

Na, ho matou, ho nga Rangatira o te Whakamauanga
 roni, ka huihui nei ki Whaitangi. Ho matou hoki ho nga
 Tuarua ka hui nei i te piteinga o enei kaupua ka tangohia
 te hui o matou. Heia ka tohungia ai o matou ingoa o
 Na moitia tenei ki Whaitangi i te oao o nona ra o 30

Appendices

Wakia & his mark	May 20 th 1840
Patiki & his mark	June 4 th
Rangi-huatahi & his mark	June 14 th 1840
Kaupururanga & his mark	
Te-hiwari & his mark	
Kaumarama & his mark	
Werau & his mark	
Na Te Ra Pa	Record June 14 th
Tautari & his mark	
Ahokai & his mark	
Mata & his mark	
Taramatapa & his mark	
Tunoi & his mark	
Tupiri & his mark	Whaitangi June 16 th
Kaukakaia & his mark	
Piarari & his mark	
Matahohoa & his mark	
Reora & his mark	
Tupara & his mark	
Mohai & his mark	

Appendix One: legislation containing Treaty references

Legislation containing clauses requiring some action in respect of the Treaty

Conservation Act 1987 (section 4)
Crown Pastoral Land Act 1998 (section 25, section 84)
Crown Research Institutes Act 1992 (section 10)
Crown Minerals Act 1991 (section 4)
Education Act 1989 (section 181(b) (added 1990))
Energy Efficiency and Conservation Act 2000 (section 6)
Foreshore and Seabed Endowment Revesting Act 1991 (section 3)
Harbour Boards Dry Land Endowment Revesting Act 1991 (section 3)
Hauraki Gulf Marine Park Act 2000 (section 6)
Hazardous Substances and New Organisms Act 1996 (section 8)
New Zealand Public Health and Disability Act 2000 (section 4)
Resource Management Act 1991 (section 8)
State-Owned Enterprises Act 1986 (section 9)
Treaty of Waitangi Act 1975 (section 6 (1))

Legislation containing other Treaty references not amounting to a direction to act

Crown Forests Assets Act 1989
Education Lands Act 1949
Environment Act 1986 (long title)
Fisheries Act 1996
Legal Services Act 1991
Local Legislation Act 1989
Māori Fisheries Act 1989
Māori Language Act 1987
Ngāi Tahu Claims Settlement Act 1998
Ngāi Tahu (Pounamu Vesting) Act 1997
Ngāi Tahu (Tutaepatu Lagoon Vesting) Act 1998
Ngāti Tūrangitukua Claims Settlement Act 1999
Orakei Act 1991
Te Ture Whenua Māori (Māori Land) Act 1993
Treaty of Waitangi (Fisheries Claims) Settlement Act 1992
Treaty of Waitangi (State Enterprises) Act 1988
Waikato Raupatu Claims Settlement Act 1995
Waitutu Block Settlement Act 1997

Appendix Two: key government goals to guide public sector policy and performance



The primary purpose of this goal statement is to provide a clear frame of reference to the public sector. The statement enables Chief Executives and agencies to understand the Government's overall direction, so that they can actively progress policy and delivery guided by the longer-term results this Government wants to achieve. The goals will also provide an organizing framework that will assist Cabinet in prioritizing budget and legislative bids, as well as for monitoring the progress of key initiatives associated with each goal. The goals were agreed to by Cabinet on 21 February 2000.⁴⁶³

Strengthen national identity and uphold the principles of the Treaty of Waitangi

Celebrate our identity in the world as people who support and defend freedom and fairness, who enjoy arts, music, movement and sport, and who value our cultural heritage; and resolve at all times to endeavour to uphold the principles of the Treaty of Waitangi.

Grow an inclusive, innovative economy for the benefit of all

Develop an economy that adapts to change, provides opportunities and increases employment, and while closing the gaps, increases incomes for all New Zealanders.

Restore trust in government and provide strong social services

Restore trust in government by working in partnerships with communities, providing strong social services for all, building safe communities and promoting community development, keeping faith with the electorate, working constructively in Parliament and promoting a strong and effective public service.

Improve New Zealanders' skills

Foster education and training to enhance and improve the nation's skills so that all New Zealanders have the best possible future in a changing world.

Close the gaps for Māori and Pacific people in health, education, employment and housing

Support and strengthen the capacity of Māori and Pacific Island communities, particularly through education, better health, housing and employment, and better co-ordination of strategies across sectors, so that we may reduce the gaps that currently divide our society and offer a good future for all.

Protect and enhance the environment

Treasure and nurture our environment with protection for ecosystems so that New Zealand maintains a clean, green environment and rebuilds our reputation as a world leader in environmental issues.

