

All about the Treaty

STATE SERVICES COMMISSION
Te Komihana O Ngā Tari Kāwanatanga



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The Treaty of Waitangi is New Zealand's founding document. Over 500 Māori chiefs and representatives of the British Crown signed the Treaty in 1840. Like all treaties it is an exchange of promises; the promises that were exchanged in 1840 were the basis on which the British Crown acquired New Zealand. The Treaty of Waitangi agreed the terms on which New Zealand would become a British colony.

This is one of a series of booklets on the Treaty of Waitangi which are drawn from the Treaty of Waitangi Information Programme's website www.treatyofwaitangi.govt.nz.

Many historians have contributed to the material in these booklets to ensure it is as accurate and balanced as possible. Their contribution is gratefully acknowledged.

Further copies of this booklet are available from:

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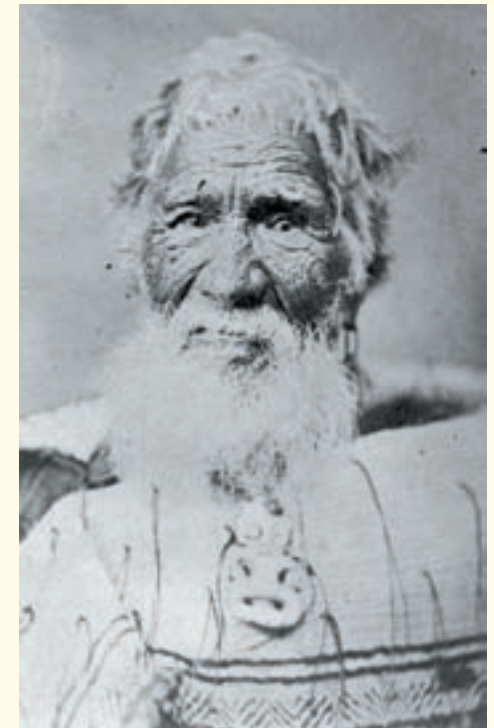
Archives = Archives New Zealand, Te Rua Mahara o te Kawanatanga.

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Queen Victoria, 1841.
 Artist: W C Ross.
 ATL: 1/2-055839.



Eruera Maihi Patuone. After signing the Treaty on 6 February, he presented a greenstone mere to Hobson for Queen Victoria.
 ATL: PA3-0197.



In 1839, Captain William Hobson was appointed Lieutenant-Governor and given responsibility for securing British sovereignty over New Zealand by the negotiation of a Treaty between Māori and the Crown. The Colonial Secretary, Lord Normanby, instructed Hobson that:

"All dealings with the Aborigines for their Lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all. They must not be permitted to enter into any Contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any Territory the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition

Captain William Hobson, R.N., signed the Treaty on behalf of the British Crown and later became the first Governor of New Zealand.
Artist: James Ingram McDonald.
ATL: A-044-002.



of Land by the Crown for the future Settlement of British Subjects must be confined to such Districts as the Natives can alienate without distress or serious inconvenience to themselves. To secure the observance of this rule will be one of the first duties of their official protector."

In carrying out his instructions, Hobson relied on the advice and support of a number of missionaries working in New Zealand, as well as his secretary, James Freeman, and James Busby, who had been in New Zealand since 1833 as the British Resident (a consular representative). Relying also on previous British treaties as examples, the Treaty was drafted in English, and an initial meeting was held at Waitangi on 5 February to discuss it with an estimated 500 Māori and about 200 Pākehā witnesses. The Treaty was first signed at Waitangi on 6 February by over 40 chiefs, before travelling to other parts of the country.

Te Ruki Kawiti, Ngā Puhi chief. Initially resisting British rule, he did not agree to the Treaty on 6th February, but his people pressed him to sign, which he did in May 1840.
ATL: 1/2-037353.



More than 500 chiefs have their signatures or marks on one or other of the nine signed copies of the Treaty that have survived. At Waitangi and at Waikato Heads there were two texts, an English and a Māori text. Two hundred copies of the Māori text were printed on 17 February for distribution to potential signatories. Almost all the chiefs signed on one of a number of handwritten copies of the Treaty in Māori. Only 39 chiefs signed the English text of the Treaty.

