

# Fiscal Accountability to te Tiriti o Waitangi mechanisms and measures

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## Abstract

This article investigates possible models for strengthening fiscal accountability to te Tiriti o Waitangi. We utilise the spheres of influence framework set out by Matike Mai Aotearoa (2016), with a rangatiratanga sphere, a kāwanatanga sphere and a relational sphere. We outline tax-like practices in the rangatiratanga sphere and how the kāwanatanga sphere resources itself. We then explore expectations and protocols for accountability within the respective spheres, before proposing three possible models to strengthen fiscal accountability in line with te Tiriti o Waitangi. These models include a Māori tax commissioner, a Waitangi Tribunal kaupapa inquiry into or including fiscal authority, and an independent Māori tax authority.

**Keywords** constitutional transformation, fiscal accountability, te Tiriti o Waitangi, taxation, rangatiratanga

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The Tiriti o Waitangi permitted kāwanatanga to the British Crown and guaranteed tino rangatiratanga to Māori.<sup>1</sup> This established an enduring relationship, with legal obligations between Māori and the Crown to act in good faith. Good faith requires accountability. Yet this enduring relationship also reveals the contradiction at the heart of New Zealand. The Crown has resourced itself through breaches of te Tiriti, and it establishes and funds mechanisms to hold itself accountable as a partner to te Tiriti. To avoid accountability, it can disestablish and defund these mechanisms at any time.

This article is based on a recent research report that set out to examine the ways that the Crown can hold itself to account to te Tiriti. Between the time it took to start and finish writing the research report, many mechanisms put in place to make the Crown accountable for obligations to te Tiriti have been repealed, are at risk, or have been threatened (Ruru, 2024). This is despite or in spite of the solidarity affirming the importance of te Tiriti demonstrated since the coalition government came to power in late 2023, including a record

50,000 people gathering at Waitangi on 6 February 2024 (Human Rights Commission, 2023; Piper, 2024).

Te Tiriti is ‘always speaking’. That is, it is relevant ‘across all public policy areas, and at all times’ (Tawhai and Gray-Sharp, 2011, p.11). While many tangata whenua and tangata Tiriti want the Crown to be accountable under te Tiriti, it often falls disproportionately on tangata whenua to hold the Crown to account. This requires significant resources, and when the Crown claims near-exclusive right to revenue raising through taxation, resourcing for rangatiratanga is fundamentally constrained. Resourcing rangatiratanga ensures that te Tiriti o Waitangi is not only ‘always speaking’, but is always heard. We need to explore ways to advance this accountability, and one possibility includes strengthening fiscal accountability. By fiscal accountability, we broadly mean the appropriate raising and spending of public funds, and, in this context, appropriate raising and spending that is in line with te Tiriti.

This short article follows the approach set out by Matike Mai Aotearoa, the independent working group on constitutional transformation. The landmark report sets out a vision and options for constitutional models in Aotearoa that affirm tikanga Māori, te Tiriti and He Whakaputanga o te Rangatiratanga o Nu Tirenī (the Declaration of the Independence of the United Tribes of New Zealand). The models reflect the ‘different spheres of influence’ the Waitangi Tribunal has conveyed that te Tiriti provides (Matike Mai Aotearoa, 2016, p.28).<sup>2</sup> Several of the models put forward include a rangatiratanga sphere of influence (Māori authority), a kāwanatanga sphere of influence (Crown/government authority), and a relational sphere of influence where Tiriti partners work together on issues that require shared authority. The models initiate an ongoing dialogue for those seeking a good faith honouring of te Tiriti and have been the subject of growing affirmation about how to take te Tiriti forward. These dialogues invite detailed consideration, including around possible financial implications. It is these implications that we explore here. Each of the spheres outlined in the Matike Mai

models will have different expectations and protocols for strengthening fiscal accountability in line with te Tiriti. Exploring possible accountability concepts and frameworks within these spheres, we present some pressing questions and ideas to address fiscal accountability to te Tiriti.

In the next section we provide a brief context outlining tax-like practices in the rangatiratanga sphere, and how the kāwanatanga sphere resources itself at the expense of the rangatiratanga sphere. We then set out the coverage of expectations and protocols for accountability within the respective spheres, before proposing possible models to strengthen fiscal accountability. These possibilities are not suggested to correspond to a specified fiscal regime. Nor are these options silver bullets for accountability. They offer a starting

collection of fines, enforcing of social protocols, subscription fees for flour mills, and levies for access to hunting (Scobie et al., 2023). As part of resistance to the Crown’s dog tax, dog taxes were also collected from some Māori by Tāwhiao and Te Kauhanganui, the Kīngitanga ‘House of Assembly’ (Williams, 1969). Comyn refers to the Crown’s dog tax and other measures as enforcing colonial rule, but draws attention to Te Kauhanganui’s resistance asserted in the *Thames Advertiser* in 1894 when it stated that Māori could not ‘be forced to pay either rates or taxes without the Treaty being broken’ (Comyn, 2023, p.118).