Appendix Three: new principles to guide the settlement of historical Treaty claims



The following principles were adopted by the Government in July 2000 to guide it in negotiating settlements of historical claims under the Treaty of Waitangi.⁴⁶⁴ The six key principles are:

Good faith

The negotiating process is to be conducted in good faith, based on mutual trust and cooperation towards a common goal.

Restoration of relationship

The strengthening of the relationship is an integral part of the settlement process and will be reflected in any settlement. The settlement of historical grievances also needs to be understood within the context of wider government policies that are aimed at restoring and developing the Treaty relationship - for example, the Government's "Closing the Gaps" programme and the development of policy to address contemporary claims.

Just redress

Redress should relate fundamentally to the nature and extent of breaches suffered. This government has ensured the final abolition of the "fiscal envelope" policy of the former National Government, while maintaining a fiscally prudent approach. Existing settlements will be used as benchmarks for future settlements where appropriate. While the Government will continue to honour the relativity clause in the Tainui and Ngāi Tahu settlements, it will not be included in future settlements. The reason for this is that each claim is treated on its merits and does not have to be fitted under a predetermined fiscal cap, as was the case under National's policy.

Fairness between claims

There needs to be consistency in the treatment of claims. In particular "like should be treated as like" so that similar claims receive a similar level of fiscal redress.

Transparency

The Government will give consideration to how to promote greater understanding of the issues. First, it is important that claimants have sufficient information to enable them to understand the basis on which claims are settled. Secondly, there is a need to promote greater public understanding of the Treaty and the settlement process.

Government-negotiated

The Treaty settlement process is necessarily one of negotiation between claimants and the Government as the only two parties who can, by agreement, achieve durable, fair and final settlements. The Government's direct negotiation with claimants ensures delivery of the agreed settlement and minimises costs to all parties.

Appendix Four: relevant government publications



Public sector guides

In 1988 the Parliamentary Commissioner for the Environment published a report entitled *Environmental Management and the Principles of the Treaty of Waitangi: Report on the Crown's Response to the Recommendations of the Waitangi Tribunal 1983-1988*, which takes into account the principles of the Treaty in its environmental planning and management.

The Royal Commission on Social Policy (1988) did not seek to compile a definitive list of Treaty principles, rather it focussed on “three principles – partnership, protection, participation – [which it considered] crucial to an understanding of social policy and upon which the Treaty of Waitangi impacts”.⁴⁶⁵

In 1995 the State Services Commission issued a document entitled *The Public Service and the Treaty of Waitangi*, which provides an introduction to the law and issues concerning the Treaty of Waitangi, including discussion on the principles of the Treaty. This document is part of the Commission's guidance series: *Public Service Principles, Conventions and Practice*.

The Third Report of the Controller and Auditor-General for 1998 provides an audit model for public sector organisations aimed at processes necessary in delivering effective outputs for Māori. This model set out expectations on public sector organisations for strategic planning, policy advice and service delivery, human resources, structures and working environment, taking into account various factors including: the Treaty of Waitangi, the Crown's position on Treaty issues, government goals, Māori perspectives, and impacts on Māori.

In 1999 the Office of Treaty Settlements produced a practical guide entitled *Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Direct Negotiations with the Crown*.

Examples of other departmental guides or related reports

A report commissioned by the Ministry of Agriculture and Fisheries in 1990 entitled *The Impact of the Treaty of Waitangi on Government Agencies*, which takes account of activities relating to the Treaty up to March 1990.

A guide entitled *Resource Management: Consultation with Tangata Whenua* produced in 1991 and a paper entitled *Taking into Account*

the Principles of the Treaty of Waitangi: Ideas for the Implementation of Section 8, Resource Management Act 1991 produced by the Ministry for the Environment in 1993 to assist local authorities, policy makers and planners in meeting Treaty obligations under the Resource Management Act 1991.

Māori Participation – Strategies for Government Departments produced by the State Services Commission in 1993.

A Guide for Departments on Consultation with Iwi, offering guidelines for formulating consultation mechanisms appropriate to a situation, produced by Te Puni Kōkiri in 1993.

A Guide for Consultation with Māori, a set of guidelines on consulting with Māori for staff of the Ministry of Justice produced by the Ministry in 1997.

Cultural Audit and Review of the Lottery Network: Responsiveness to Māori and Recognition of the Principles of the Treaty of Waitangi, Wellington, Department of Internal Affairs, 1997.

Consultation and Engagement with Māori: Guidelines for the Ministry of Education produced by that Ministry in 1999.

A booklet entitled *Better Relationships for Better Learning*, guidelines for Boards of Trustees and Schools on engaging with Māori parents, whānau, and communities and produced by the Ministry of Education in 2000.

Talking Constructively: A Practical Guide for Local Authorities on Building Agreements with Iwi, Hapū and Whānau produced by the Ministry for the Environment in 2000.

