaty of Waitangi was signed by tangata whenua ...’; commitment to principles in the Conservation Act 1987, s 4, which provides that ‘this Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi’.
- 4 See Oaths and Declarations (Endorsing the Principles of the Treaty of Waitangi) Amendment Bill 2016. See also Wendy McGuinness. (2022). Think Piece 40: The time is right! Why MPs need a code and oath fit for the 21st century. Retrieved 23 November 2022 from [www.mcguinnessinstitute.org/publications/think-pieces](http://www.mcguinnessinstitute.org/publications/think-pieces)
- 5 See New Zealand Parliament. (10 August 2016). Oaths and Declarations (Endorsing the Principles of the Treaty of Waitangi) Amendment Bill 2016 – First Reading. Retrieved 23 November 2022 from [www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb\\_20160810\\_20160810\\_20](http://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20160810_20160810_20)
- 6 See Treaty of Waitangi Act 1975. Retrieved 3 July 2023 from [www.legislation.govt.nz/act/public/1975/0114/latest/whole.html?search=sw\\_096be8ed81cec2dd\\_principles\\_25\\_se&p=1#DLM435371](http://www.legislation.govt.nz/act/public/1975/0114/latest/whole.html?search=sw_096be8ed81cec2dd_principles_25_se&p=1#DLM435371)
- 7 Waitangi Tribunal. (2022). *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Rahi Inquiry – Pre-publication Version*. Retrieved 3 July 2023 from [www.waitangitribunal.govt.nz/publications-and-resources/waitangi-tribunal-reports](http://www.waitangitribunal.govt.nz/publications-and-resources/waitangi-tribunal-reports)
- 8 See Waitangi Tribunal. (19 September 2016). The Treaty of Waitangi/Te Tiriti o Waitangi. Retrieved 21 June 2023 from [www.waitangitribunal.govt.nz/treaty-of-waitangi/meaning-of-the-treaty](http://www.waitangitribunal.govt.nz/treaty-of-waitangi/meaning-of-the-treaty)
- 9 See Te Arawhiti. (March 2022). Providing for the Treaty of Waitangi in legislation and supporting policy design. Retrieved 29 June 2023 from [www.tearawhiti.govt.nz/tools-and-resources/contemporary-treaty-of-waitangi-issues](http://www.tearawhiti.govt.nz/tools-and-resources/contemporary-treaty-of-waitangi-issues)
- 10 See Cabinet Office. (22 October 2019). Te Tiriti o Waitangi/Treaty of Waitangi Guidance. Retrieved 29 June 2023 from [www.tearawhiti.govt.nz/tools-and-resources/contemporary-treaty-of-waitangi-issues](http://www.tearawhiti.govt.nz/tools-and-resources/contemporary-treaty-of-waitangi-issues)
- 11 Parliamentary Counsel Office. (n.d.). About legislation. Retrieved 19 June 2023 from [www.pco.govt.nz/about-legislation](http://www.pco.govt.nz/about-legislation)
- 12 Because of the manual exclusion of results from the datasets under Step 2, the same types of results were excluded from the total of 1040 for more accurate total comparison. Those Acts excluded manually were: 91 claim- and settlement-specific Acts, 51 renamed Acts, and 4 bilingual duplicates.
- 13 This begins with the Nelson College Act 1858 (received assent 4 August 1858) as the oldest, and includes the Fair Pay Agreements Act 2022 (received assent 1 November 2022) as the most recent. For further examination see [www.legislation.govt.nz/act/results.aspx?search=ad\\_act\\_200\\_ac%40bn%40rn%40dn%40apub%40bgov%40bloc%40bpri%40bmem%40rpub%40rimp\\_ac%40ainf%40bcnr%40rinf%40rnif\\_ya](http://www.legislation.govt.nz/act/results.aspx?search=ad_act_200_ac%40bn%40rn%40dn%40apub%40bgov%40bloc%40bpri%40bmem%40rpub%40rimp_ac%40ainf%40bcnr%40rinf%40rnif_ya)
- 14 As presented in the list of search results, legislation enacted in both te reo Māori and English appears twice. Each result corresponds to the same legislation, but is presented in two forms, with the te reo Māori title followed by the English title and vice versa. For example, two separate results would appear for ‘Maori Land Act 1993 Te Ture Whenua Maori Act 1993’ and ‘Te Ture Whenua Maori Act 1993 Maori Land Act 1993’. The duplicate results with the English title first were removed for consistency.