Henry Williams translated the Treaty into Māori on 4 February and, on 6 February or a few days later, he translated the Māori text back into English. This became the "official English text". It was presumed that the Māori text and the translation back into English had the same meaning, but Henry Williams observed on the copy of the official text sent in Hobson's despatch to Governor Gipps: "I certify that the above is as literal a translation of the Treaty of Waitangi as the idiom of the language will admit of." (Public Record office, London, CO 209/7, 13-15), indicating that a literal or word-for-word translation was impracticable.

The texts are, in some places, significantly different in meaning. One significant difference is in the two texts of Article 1, which describe what was being given up by Māori: "all the rights and powers of sovereignty" in the English text or "te kawanatanga katoa" in the Māori text. Some historians have suggested that "te tino rangatiratanga" or "mana" were better approximations of sovereignty than "kawanatanga". Another difference is in the two texts of Article 2, which describe what the Crown's guarantee to Māori was in respect to their property. It has been argued that "full, exclusive and undisturbed possession" is not an accurate translation of "te tino rangatiratanga" in the Māori text. (For one modern English translation of the Māori text, see the translation by Professor Sir Hugh Kawharu on page 9.)

It is widely accepted that the use of the words "kawanatanga" and "tino rangatiratanga" contributed to misunderstanding by the chiefs as to how much authority they would retain relative to that of the governor. There can be little doubt that the chiefs who signed expected to enter into some kind of partnership and power sharing in the new enterprise of creating a functioning nation-state in New Zealand, but this was not to be the case.

Some commentators, however, suggest that it is the spirit of the Treaty that matters most, and that should override the ambiguities and differences of emphasis between the texts. Legally there is only one Treaty, despite the differences between the two texts. Current references to the Treaty in legislation seek to bridge the differences by referring to the "principles" of the Treaty, these being the core underlying concepts that underpin both texts. (See page 14 for a discussion of Treaty principles.)

Rev. Henry Williams.
Artist: Charles Baugniet.
ATL: C-020-005.





Apihai Te Kawau of Ngāti Whātua and his nephew (standing). Te Kawau signed the Treaty at Manukau Harbour in March 1840. He subsequently provided 3000 acres (1200 hectares) for £50 and a quantity of goods, for the new capital at Auckland on Waitematā Harbour.
Artist: George French Angas.
ATL: PUBL-0014-56-2.



Preamble

English Text

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands – Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Māori Text

KO WIKITORIA te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu-na te mea hoki he tokomaha ke nga tangata o tona lwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kua ai nga kino e puta mai ki te tangata maori ki te Pakeha e noho ture kore ana.

Na kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane amua atu ki te Kuini, e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Key Differences

The preamble of the English version states the British intentions were to:

- protect Māori interests from the encroaching British settlement;
- provide for British settlement;
- establish a government to maintain peace and order.

The Māori text suggests that the Queen's main promises to Māori were to:

- provide a government while securing tribal rangatiratanga and Māori land ownership for as long as they wished to retain it.



Article the first

English Text

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Rangi Topeora, of Ngāti Toa and Ngāti Raukawa. She signed the Treaty in May 1840 when the missionary Henry Williams brought the Treaty to Kapiti Island. She was one of an estimated 13 women to sign the Treaty.
ATL: PA2-2808.



Ko te tuatahi

Māori Text

Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

Key Differences

In the English text of the Treaty, Māori leaders gave the Queen "all the rights and powers of sovereignty" over their land.

In the Māori text of the Treaty, Māori leaders gave the Queen "te kawanatanga katoa" – the complete government over their land.

Matene Te Whiwhi of Ngāti Toa and Ngāti Raukawa. In 1839 he travelled to the Bay of Islands seeking a Christian missionary for his people. As a result Octavius Hadfield later settled at Waikanae. In 1840, Te Whiwhi (son of Rangi Topeora) signed the copy of the Treaty brought south by Henry Williams.
ATL: 1/2-057403.



Article the second

English Text

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Ko te tuarua

Māori Text

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Key Differences

In the English text of the Treaty, Māori leaders and people, collectively and individually, were confirmed and guaranteed "exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties".