Cabinet Manual

The *Cabinet Manual*⁴⁶⁶ is the authoritative guide to central government decision making, for those working within government. It is also a primary source of information for those outside government on constitutional and procedural matters. Successive governments have recognised the need for a Cabinet Manual, to provide the basis on which they will conduct themselves while in office. The endorsement of the Manual is an item on the agenda of the first Cabinet meeting of a new government, to provide for the orderly re-commencement of the business of government. It was recently updated in 2001 to reflect the evolution of coalition government under proportional representation.

The overview section of this guide (which considers the constitutional significance of the Treaty of Waitangi) refers to requirements in the *Cabinet Manual* relating to cabinet proposals that have legislative implications, including those which have implications for or, may be affected, by the principles of the Treaty of Waitangi.

The *Step by Step Guide: Cabinet and Cabinet Committee Processes*⁴⁶⁷ (a companion guide to the *Cabinet Manual*) sets out processes approved by Cabinet for Cabinet and its committee. It currently requires that, where necessary, submissions to Cabinet should include sections on financial and legislative implications, human rights issues, and gender implications. While there is no requirement for a section on Treaty implications, there are, as noted above, requirements in the *Cabinet Manual* concerning cabinet proposals that have legislative implications for Treaty principles .

Appendix Five: organisational expertise

Government departments

The following departments have key government advisory functions in respect of Treaty issues.

Te Puni Kōkiri – Ministry of Māori Development

The Ministry of Māori Development Act 1991 established Te Puni Kōkiri, the Ministry of Māori Development, in 1992. The functions of Te Puni Kōkiri are set out in this Act and have since been enhanced to assist the Government in achieving its objectives for Māori. Te Puni Kōkiri currently provides policy advice to the Government and other agencies; provides some services to assist whānau, hapū, iwi and Māori achieve their development aims; audits programmes delivered by iwi or other Māori authorities and those delivered by mainstream agencies; works with other government departments to ensure that mainstream programmes work to eliminate social inequality and monitors progress towards Māori development targets.

In addition to its other functions, Te Puni Kōkiri provides policy advice on the Crown's relationship with iwi, hapū, and Māori, and the Government's objectives, interests and obligations concerning Māori, including Treaty of Waitangi obligations. This advice is informed by the Ministry's Treaty Framework. Te Puni Kōkiri is responsible for developing advice on Treaty settlement policies, on specific claims, on claimant representation and mandate, on cultural heritage and international indigenous issues, and the Crown's obligations under the Treaty of Waitangi. The Ministry also provides advice to the Minister of Māori Affairs and to other agencies on Treaty issues and Māori interests arising in proposed legislative reforms or initiatives, legislative reviews, and legislative administration. In addition, it offers expertise in designing and managing consultation processes with Māori and, through its Regional Offices, in managing the Crown-Māori relationship at a local level.

The Office of Treaty Settlements

The primary functions⁴⁶⁸ of the Office of Treaty Settlements (OTS) are to:

- negotiate on behalf of the Crown the settlement of historical grievances under the Treaty of Waitangi;
- implement settlements that have been reached; and
- administer the Protection Mechanism for surplus Crown land (a

function formerly administered by Land Information New Zealand).

OTS is also responsible for:

- managing the portfolio of land and property that is set aside for possible use in future settlement packages, known as land banks; and
- providing generic and claim-specific advice relating to representation, mandating issues and processes, advising on Crown positions on types of outstanding historical Treaty claims and liaising with other agencies on new policy issues arising out of specific Treaty claim negotiations.

Crown Law Office

The Crown Law Office operates as a government department with the Solicitor-General as its Chief Executive. It provides legal advice and representation to the government in matters affecting the Crown, and in particular, government departments. It has two primary aims. First, to ensure that the operations of executive government are conducted lawfully and second, to ensure that the Government is not prevented, through the legal process, from lawfully implementing its chosen policies.

The Crown Law Office is organised into nine specialist teams, which provide legal advice and litigation services in the area of criminal, public and administrative law. The Treaty Issues and International Law Team work on the legal and historical issues relating to the Treaty of Waitangi. This work includes: claims made to the Waitangi Tribunal general advice to ministries and departments on Treaty issues, and involvement in the Treaty settlement process. It also represents the government before the Waitangi Tribunal and the Courts. In recent years, developments in the impact of New Zealand's international obligations on New Zealand law have provided another area of responsibility for the team.

The Crown Law Office maintains a Register of Crown Commitments in Treaty Litigation. The Register contains a brief description of commitments given by the Crown to the Courts and to Māori in litigation concerning the Treaty, together with a copy of the documentation relating to the commitments.

Ministry of Justice

The Ministry of Justice provides strategic and policy advice across the justice sector. Justice policy is based primarily on a concern for the

rights and responsibilities of the individual in regard to his/her relationships with other individuals, communities and the State. It is also concerned with advice on fundamental constitutional matters such as: rights, the body of law and democratic processes, and the relationships between Treaty partners.