- 15 These results appeared distinctly listed, but when individually opened they were linked to corresponding Acts. For example, see the result for the Vulnerable Children’s Act 2014. Retrieved 23 November 2022 from [www.legislation.govt.nz/act/public/2014/0040/latest/formertitle.aspx](http://www.legislation.govt.nz/act/public/2014/0040/latest/formertitle.aspx)

- 16 As articulated in the contents of the Treaty of Waitangi Act 1975. This dictates that the Act is to ‘provide for the observance, and confirmation, of the principles of the Treaty of Waitangi’ through establishment of the Waitangi Tribunal. Since 1975, the meaning of ‘Treaty principles’ in legislation has been explored and developed by the Courts and the Waitangi Tribunal. See Te Puni Kōkiri. (2001). *He Tirohanga o Kawa ki te Tiriti o Waitangi*. Retrieved 23 November 2022 from [www.tpk.govt.nz/en/o-matou-mohiotanga/crownmaori-relations/he-tirohanga-o-kawa-ki-te-tiriti-o-waitangi](http://www.tpk.govt.nz/en/o-matou-mohiotanga/crownmaori-relations/he-tirohanga-o-kawa-ki-te-tiriti-o-waitangi)
- 17 See Te Arawhiti. (March 2022). Providing for the Treaty of Waitangi in legislation and supporting policy design. Retrieved 29 June 2023 from [www.tearawhiti.govt.nz/tools-and-resources/contemporary-treaty-of-waitangi-issues](http://www.tearawhiti.govt.nz/tools-and-resources/contemporary-treaty-of-waitangi-issues)
- 18 Incorporation of the Treaty/Te Tiriti into a supreme Bill of Rights for New Zealand was suggested in 1985. See Geoffrey Palmer. (1985). *A Bill of Rights for New Zealand: A White Paper*, p. 11. Retrieved 23 November 2022 from [www.ojp.gov/pdffiles1/Digitization/108981NCJRS.pdf](http://www.ojp.gov/pdffiles1/Digitization/108981NCJRS.pdf)
- 19 See Radio New Zealand. (2016, 23 October). Moana Jackson – a new constitution for Aotearoa. Retrieved 23 November 2022 from [www.rnz.co.nz/national/programmes/sunday/audio/201821049/moana-jackson-a-new-constitution-for-aotearoa](http://www.rnz.co.nz/national/programmes/sunday/audio/201821049/moana-jackson-a-new-constitution-for-aotearoa)
- See also Matike Mai Aotearoa. (2016). *Report of Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation*. Retrieved 23 November 2022 from [nwo.org.nz/resources/report-of-matike-mai-aotearoa-the-independent-working-group-on-constitutional-transformation](http://nwo.org.nz/resources/report-of-matike-mai-aotearoa-the-independent-working-group-on-constitutional-transformation)
- 20 See Anneke Smith. (4 June 2023). ACT Party conference: A new ministry to sort ‘jungle of red tape’, ‘speaking out’ against Te Tiriti o Waitangi. Radio New Zealand. Retrieved 29 June 2023 from [www.rnz.co.nz/news/political/491317/act-party-conference-a-new-ministry-to-sort-jungle-of-red-tape-speaking-out-against-te-tiriti-o-waitangi](http://www.rnz.co.nz/news/political/491317/act-party-conference-a-new-ministry-to-sort-jungle-of-red-tape-speaking-out-against-te-tiriti-o-waitangi)
- See also Adam Pearse. (16 October 2022). NZ First conference: Members vote for Treaty of Waitangi legislation repeal review. *New Zealand Herald*. Retrieved 29 June 2023 from [www.nzherald.co.nz/nz/nz-first-conference-members-vote-for-treaty-of-waitangi-legislation-repeal-review/BIDZHR5SAEVILJC52AYXNJM2YE](http://www.nzherald.co.nz/nz/nz-first-conference-members-vote-for-treaty-of-waitangi-legislation-repeal-review/BIDZHR5SAEVILJC52AYXNJM2YE)







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