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point for advancing accountability to te Tiriti alongside constitutional transformation, as this transformation takes place.

### Taxation, rangatiratanga and kāwanatanga

Māori never ceded sovereignty, and had their tino rangatiratanga over lands, villages and resources affirmed in te Tiriti (Waitangi Tribunal, 2014). Prior to and in the decades following the signing of te Tiriti, Māori were engaging in tax-like practices to raise collective revenues and assert rangatiratanga. These included customary distribution practices: harbour dues, toll ways, stock grazing fees and fines, and joint stock subscriptions following contact. In addition, local or hapū-level activities carried out from the 1850s by komiti rūnanga, as well as Kīngitanga representatives later, extended to the

through Crown assumptions. This challenges rangatiratanga by recasting Māori from sovereigns to engage with to citizen subjects of the Crown. But promises under article 3 of te Tiriti have also failed to manifest within tax policy over time, reinforcing inequity in the tax system. For a large period of the 19th century, Māori disproportionately funded the Crown through an effective capital gains tax and customs duties without representation (Hooper and Kearins, 2003). Today there is inadequate consultation and inclusion of tangata whenua in tax policy development (Marriott, 2021; Scobie and Love, 2019).

These breaches impose an effective double taxation on Māori, where restrictions on rangatiratanga are imposed despite article 2, on top of inequitable tax policy under article 3. The breaches are also out of step with the United Nations

Declaration on the Rights of Indigenous Peoples, which confirms indigenous peoples' right to self-determination, including approaches and systems for financing their autonomous functions. This is how fiscal authority and accountability to Māori has played out to date. But it does not have to be this way. An enduring accountability, which takes fiscal authority seriously, could be a pathway to strengthening both the rangatiratanga and kāwanatanga spheres, and especially the relational sphere where they meet and move forward together. But what are the

integrity in relationships and are important for understanding what should be done to maintain accountability between parties. Accountability in Māori society must be understood within a set of reciprocal obligations. Obligations are enforced by a careful attention to both tradition and public opinion (Mead, 2003). As people act to honour and respect agreements, norms or ways of working together, mana is bestowed on them and further trust in the relationship is gained (Haemata Limited, 2022). In instances where parties deviate from an agreement, the mana of

give an accurate account, to be answerable and to respond to judgements on agreed obligations (Auel, 2007). But it is only attainable when public institutions recognise the relations of power and power asymmetries that shape the demands of those answers and obligations (Pansardi and Bindi, 2021). Public accountability in the kāwanatanga sphere can be understood in three key ways, as conceptualised by Bovens, Schillemans and Hart (2008).

Democratic accountability is created via procedural mechanisms that delegate power and responsibilities to elected representatives. Democratic processes legitimise the expectations against which specific actors honour their responsibilities, as intended in the Westminster parliamentary model, and accountability is measured by the way representatives or ministers adhere to delegated roles and responsibilities. Democratic accountability encourages transparency and demonstrations of trustworthiness, but the quality of accountability hinges upon how institutional structures designate responsibilities.

Constitutional accountability seeks to temper concentrations of power in individual representatives by upholding societal rules and norms. These instruments highlight normative non-conformity and transgressions, but do not necessarily demand answers or actions to restore relationships or prevent recurring transgressions. New Zealand relies predominantly on this type of public accountability and this often limits opportunities to enhance accountability and trustworthiness (New Zealand Institute of Economic Research, 2023).

Learning accountability creates a feedback loop highlighting why and how failures to uphold responsibilities and obligations have occurred. The aim is to create transparency and mechanisms that reinforce the specificities, actions or practices required for upholding responsibilities and obligations, to establish proactive change and prevent further failures. This improves the robustness of answers to accountability and of the mechanisms for accountability themselves, future-proofing against scenarios of declining public accountability.

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expectations and protocols for fiscal accountability across the various spheres of influence?

### Accountability within the spheres of influence

To explore a range of possible mechanisms for accountability to te Tiriti, it is important to grasp the fundamental principles guiding accountability from both rangatiratanga and kāwanatanga perspectives. In doing so, we can assess how these may be exercised within and across different spheres of influence.