In the Māori text of the Treaty, Māori were guaranteed "te tino rangatiratanga" – the unqualified exercise of their chieftainship over their lands "wenua", villages "kainga", and all their property/treasures "taonga katoa".

In the English text of the Treaty, Māori yielded to the Crown an exclusive right to purchase their land.

In the Māori text of the Treaty, Māori agreed to give the Crown the right to buy land from them should Māori wish to sell.

The landing of New Zealand's first Governor, Captain Hobson, Bay of Islands, 1840. Artist: Arthur Herbert Messenger. ATL: A-109-018.



Article the third

English Text

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

[signed] W. Hobson Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty.

The Chiefs of the Confederation

Ko te tuatoru

Māori Text

Hei wakaritenga mai hoki tenei mo te wakaatanga ki te Kawana-tanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

[signed] W. Hobson Consul & Lieutenant Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu. Ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te Wakaminenga

Key Differences

In the Māori text of the Treaty, the Crown gave an assurance that Māori would have the Queen’s protection and all rights – "tikanga" – accorded to British subjects.

This is considered a fair translation of the English.



Rev. Richard Taylor. Taylor took part in the Treaty discussions at Waitangi in February 1840, and attended Treaty signings at Hokianga and Kaitiaki. ATL: 1/2-C-14302.

Preamble

English Text

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty’s Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty’s Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty’s Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

English translation of Māori text by Professor Sir Hugh Kawharu

Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship (1) and their lands to them and to maintain peace (2) and good order considers it just to appoint an administrator (3) one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen’s Government being established over all parts of this land and (adjoining) islands (4) and also because there are many of her subjects already living on this land and others yet to come.

So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson, a Captain in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents (5) to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.

Footnotes

(1) "Chieftainship": this concept has to be understood in the context of Māori social and political organization as at 1840. The accepted approximation today is "trusteeship".

(2) "Rongo": "Peace", seemingly a missionary usage (rongo – to hear i.e. hear the "Word" – the "message" of peace and goodwill, etc).

(3) "Chief" ("Rangatira") here is of course ambiguous. Clearly a European could not be a Māori, but the word could well have implied a trustee-like role rather than that of a mere "functionary". Māori speeches at Waitangi in 1840 refer to Hobson being or becoming a "father" for the Māori people. Certainly this attitude has been held towards the person of the Crown down to the present day – hence the continued expectations and commitments entailed in the Treaty.

(4) "Islands" i.e. neighbouring, not of the Pacific.

(5) "Making" i.e. "offering" or "saying" – but not "inviting to concur".

Article the first

English text

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Wiremu Nera Te Awa-i-taia of Ngāti Mahanga at Whaingaroa (Raglan). Te Awa-i-taia signed the Treaty of Waitangi on 11 April 1840, when it was brought to Whaingaroa by the CMS missionary Robert Maunsell.
Photographer: Webster Hartley.
ATL: PA2-2101.



The first

English translation of Māori text

The Chiefs of the Confederation and all the chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government (6) over their land.

Footnotes

(6) "Government": "kawanatanga". There could be no possibility of the Māori signatories having any understanding of government in the sense of "sovereignty" i.e. any understanding on the basis of experience or cultural precedent.

Thomas Bunbury, 1861. In March 1840, Bunbury was instructed by Governor Gipps to come to New Zealand with 100 men of his 80th Regiment to back up Hobson and, given Hobson's failing health, take over the Lieutenant-Governorship if necessary. He sailed down the east coast to Port Nicholson and to the South Island to gather Treaty signatures.
ATL: PACOLL-6075-15.



Article the second

English text

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

The second

English translation of Māori text

The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise (7) of their chieftainship over their lands, villages and all their treasures (8). But on the other hand the Chiefs of the Confederation and all the Chiefs will sell (9) land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being appointed by the Queen as her purchase agent).