The Treasury

As the Government's lead agency on economic policy, the Treasury is responsible for managing the public purse and providing advice on how to get the best quality and value out of public spending. It is also responsible for developing strategic advice for the Treasury Ministers and Cabinet on the future shape and direction of New Zealand's economy. The Treasury is one of three central agencies (along with the Department of the Prime Minister and the Cabinet and the State Services Commission) responsible for coordinating and managing public sector performance. In particular, the Treasury provides sectoral policy advice on issues affecting Māori and strategic advice on the management and negotiation of generic policy for Treaty of Waitangi claims. Treasury's role in the settlement of historical Treaty claims is to monitor the fiscal and commercial aspects of settlement (this includes the quantum and Crown properties that comprise the total fiscal redress), and to assess any associated risks.⁴⁶⁹

The Department of Conservation

The primary role of the Department of Conservation is to protect and restore New Zealand's natural and historic heritage in those places set aside by the Government for this purpose. The Department's mission is "to conserve New Zealand's natural and historic heritage for all to enjoy now and in the future". The Department acknowledges that in order to achieve this mission, it needs to focus on conservation partnerships, or partnerships with the community. The practical expression of a Treaty partnership with iwi Māori is a key consideration for the Department in establishing and maintaining this concept of conservation partnerships.

Section four of the Conservation Act 1987 requires that the Act is to be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi. Section four also applies to other legislation administered by the Department. A Court of Appeal judgment in *Ngai Tahu Māori Trust Board v Director-General of Conservation* (1995) 3 NZLR 553 stated that: "section [four] applies to the Acts in the First Schedule (including their dependent Regulations) except to the extent that it may be inconsistent with the specific legislation".

There are Treaty claims against much of the land and many of the resources administered by the Department. While the Office of Treaty Settlements has primary responsibility for the Treaty Settlements process, the Department of Conservation makes a significant contribution to Crown teams working on the preparation, negotiation and implementation of Treaty Settlements.

Judicial and quasi-judicial bodies

The Waitangi Tribunal

The Tribunal was established in 1975 as a permanent commission of inquiry to investigate claims by Māori against the Crown for breaches of the principles of the Treaty in government legislation, policies and practices, and to report its findings and any recommendations to the Crown. The role of the Tribunal is set out in the Treaty of Waitangi Act 1975 which deals with actions or omissions of the Crown from 1975. The Treaty of Waitangi Amendment Act 1985 extended the Tribunal's jurisdiction to include historical claims dating back to 1840. The Tribunal's role may include examining and reporting on any proposed legislation referred to it by the House of Representatives or a Minister of the Crown; and making recommendations or determinations in respect of certain Crown forest land, railways land, State-owned enterprise land, and land transferred to educational institutions.

The Tribunal has exclusive authority, for the purposes of the Act, to determine the meaning and effect of the Treaty. Under the Act, the Tribunal must consider both the Māori and English texts when interpreting the meaning and effect of the Treaty and decide issues raised by the differences between them.

The Tribunal consists of 16 members appointed by the Governor-General on the recommendation of the Minister of Māori Affairs. It also has a chairperson, who is either a judge or a retired judge of the High Court or the chief judge of the Māori Land Court, and a deputy chairperson, who is a judge of the Māori Land Court. Approximately half the members are Māori and half are Pākehā.

The Tribunal is supported in its role by the Department for Courts, through the Waitangi Tribunal Business Unit, which provides administrative, research, and support services.

Māori Land Court

The Māori Land Court and Māori Appellate Courts are constituted under the Te Ture Whenua Māori Act 1993 (the Act) and have jurisdiction to hear matters relating to Māori land. The function of the Māori Land Court is to contribute to the administration of Māori land, the preservation of taonga Māori and the promotion of the management of Māori land by its owners. The Māori Land Court has a variety of functions under the Act, including the power to:

- call meetings of owners to consider alienation of use of Māori land;
- make vesting orders on succession in certain circumstances to those proved entitled to succeed to a deceased owner of Māori freehold land;
- appoint trustees for persons under disability;
- grant partition orders and vesting orders transferring or gifting land or interests in land under section 164 of the Act;
- make orders creating incorporation of Māori land owners under section 247 of the Act;
- confirm the alienation of Māori land under section 326 of the Te Ture Whenua Māori Act 1993;
- appoint trustees to carry out certain functions for the benefit of the beneficial owners;
- make charging orders in respect of rates owing; and
- appoint agents for various purposes.

The Māori Appellate Court is a court of record originally constituted under the Māori Land Court Act 1894. It hears appeals from the Māori Land Court.