### *Te ao Māori and accountability*

The Māori constitutional system is based on tikanga which stems from a series of values that regulate political power, including whanaungatanga, mana, manaakitanga and utu (Godfery, 2016). These characterise Māori politics at a larger scale, but also at a functional level, and must be studied together in aggregate. Tikanga is a guide to strong and trusting relationships. As such, concepts like pono, aroha, mana, whanaungatanga, kotahitanga and manaakitanga ensure

either or both parties is compromised, and actions must be taken to restore mana for the sake of the relationship. The relational nature of trust in te ao Māori means active reciprocity is critical to accountability; without tangible steps towards restoration of the agreement and relationship, accountability cannot be achieved.

Trust and relationships are founded on interpersonal, intergroup or shared experiences and the histories of exchanges or agreements are acknowledged as ongoing. Accountability cannot be maintained without meaningful engagement and sustained acknowledgement of what the relationship means according to all parties' values and world views. This should be reflected in processes rather than in outcomes only, and extends towards the reparation of trust.

### *Kāwanatanga and public accountability*

Situated within its historical origins, accountability is a form of story-telling or account-giving that is always shaped by social and power relations (Bovens, Goodin and Schillemans, 2014). Public accountability reflects this: it means to

Some of these approaches and expectations overlap and some would be difficult to reconcile. But the Matike Mai approach requires that we think about spheres of influence, and the relationship between these spheres.

#### Proposed accountability models

Here we propose three mechanisms for accountability based on the various Māori and non-Māori aspects of accountability outlined above. First, we propose a Māori tax commissioner to enhance learning and democratic accountability in the kāwanatanga sphere. Second, we propose a kaupapa inquiry into fiscal authority to enhance learning accountability in the relational sphere. Finally, we propose an independent Māori tax authority to strengthen the rangatiratanga sphere and constitutional accountability. We view these as proposals for further discussion and possible steps towards realising the vision of Matike Mai.

#### *Māori tax commissioner*

The Māori tax commissioner could work within an independent tax commission, an independent authority to oversee tax policy proposed by Sawyer (2020), to hold accountability from within the kāwanatanga sphere. As New Zealand does not have any permanent independent entities to oversee tax policy, this commission would establish an important mechanism for monitoring and improving the tax system. The commission could be governed by its own board and operate at 'arm's length' from the Crown under legislation similar to that for existing 'independent' Crown entities. The National Audit Office in the UK is one model that demonstrates how this type of entity promotes independence of oversight in tax policy (Sawyer, 2020).

A Māori tax commissioner could hold an important role within this autonomous body, working across current kāwanatanga tax departments and workstreams within Inland Revenue and the Treasury, monitoring and providing feedback to improve analysis and standards. Inspired by Kukutai et al.'s (2023) proposed chief Māori data steward, the Māori tax commissioner would look to tikanga, te ao Māori and mātauranga Māori to improve

kāwanatanga tax policy, establishing processes and structures accounting for the rights and interests of Māori, particularly under the articles of te Tiriti. The commissioner could also work alongside Māori communities to improve accountability to Māori for existing budgetary frameworks like He Ara Waiora (see Treasury, 2023) and to establish new frameworks for te Tiriti accountability in tax policy.

A Māori tax commissioner would establish the settings for learning accountability in the kāwanatanga sphere. The role is feedback focused, working to

above. It remains subject to the political whims of the Crown for resourcing. Additionally, if there is no requirement to enact recommendations and integrate advice from the commissioner, the Crown can delay or avoid implementing changes to tax policy. Introducing a Māori tax commissioner requires cooperation at the executive and departmental level. Given the recent actions taken under current kāwanatanga, this role is unlikely to proceed or succeed without advancing Māori rights to fiscal authority under te Tiriti and the UN Declaration on the Rights of Indigenous Peoples. Careful

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establish direct and regular oversight with agencies and departments to ensure that structures and systems support te Tiriti obligations. The commissioner would report on how functions are upholding obligations to te Tiriti on a regular basis, providing transparency and detailed recommendations. This provides ways for different workstreams to understand specific obligations and responsibilities in their work, clarifying where changes must occur and the appropriate avenues through which to do this. The commissioner and the independent tax commission could also enhance democratic accountability by providing transparency on how tax policy is meeting te Tiriti obligations and the measures elected representatives are taking to support this work. This requires reporting structures and legislation that ensure that the medium- to long-term kāwanatanga commitments and objectives are made clear and publicly available, and ringfenced funding to protect the role ongoing.