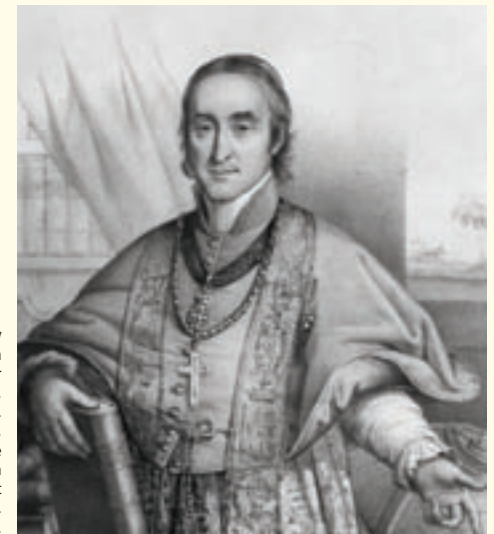
Footnotes

(7) "Unqualified exercise" of the chieftainship – would emphasise to a chief the Queen's intention to give them complete control according to their customs. "Tino" has the connotation of "quintessential".

(8) "Treasures": "taonga". As submissions to the Waitangi Tribunal concerning the Māori language have made clear, "taonga" refers to all dimensions of a tribal group's estate, material and non-material heirlooms and wāhi tapu (sacred places), ancestral lore and whakapapa (genealogies), etc.

(9) "Sale and purchase": "hokonga". Hoko means to buy or sell.

Bishop J. B. F. Pompallier. He was consecrated Bishop with responsibility for Western Oceania (including New Zealand) in 1836. He arrived in New Zealand in 1838, and by the mid-1840s had established a number of Catholic missions. Pompallier was sympathetic to Māori concerns, and for his time, he had an enlightened view towards Māori culture. He was at Waitangi when the Treaty was signed on 6 February 1840, and asked Lieutenant-Governor Hobson for his promise to protect the Catholic faith. This pledge is sometimes referred to as the unwritten "fourth article" of the Treaty, and is said to protect and recognise not only major western religions, but also Māori custom.
Image: Special Collections, Auckland City Libraries (NZ). A4017.



Article the third

English text

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

The third

English translation of Māori text

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties (10) of citizenship as the people of England (11).

[signed] W. Hobson Consul & Lieutenant Governor

So we, the Chiefs of the Confederation and of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus.

Was done at Waitangi on the sixth of February in the year of our Lord 1840.

Footnotes

(10) "Rights and duties": "tikanga" while "tika" means right, correct, (e.g. "e tika hoki" means that is right), "tikanga" most commonly refers to custom(s), for example of the marae; and custom(s) clearly includes the notion of duty and obligation.

(11) There is, however, a more profound problem about "tikanga". There is a real sense here of the Queen "protecting" (i.e. allowing the preservation of) the Māori people's tikanga (i.e. customs) since no Māori could have had any understanding whatever of British tikanga (i.e. rights and duties of British subjects.) This, then, reinforces the guarantees in Article 2.



Te Rangihaeata, a Ngāti Toa signatory to the Treaty.
Artist: Richard Aldworth Oliver.
ATL: PUBL-0032-1.

The Principles of the Treaty of Waitangi

The Treaty of Waitangi is considered to be an important source of the New Zealand constitution, however the formal legal position is that the Treaty has legally enforceable effect only when referred to in legislation. At the present time the Treaty of Waitangi is referred to in 62 separate Acts of Parliament. Most statutes have no reference to the Treaty, and most of the ones that do relate either to natural resources and environmental legislation, or to such Māori-specific parts of the law as Māori land law.

Most of these legislative references are not to the Treaty text but rather to the "principles" of the Treaty. This is because the two texts of the Treaty have led to different understandings, and because of the need to apply the Treaty to present-day circumstances and issues. Treaty principles interpret the Treaty as a whole, its intention and its spirit. In the 1994 Broadcasting Assets case (p. 513), Lord Woolf described the principles as "the underlying mutual obligations and responsibilities the Treaty places on the parties. They reflect the intention of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty."

Examples of references to Treaty principles in legislation include section 6 of the Treaty of Waitangi Act 1975, which gives the Waitangi Tribunal jurisdiction to inquire into claims that actions or omissions of the Crown are "inconsistent" with "the principles of the Treaty of Waitangi". Section 9 of the State Owned Enterprises Act 1986 states that "nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi". To take yet another example, section 4 of the Crown Minerals Act 1991 states that the Act "shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi".

There are many other examples. There is considerable variety in wording: in some statutes an obligation to comply with the Treaty is phrased positively, in others negatively.