The Environment Court

The Environment Court, formerly called the Planning Tribunal, is constituted by the Resource Management Amendment Act 1996. It is a court of record consisting of Environment Judges (who are also District Court Judges) and Environment Commissioners. The Court is not bound by the rules of evidence and the proceedings are often less formal than the general courts. In addition to the Resource Management Act, this Court has jurisdiction under the Public Works Act; Historic Places Act; Forests Act; Local Government Act; and the Transit New Zealand Act. The Environment Court's work covers a wide range of natural resource issues in which Māori have an interest, and includes interpretation and enforcement of the provisions of the Resource Management Act 1991 which refer to the Treaty, to Māori cultural and spiritual issues, and the relationship of Māori with their ancestral land.

Other bodies

The Human Rights Commission

The Human Rights Commission is a statutory body that administers the Human Rights Act 1993 (the Act). The Act is intended to provide for the protection of human rights in New Zealand, and empowers the Commission to:

- promote, by education and publicity, respect for and observance of human rights;
- conciliate and/or investigate complaints of unlawful discrimination.

The advisory functions of the Commission include making public statements, receiving representations and advising and reporting on “any matter affecting human rights”, including the desirability of legislative, administrative, or other action to give better protection to human rights and to ensure better compliance with standards laid down in international instruments on human rights. The Commission also has a complaints jurisdiction under the Act, by which it is empowered to hear applications from persons claiming that their rights under the Act have been violated. The Commission has both mediative and quasi-judicial functions.

The Office of the Race Relations Conciliator

The Office of the Race Relations Conciliator administers the race provisions of the Human Rights Act 1993 and is mandated to investigate, and attempt to resolve, complaints of racial discrimination when these occur in the areas of employment, training, housing, education, access to public places and the provision of goods, services and facilities. Racial harassment and racial disharmony can also be unlawful.

The Conciliator also has the responsibility, through the general provisions of the Human Rights Act 1993, to respond to broader issues to do with race and race relations. These include addressing institutional racism; promoting positive race relations through education and public promotions; monitoring and providing advice on policies affecting race relations and commenting on the implications of any relevant proposed legislation.

The Law Commission

The Law Commission is an independent, government-funded organisation, established by statute in 1985, which reviews areas of the law that need updating, reforming or developing. It is funded to

investigate and report to the Minister of Justice on how New Zealand laws can be improved, and makes recommendations to Parliament. The Law Commission's goal is to achieve law that is just, principled, accessible, and reflects the heritage and aspirations of the peoples of New Zealand. The Commission also assists government departments and Crown entities in reviews of the law and is regularly called on to assist parliamentary select committees. Over the years, the Commission has undertaken work to give effect to Māori values in the laws of New Zealand, including for example, questions about the status of Māori custom in New Zealand law. The Commission has produced a number of relevant publications including: *Justice: The Experiences of Māori Women: Te Tikanga o te Ture Te Matauranga o nga Wahine Māori e pa ana ki teni* (1999); *Coroners* (2000); *Determining Representation Rights under Te Ture Whenua Māori Act 1993: An Advisory Report for Te Puni Kōkiri* (March 2001); and *Māori Custom and Values in New Zealand* (2001). The latter study paper includes discussion on indigenous custom law and the doctrine of aboriginal rights, and Māori custom law and the Treaty of Waitangi.

The Crown Forestry Rental Trust

The Crown Forestry Rental Trust (CFRT) was established under the Crown Forest Assets Act 1989. It is an independent Trust that receives the rental proceeds from licensees of Crown forest land (through Land Information New Zealand). CFRT invests the rental proceeds, holding the funds in trust until ownership of the land is confirmed. CFRT uses the interest earned from the investment of rental proceeds to assist Māori claimant communities in preparing, presenting and negotiating Treaty of Waitangi claims that involve, or could involve, certain Crown forest land.

CFRT's vision is to enhance the capacity within Māori communities to achieve their desired outcomes from Treaty claims. Its mission is to work with Māori to provide support and services to achieve high levels of efficiency and effectiveness in the resolution of their claims through enhanced capabilities and skills and the design of effective organisations.

Te Ohu Kai Moana - The Treaty of Waitangi Fisheries Commission

In 1989 and 1992, Māori and the Crown agreed to a settlement in which ownership of a significant portion of New Zealand's commercial fisheries was returned to Māori. This settlement was aimed at redressing Treaty of Waitangi grievances in respect of commercial fisheries. The fisheries assets are the result of a 1989 interim settlement

and a 1992 final settlement and are vested with the Treaty of Waitangi Fisheries Commission.