This role introduces a break from the reliance on the constitutional accountability common in New Zealand, but is unlikely to avoid the core contradiction noted

attention and advocacy are required to ensure that a Māori tax commissioner role is integrated within the kāwanatanga sphere. These considerations indicate the need to strengthen accountability using existing mechanisms, especially the Waitangi Tribunal.

#### *Waitangi Tribunal kaupapa inquiry into fiscal authority*

The precise jurisdiction or workings of a relational sphere for accountability requires further development. One consideration for accountability in the relational sphere are the mechanisms that would make explicit how Crown-Māori partnerships are maintained to honour te Tiriti. Mechanisms need to highlight where accountability is absent and demonstrate where the Crown must realign policy and practices with te Tiriti, reflecting concepts of learning accountability. As a permanent commission of inquiry investigating breaches of te Tiriti, the Waitangi Tribunal contributes to this. The argument above indicating that there have been breaches to fiscal authority according to articles 2 and 3 of te Tiriti lays the ground for a Waitangi

Tribunal kaupapa inquiry into fiscal authority. Kaupapa inquiries examine nationally significant breaches of te Tiriti. This involves the comprehensive review of historical breaches and the contemporary impact these have for Māori, providing the scope to investigate the widespread implications involved in the denial of rights to fiscal authority. This would assist in laying the groundwork for shifting practices in tax policy in the kāwanatanga and relational spheres, and may also support steps towards establishing fiscal jurisdiction of the rangatiratanga sphere.

Rather than a new inquiry, evidence for fiscal authority within the rangatiratanga sphere is likely to be included in existing kaupapa inquiries, like the economic

is statutorily obligated to establish ‘the truth of what happened’ concerning the Treaty, claimants and Māori more broadly when examining evidence related to historical inquiries (Waitangi Tribunal, 1995, p.293). This can ultimately counter ongoing attempts to promote ‘objective’ narratives and has over time ‘unraveled carefully woven Crown myths’ (Mutu, 2019, p.161). In this way, the inquiry process and the Tribunal can be tools for accountability in line with some Māori as well as kāwanatanga accountability concepts.

The Tribunal is bound by the jurisdiction imposed on it by the Crown and its recommendations are not legally binding. Without an obligation to fully implement recommendations, the Crown

and jurisdiction of the Tribunal are at significant risk under proposals set out in each of the coalition agreements between National and New Zealand First and ACT that seek to redefine the principles of te Tiriti (New Zealand National Party and ACT New Zealand, 2023) and ‘[a]mend the Waitangi Tribunal legislation to refocus the scope, purpose, and nature of its inquiries back to the original intent of that legislation’ (New Zealand National Party and New Zealand First, 2023, p.10). The government has also signalled that a review of the ‘focus and scope’ of the Tribunal is to take place (RNZ, 2024). The Tribunal, however, remains an important option for establishing evidence that bolsters accountability within the kāwanatanga sphere and could support changes for fiscal authority in the rangatiratanga sphere.

While the executive within the kāwanatanga has significant amounts of centralised power, technically dependent on the electoral system and the will of voting citizenry, the rangatiratanga sphere derives its power from mana and rangatiratanga, and relationships with land and one another.

#### *Independent Māori tax authority*

An independent Māori tax authority could strengthen ongoing accountability in the rangatiratanga sphere. Key responsibilities would be to provide an independent monitoring mechanism that identifies how the Crown can meet its obligations to te Tiriti and to explore resourcing opportunities for the rangatiratanga sphere. An existing model for assisting to build this type of independent entity exists under the National Iwi Chairs Forum. The National Iwi Chairs Forum works across a number of important issues and has rejected attempts to bring its work under the control of the Crown (Mutu, 2019). For example, the monitoring and reporting on the Crown’s implementation of the UN Declaration on the Rights of Indigenous Peoples is carried out under the forum.

The Māori housing authority proposed by Menzies and Paul (2023) reflects the potential structure of this authority. Like the Māori housing authority, the Māori tax authority would be independently appointed, and work in collaboration with iwi, hapū and Māori organisations to oversee opportunities for fiscal accountability from the Crown according to tikanga Māori. Gathering its own data with Māori, the authority would analyse solutions and establish a range of evidence from which to hold the Crown to account.

The second role for the authority would be to strengthen opportunities for further

development inquiry, which already refers to ‘control of taxation and revenue’ (Waitangi Tribunal, 2024, p.2); or the Constitutional Kaupapa Inquiry (Wai 3300) that commenced in December 2022. Inquiry themes for Wai 3300 include national models of Māori self-government; tino rangatiratanga, mana motuhake, autonomy, and self-governance; kāwanatanga; and constitutional legitimacy and sovereignty (Ministry of Justice, n.d.). The Constitutional Kaupapa Inquiry has so far included an urgent hearing in May 2024 on the Treaty Principles Bill and Treaty clause review.