Given the tendency to refer to the "principles" of the Treaty rather than to the Treaty text, it has become necessary for the Courts and the Waitangi Tribunal to work out what those principles are. The most important discussion of this issue by the Courts is found in the judgment of the Court of Appeal in *New Zealand Māori Council v Attorney-General*, [1987] 1 NZLR 641. In this case, Court of Appeal President Cooke said that the task of interpretation "should not be approached with the austerity of tabulated legalism" and that a "broad, unquibbling and practical interpretation" was necessary (p. 661). In the same case, Justice Richardson noted that "regrettably, but reflecting the limited dialogue there has been on the Treaty, it cannot yet be said that there is broad agreement as to what those principles are" (p. 673).

The Court of Appeal emphasised that there were two core principles. These were "partnership" and "active protection". President Cooke said that "the Treaty signified a partnership between races, and it is in this concept that the answer to the present case has to be found" (p. 664).

Both the Courts and the Waitangi Tribunal have determined that the principle of partnership includes the obligation on both parties to act reasonably, honourably and in good faith. The Courts have found that Treaty partnership does not necessarily describe a relationship where the partners share national resources equally. The Courts have also found that an aspect of the obligation to act in good faith is a duty to make informed decisions through consultation (although the duty to consult is not absolute). The Waitangi Tribunal has emphasised the value and

utility of consultation in upholding and strengthening the Treaty partnership.

Also mentioned in the case was a principle of "redress of grievances", which, however, "is not justiciable in the Courts" (Justice Somers, at p. 693). The principle of redress was seen to arise from the partnership principle, and reflects the Crown's duty to take active and positive steps to redress Treaty breaches. It entails a fair and reasonable recognition and recompense for wrongdoing.

As to "active protection", President Cooke observed that "the duty of the Crown is not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable". This principle is located in the fundamental exchange recorded in the Treaty – the cession of sovereignty for the promise to respect

Māori authority over their own affairs and protect their resource rights; or, in the Māori text, the giving up of kawanatanga for the guarantee of tino rangatiratanga. This is sometimes described as the principle of reciprocity.

Since 1987, the Courts and the Waitangi Tribunal have developed a number of more detailed principles but the concepts of "partnership" and "active protection" have remained dominant. For a detailed list of the principles that have been developed see "He Tirohanga o Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi", Te Puni Kōkiri, Wellington, 2001 (<http://www.tpk.govt.nz/publications>).

Dame Whina Cooper and others in the public gallery of the Court of Appeal, at the hearing of the New Zealand Māori Council case. The Dominion Post, 5 May 1987.



Frequently Asked Questions

Frequently asked questions about the Treaty of Waitangi, the Declaration of Independence, and the signing of the Treaty.

What is the Treaty of Waitangi?

The Treaty of Waitangi is the founding document of New Zealand. It is an agreement drawn up between representatives of the British Crown and representatives of Māori iwi and hapū. It is named after the place in the Bay of Islands where the Treaty was first signed, on 6 February 1840, although, in fact, it was signed all over the country. The Treaty, like all treaties, is an exchange of promises between the parties to it. The Treaty is in two languages, Māori and English, but this is not exceptional, as most international treaties are in a number of languages, often more than two. But the precise nature of the exchange within the Treaty of Waitangi is a matter of debate, as the terms used in the surviving Māori and English texts do not mean quite the same thing. (To find out more, see pages 5-8.) The Treaty was intended by Great Britain to be an exchange of sovereignty in return for a guarantee of the authority of the chiefs and the protection of Māori land and resource rights. The Treaty also extended to Māori the same rights and privileges of British citizens.

The copy of the Treaty signed at Waitangi on 6 February 1840, although it has been damaged over the years, is on display at Archives New Zealand in Wellington, along with eight other Treaty sheets that have survived.



The Treaty of Waitangi - the Waitangi Sheet.
Archives New Zealand: IA 9/9.

What was the Declaration of Independence?

The Declaration asserted that all sovereign power and authority in the land resided with the chiefs. It requested that the King of England, "in return for the 'friendship and protection' Māori gave to British subjects in New Zealand", "continue to be the parent (matua) of their infant State and its Protector from all attempts upon its independence".