The Commission (Te Ohu Kai Moana) is responsible for getting Māori into the business and activity of fishing. It is also required to develop a method for allocating the assets to Iwi, ultimately for the benefit of all Māori. The value of the assets has increased significantly under Te Ohu Kai Moana management. Te Ohu Kai Moana is governed by two main pieces of legislation: the Māori Fisheries Act 1989 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

Appendix Six: international instruments

A number of New Zealand's international commitments impact on the Crown-Māori relationship and the interests of Māori. In particular those dealing with matters such as:

- Intellectual and cultural property
- Foreign investment and trade
- Genetic resources
- Indigenous flora and fauna
- Natural physical resources
- Human rights
- Language and culture
- Indigenous rights
- Kōiwi tangata and mokomokai
- Immigration

Relevant international instruments include the following. These include agreements to which New Zealand is a party along with other instruments which remain in draft form or to which New Zealand is not a party.

- The International Covenant on Civil and Political Rights, including especially Article 27 (and the First Options Protocol)
- The International Covenant on Economic, Social and Cultural Rights
- The International Convention on the Elimination of All Forms of Discrimination Against Women (and the Optional Protocol)
- The Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Rights of the Child
- Convention on Biological Diversity
- World Trade Agreement (including General Agreement on Tariffs and Trade, General Agreement on Trade in Services, and Trade-related Aspects of International Property Rights (TRIPS)
- Convention Against Illegal Trade and Endangered Species
- Draft United Nations Declaration on the Rights of Indigenous Peoples
- International Labour Organisation Convention 169 on Indigenous and Tribal Peoples
- UNCED Agenda 21 and associated statements
- Multilateral Agreement on Investment (MAI)

Appendix Seven: glossary of Māori terms



This glossary seeks to provide the reader with translations that relate to the context in which Māori words are used in the guide, recognizing that words may have multiple meanings.

Some meanings of *kāwanatanga*, *tino rangatiratanga*, and *taonga* are discussed in detail in the sections on Historical Background and Key Concepts in the Treaty Exchange, and are therefore not translated here. Likewise, the term *mana* is also discussed in the Historical Background section of the guide and is not translated here.

<i>Haka</i>	posture dance
<i>Hapū</i>	collection of families with common ancestry and common ties to land
<i>Iwi</i>	nation, people, collection of hapū
<i>Kaitiakitanga</i>	the practice of guardianship
<i>Kōiwi tangata</i>	repatriated remains, bones
<i>Mahinga kai</i>	places where food was gathered
<i>Māori</i>	indigenous person/s or descendant of indigenous person/s of New Zealand
<i>Marae</i>	village courtyard; the spiritual and symbolic centre of tribal affairs
<i>Mātauranga Māori</i>	knowledge of things Māori
<i>Maunga</i>	mountain
<i>Mauri</i>	life principle or life force
<i>Mokamokai</i>	dried human head
<i>Ngā tikanga katoa</i>	all customs
<i>Pākehā</i>	European (not Māori)
<i>Pukapuka</i>	usually refers to a book; used here to refer to the Treaty of Waitangi
<i>Rangatira</i>	chief or leader
<i>Raupatu</i>	the confiscation of land
<i>Rūnanga</i>	council
<i>Tangata whenua</i>	person or people of a given place
<i>Te Ohu Kai Moana</i>	Treaty of Waitangi Fisheries Commission
<i>Te Puni Kōkiri</i>	Ministry of Māori Development
<i>Te reo</i>	the (Māori) language
<i>Tikanga</i>	custom(s)
<i>Tohunga</i>	expert
<i>Wānanga</i>	modern tertiary education providers based on an ancient Māori institution of advanced learning known as <i>whare wānanga</i>
<i>Whānau</i>	family
<i>Whenua</i>	land

Appendix Eight: bibliography

Court cases

R v Symonds [1847] NZPCC 387

Wi Parata v the Bishop of Wellington and the Attorney-General [1877]
3 NZ Jur (NS) SC 72

Nireaha Tamaki v Baker [1901] NZPCC 371

Hohepa Wi Neera v Bishop of Wellington [1902] 21 NZLR 655

Wallis v Solicitor-General [1903] AC 173

Te Heu Heu Tukino v Aotea District Māori Land Board [1941] AC
308 (PC)

Taylor v New Zealand Poultry Board [1984] 1 NZLR 394 (CA)

Te Weehi v Regional Fisheries Officer [1986] 1 NZLR 680 (HC)

Huakina Development Trust v Waikato Valley Authority [1987] 2 NZLR
188 (HC)

New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641
Lands (CA)

*New Zealand Fishing Industry Association v Minister of Agriculture
and Fisheries* [1988] 1 NZLR 544 (CA)

Kohu v Police [1989] 5 CRNZ 194 (HC)

New Zealand Māori Council v Attorney-General [1989] 2 NZLR 142
Forests (CA)

Tainui Māori Trust Board v Attorney-General [1989] 2 NZLR 513 Coal
(CA)

Kaihau v Inland Revenue Department [1990] 3 NZLR 344 (HC)