A kaupapa inquiry provides the space for the linking up of powerful evidence and for Māori to be heard. This lays further foundations for undoing colonial myths concerning fiscal authority. The Tribunal

is not necessarily prompted to break with colonial myths and narratives that would bring about more significant shifts in power and accountability (Mutu, 2019). The extent of trust gained from this accountability mechanism between Māori and the Crown relies, therefore, on how the Crown responds to and acts on demonstrated breaches. This means inquiry outcomes lean to a great extent on constitutional accountability, subject to the political whims of the Crown. As discussed, this often undermines lasting accountability and prevents structural changes to avoid further breaches of te Tiriti.

Persistent politicisation of the Tribunal has threatened its resources and operation, with significant reductions in funding or its abolition tabled on several occasions (Hamer, 2015). In addition, the purpose

resourcing. This entails advancing te Tiriti and fiscal authority education, and identifying possible central claims and strategies while supporting localised ones. The mandate and the autonomy of hapū and iwi are also necessary considerations. In Canada, the First Nations Tax Commission is a shared governance institution that approves the property tax laws set by indigenous governments. Although not independent (comprising a majority of federal government-selected members), the First Nations Tax Commission 'regulates, supports and advances First Nation Taxation' (First Nations Tax Commission, n.d.). While this body educates and assists First Nations to instate tax systems, it also oversees the integrity of the system and the reconciliation of taxpayer interests to the leaders of the Nations. In 2023 the First Nations Fiscal Management Act was amended to expand the mandates of the commission to 'better support First Nations' to establish local revenue laws and support local revenue service agreements (Crown–Indigenous Relations and Northern Affairs Canada, 2023).

Without self-determined oversight of fiscal authority and issues, Māori are denied the right to fully and genuinely pursue economic, social and cultural development. Taking the capacity-building and general organising aspects of the Canadian model, while maintaining the independence of, for example, the National Iwi Chairs Forum, an independent Māori tax authority could strengthen rangatiratanga. This provides, in part, for

the rights of Māori agreed to in te Tiriti and affirmed in the UN declaration, and establishes one possible avenue for rangatiratanga accountability in the fiscal sphere.

#### Conclusion

This short article has drawn attention to both the enduring relationship set out in te Tiriti, and the enduring contradiction where the Crown funds its own accountability. To overcome this contradiction and advance the enduring relationship, the kāwanatanga sphere must be accountable. The rangatiratanga sphere must also be accountable, but, more critically, contain the capacity to hold the kāwanatanga sphere to account. This requires enduring processes between the rangatiratanga and kāwanatanga spheres that progress relational or learning accountability.

Accountability is shaped by power. While the executive within the kāwanatanga has significant amounts of centralised power, technically dependent on the electoral system and the will of voting citizenry, the rangatiratanga sphere derives its power from mana and rangatiratanga, and relationships with land and one another. The short-term view of the kāwanatanga sphere can be a significant challenge for accountability, but the long-term view of the rangatiratanga sphere is a source of power. We can see this power manifesting today as struggles move out of the formal relational sphere that has been dictated by the kāwanatanga sphere, back onto the land to demand accountability

through, for example, the support for te Tiriti witnessed on occasions like Waitangi Day 2024. Tangata whenua and many tangata Tiriti are pursuing transformation towards a more just world and see honouring te Tiriti as fundamental to this transformation. To paraphrase Bargh and Tapsell (2021), the transformation must be 'tika' and for this to be tika, rangatiratanga must be strengthened.

In this context, we put forward some brief proposals inspired by Matike Mai for advancing fiscal accountability within and between the spheres of influence. These should be understood as proposals for discussion, discussion which we welcome. These proposals also offer opportunities for future research. This research could include deepening these proposals with historical and comparative approaches or presenting other proposals that overcome the contradiction detailed here while affirming the enduring te Tiriti relationship.

<sup>1</sup> Kāwanatanga is generally translated as 'the complete right to government', while tino rangatiratanga is generally understood as 'the unqualified exercise of chieftainship': see Kawharu, 1998.

<sup>2</sup> See Waitangi Tribunal, 2014, p.22.

#### Acknowledgements

This work was supported by the Ministry of Business, Innovation and Employment under New Zealand's Biological Heritage National Science Challenge, Ngā Koiora Tuku Iho, strategic outcome 7 – adaptive governance and policy. We would also like to thank Max Harris, Lisa Marriott, Maria Bargh and Ellen Tapsell for reading and commenting on various versions of the article.

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