There is evidence that Busby drew up the Declaration without the authority of his superiors, using a perceived threat of French annexation to encourage the chiefs to sign. Some historians also suggest that the Colonial Office in London was by no means convinced that there was a viable political authority in New Zealand with which it could form diplomatic relations. Other historians, however, view the Declaration as an embryonic expression of Māori nationhood, irrespective of its original impetus. The Declaration was, however, formally acknowledged by the British Government in 1836, and a primary purpose of the Treaty of Waitangi was to revoke the Declaration, so as to permit the transmission of sovereignty to Queen Victoria.

James Busby.
Artist: Richard Read.

Private collection, courtesy ATL: NON-ATL-P-0065.



Why was the Treaty entered into?

The British Government was aware that its appointment of James Busby as British Resident was not adequate to control the lawlessness of its own citizens, Māori warfare, or the organised and orderly settlement of New Zealand. The British Government was also very concerned about land purchases from Māori by British subjects and other Europeans. To some extent, it was also concerned about the interest being taken by other foreign powers in New Zealand. It therefore appointed Captain William Hobson as Consul, and provided him with instructions to negotiate for the sovereignty of New Zealand and for the setting up of a British colony.

Missionary assurances that the Treaty would be of benefit to Māori may have been important in obtaining the agreement of the chiefs. However it also seems Māori had clear expectations of how the Treaty would bring benefits. A sharing of authority in the land would enhance the mana of the chiefs, and the country would be protected from acquisition by other foreign powers. A kawana (governor) would control Europeans, especially land buyers, who were causing problems in some areas. The Treaty would bring settlement and more markets for Māori produce and more goods to buy, and it would increase demand for Māori to provide services essential to settlement. Some chiefs also noted that circumstances had changed as a result of contact with Europeans, and that the clock could not be turned back.

The Treaty was not drafted as a constitution or a statute. Rather, it was a broad statement of principles upon which the British officials and Māori chiefs made a political compact or covenant to found a nation-state and build a functioning government in New Zealand to deal with pressing new circumstances.

Who signed the Treaty of Waitangi, where and when?

The Treaty was first presented to a meeting of around 500 Māori at Waitangi on 5 February 1840, and it was signed by over 40 chiefs on 6 February. It was then taken to Waimate North and to a major Hokianga meeting, where further signatures and marks were added. On 17 February, 200 copies of the Treaty were printed. A meeting by the Waitemata Harbour resulted in more signatures. Several manuscript copies of the Treaty were made in longhand and were widely circulated. There were about 50 meetings around the country over a seven-month period in 1840, starting in February and ending in September.

Over 500 chiefs gave their agreement on one of the nine Treaty copies that have survived. Most chiefs signed a Māori-language copy of the Treaty, except for 39 chiefs who signed an English-language version. (See page 5-8 for more on the differences between the two texts.)

What happened after the Treaty was signed?

In May 1840, Lieutenant-Governor Hobson proclaimed British sovereignty over the whole of New Zealand. His proclamations were ratified by the British Government in October of that year. Under British law, the effect was that New Zealand technically became a part of the colony of New South Wales. In late 1840 and early 1841, there were further constitutional changes, making New Zealand a separate Crown colony in its own right. In 1852, with the New Zealand Constitution Act 1852, Britain conferred responsible government on New Zealand. This set up a quasi-federal constitution, with a general government based in Auckland (later moved to Wellington) and a number of separate

provincial governments. The provincial governments were abolished in 1875 by an Act of the New Zealand parliament. At this point, the New Zealand constitutional and governmental system reached the same basic form as it is today. There have, however, been some further changes, such as the abolition of the British Government's power to legislate for New Zealand, and the abolition of the Legislative Council (the upper house of the New Zealand parliament). Items of constitutional significance are set out in the Constitution Act 1986.

The Treaty of Waitangi has never been made a formal part of the New Zealand constitutional system. Many statutes, however, refer to it and, in 1975, parliament enacted the Treaty of Waitangi Act. This established the Waitangi Tribunal as a means of inquiring into Māori claims relating to breaches of the Treaty.

Is the Treaty still valid today?