Te Rūnanga o Muriwhenua Inc v Attorney-General [1990] 2 NZLR
641 (CA)

Attorney-General v New Zealand Māori Council [1991] 2 NZLR 129
Radio Frequencies No 1 (CA)

Attorney-General v New Zealand Māori Council [1991] 2 NZLR 147
Radio Frequencies No 2 (CA)

Berkett v Tauranga District Court [1992] 3 NZLR 206 (HC)

New Zealand Māori Council v Attorney-General [1992] 2 NZLR 576
Broadcasting (CA)

Te Rūnanga o Wharekauri Rekohu v Attorney-General [1993] 2 NZLR
301 *Sealords* (CA)

Wellington International Airport Ltd v Air New Zealand [1993] 1 NZLR
671 (CA)

*Wellington Rugby Football Union Incorporated v Wellington City
Council* [1993] 30 September, unreported, W84/93 (PT)

Hanton v Auckland City Council [1994] NZRMA 289 (HC)

New Zealand Māori Council v Attorney-General [1994] 1 NZLR 513
Broadcasting Assets (PC)

Ngāti Kahu v Tauranga District Council [1994] NZRMA 481 (EC)

Ngātiwai Trust Board v Whangarei District Council [1994] NZRMA
269 (EC)

Quarantine Waste (NZ) Ltd v Waste Resources Ltd [1994] NZRMA
529 (HC)

Rural Management Limited v Banks Peninsula District Council [1994]
NZRMA 412 (EC)

Taiaroa and Others v Attorney-General [1994] 4 October, unreported,
CP No 99/94 (HC)

Te Rūnanganui o Te Ika Whenua Inc Society v Attorney-General [1994]
2 NZLR 20 *Dams* (CA)

Ngāi Tahu Māori Trust Board v Director-General of Conservation
[1995] 3 NZLR 553 *Whales* (CA)

R v Pairama [1995] 13 CRNZ 496

Taiaroa v Minister of Justice [1995] 1 NZLR 411 *Māori Electoral Option*
(CA)

New Zealand Māori Council v Attorney-General [1996] 3 NZLR 140
Radio NZ (CA)

R v Fuimaono [1996] 24 October, unreported, 159/96 (CA)

Te Rūnanga o Tauramere v Northland Regional Council [1996]
NZRMA 77 (PT)

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179 (HC)

Mason-Riseborough v Matamata-Piako District Council [1997] 11
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Appendix Nine: footnotes

- 1 Kawharu (ed.), *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi* (1989) p 321.
- 2 *Lands* (CA) [1987] at 662–663.
- 3 Kawharu (ed.), *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi* (1989) pp 320-21.
- 4 Elias, “Treaty of Waitangi and the Separation of Powers” in Gray and McClintock (ed.) *Courts and Policy: Checking the Balance* (1995) p 206. See also *Whiti Te Ra Kaihau v New Zealand Police* (HC) [2000] at 4: “... the Treaty of Waitangi while underpinning the Government’s decision to annex New Zealand is not in fact the basis in law on which the Government has legal authority. Its authority arises from the Proclamation of Sovereignty”. See also *M W Manukau and Others v Attorney-General* (HC) [2000] at 4.
- 5 See the *Broadcasting Assets* (PC) [1994] at 517, where Lord Woolf of the Privy Council confirmed that: “... the obligations of her Majesty, the Queen of England, under the Treaty of Waitangi were now those of the Crown in the right of New Zealand”.
- 6 Increasingly, elements of New Zealand’s constitution are set out in legislation. Examples are the Constitution Act 1986, the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and arguably the Treaty of Waitangi Act 1975 (establishing the Waitangi Tribunal).
- 7 Palmer and Palmer, *Bridled Power: New Zealand Government under MMP* (1997) p 287.
- 8 Waitangi Tribunal, *Ngāi Tahu Report* (1991) p 224.
- 9 *Broadcasting Assets* (PC) [1994] per Lord Woolf at 516.
- 10 Boast, “The Treaty of Waitangi” in *Māori Land Law* (1999) p 272.
- 11 *Huakina Development Trust v Waikato Valley Authority* (HC) [1987] at 210.
- 12 Now Lord Cooke of Thorndon.
- 13 Cooke, “Introduction” in *New Zealand University Law Review* (1990) p 1.
- 14 *Sealords* (CA) [1993] at 308-309. Elsewhere in this case at 305, it was noted: “In [the *Coal* case (1989)], as in the lands and the forests cases, the basic arguments did not go beyond s 9 of the State-Owned Enterprises Act and more fundamental questions of the place of the Treaty in the New Zealand constitutional system were left open ... Such dicta bearing on the wider questions as are to be found in these or other cases of recent times can be no more than obiter, for the subject of the foundations of the New Zealand constitutional system remains unargued, except that occasionally (as in the present case) it has been lightly touched on, and there is no need for or advantage in trying to embark on that profound subject in this judgment”.
- 15 *Lands* (CA) [1987] per Casey J at 703.
- 16 Pool, *Te Iwi Māori* (1991) p 61; see also pp 237-238.
- 17 See, for example, Belich, *Making Peoples: A History of the New Zealanders – From Polynesian Settlement to the End of the Nineteenth Century* (1996) chapter 7, especially pp 194, 202; Orange, *The Treaty of Waitangi* (1987) pp 46, 58; and Brookfield, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation* (1999) pp 89, 103-105.
- 18 *Lands* (CA) [1987] per Cooke P at 656.
- 19 *Lands* (CA) [1987] per Casey J at 702-703.
- 20 *Lands* (CA) [1987] per Cooke P at 663.
- 21 *Te Rūnanga o Muriwhenua Inc v Attorney-General* (CA) [1990] per Cooke P at 655.