The status of the Treaty has evolved over time. Unlike many other countries, New Zealand does not have a constitution in the form of a single document, but it has a collection of common laws, customs and legislation that establish the framework of our government. Nevertheless, the Treaty was the initial agreement by which British authority was established here and was later transferred to the earlier settler parliament. In recent history, successive governments have recognised the importance of the Treaty in the life of the nation. In 1994, the Privy Council commented that the Treaty "is of the greatest constitutional importance to New Zealand". Similarly, New Zealand Courts have held similar views that attest to the continuing importance and relevance of the Treaty today.

Why are there Treaty of Waitangi claims?

Essentially, over the course of New Zealand's history since 1840, there have been actions taken by early governments that have resulted in the alienation of Māori land, waters, and other resources from their owners. Recent governments have recognised that the way this has occurred has often not been just, leaving a strong sense of grievance with the original owners and their descendants. Ever since the grievances occurred, there have been many attempts by Māori to have their grievances addressed, and some early governments made attempts to settle their claims. However, only some of those claims were addressed, and these attempts are now considered to have been inadequate.

In 1975, the Waitangi Tribunal was established as a permanent commission of inquiry to consider claims by Māori against the Crown regarding breaches of principles of the Treaty, and to make recommendations to government to remove the prejudice and provide recompense. Initially, it had the power to only hear claims relating to Crown actions after 1975.

The jurisdiction of the Waitangi Tribunal was extended in 1985 to cover Crown acts and omissions dating back to 1840. This has provided Māori with an important means to have their grievances against the actions of past governments investigated.

How does a historical claim get settled?

The Tribunal considers claims by individuals, usually on behalf of groups (whānau, hapū or iwi), and issues a report about the claim and the evidence provided in the inquiry. It may make recommendations, but it has no further involvement in the settlement process. The government may decide to settle a claim. If so, the Office of Treaty Settlements negotiates on behalf of the Crown with the claimants. Once claimants and the Crown agree on the terms of a settlement, they sign a Deed, and the Crown passes legislation in Parliament to give effect to it and remove the Tribunal's ability to inquire further into those claims. Settlement redress is then transferred to the claimants.

The Minister or Department responsible for the policy usually addresses the resolution of contemporary claims (those that relate to current or recent Government policies or practices).

Although Treaty breaches need to be proven, this does not have to be through a Waitangi Tribunal hearing. Some claimants may choose to negotiate directly with the Office of Treaty Settlements, without having a Tribunal hearing first.



Mr Charles Crofts and Sir Tipene O'Regan with other members of Ngāi Tahu at Parliament for the passage of the Ngāi Tahu settlement legislation, 1998. Photographed by Craig Simcox. ATL: EP/1998/3025/33 Dominion Post Collection.

How many claims are there?

At the time of writing (September 2005) there are 1294 claims lodged at the Waitangi Tribunal. These may be historical or contemporary, and they may relate to either specific pieces of land or a generic government policy. Any Māori can make a claim at the Tribunal, so many of the claims relate to the same group of people or events.

Rather than hearing individual claims one by one, the Tribunal groups them into District Inquiries. Claims within an Inquiry district are researched together, and once the research is ready, hearings are held at which claimants and the Crown give evidence. The Tribunal then writes a report on the claims in the district. The Waitangi Tribunal has set itself the goal of reporting on all historical claims by 2010 and all generic claims by 2012.

Although claims at the Tribunal can be about group or individual grievances, the Crown negotiates Treaty Settlements at the "large natural group" level.

All historical hapū and whānau claims within a larger group are addressed in one set of negotiations. Usually, when a settlement is negotiated, all the existing and potential historical claims made by that claimant group are settled. Once settlement legislation is passed, the Tribunal has no further power to hear historical claims made by that group.

The Office of Treaty Settlements has estimated that, depending on the number of "large natural groups" that form to negotiate Treaty settlements, the vast majority of claims could be resolved within 10 to 15 years.

Ngahinatūrae Te Uira and other members of the Waikato Tainui iwi, in the public gallery of Parliament, Wellington, to witness the enactment of the Waikato Tainui settlement.
Photographed by Craig Simcox.
ATL: EP/1995/4228/4a Dominion Post Collection.