- 22 *Coal* (CA) [1989] per Cooke P at 530.
- 23 Waitangi Tribunal, *Motunui-Waitara Report* (1983) p 52; see also
Richardson J in *Lands* (CA) [1987] at 673: “[The Treaty] must be
capable of adaptation to new and changing circumstances as they arise”.
- 24 Waitangi Tribunal, *Motunui-Waitara Report* (1983) p 52.
- 25 *Key Government Goals to Guide Public Sector Policy and Performance*,
DPMC refers, 22 February 2000; see Appendix Two.
- 26 *Cabinet Manual* (2001) chapter 5 (Legislation and the Executive)
section 5.35 (Compliance with Legal Principles and Obligations) pp
68-69.
- 27 For a discussion of the significance of these requirements, see Joseph,
“Constitutional Review Now” in *New Zealand Law Review* (1998) p 90.
- 28 In practice, there are a number of important conventions, or customs,
to which Parliament adheres in exercising its powers. These are political
constraints on Parliament that go to the core of its legitimacy of law-
making. In practice, many argue, there are certain acts which
Parliament will not undertake, even though it is technically capable of
them, and some indications from the Courts that they would not
enforce legislation which violated certain fundamental rights. See
Taylor v New Zealand Poultry Board (CA) [1984] per Cooke J (as he
then was) at 398.
- 29 This was explicitly recognised in *Lands* (CA) [1987] at 655-656, where
President Cooke said that: “The Court will not ascribe to Parliament
an intention to permit conduct inconsistent with the principles of the
Treaty”. See also *Coal* (CA) [1989] per Cooke P at 518.
- 30 See the comments of Cooke P in *Whales* (CA) [1995] at 558: “Statutory
provisions for giving effect to the principles of the Treaty of Waitangi
in matters of interpretation and administration should not be narrowly
construed ... at least to the extent that the provisions of the [relevant
Act are] not clearly inconsistent with those principles”. See also Joseph,
“Constitutional Review Now” in *New Zealand Law Review* (1998) p 90;
Boast, “Māori Land Law and the Treaty of Waitangi” in Boast, Erueti,
McPhail, Smith, *Māori Land Law* (1999) p 273; and Burrows, *Statute
Law in New Zealand*, (1999) p 302.
- 31 *Lands* (CA) [1987] per Somers J at 691.
- 32 *Lands* (CA) [1987] per Richardson J at 668.
- 33 Burrows, *Statute Law in New Zealand* (1999) pp 300-301.
- 34 *Te Heu Heu Tukino v Aotea District Māori Land Board* (PC) [1941] at
324.
- 35 In *Lands* (CA) [1987] Cooke P said of the *Te Heu Heu Tukino* case at
667: “That judgment represented wholly orthodox legal thinking, at
any rate from a 1941 standpoint ...”. See also the comments made by
McGechan J in *Taiaroa and Others v Attorney-General* (HC) [1994] at
19: “The Treaty does not in itself give rise to legal rights enforceable in
this Court. Perhaps that will change some day, but for the moment I
am bound by *Te Heu Heu Tukino v Aotea District Māori Land Board*
...”.
- 36 *Broadcasting* (CA) [1992] per McKay J at 603; see also *Broadcasting
Assets* (PC) [1994] per Lord Woolf at 515, where the Privy Council
noted that: “... the appellants [had] not attempted to challenge or
avoid the decision of the Privy Council in *Te Heu Heu* case ...”.
- 37 Keith, “The Treaty of Waitangi in the Courts” in *New Zealand
Universities Law Review* (1990) p 47.
- 38 *Ibid.*, p 45.
- 39 Joseph, “Constitutional Review Now” in *New Zealand Law Review*
(1998) p 85.
- 40 See President Cooke’s comments in *Lands* (CA) [1987] at 655: “... ”

- other issues, however important and interesting in themselves, are probably better left free of crumbs of dicta. For example, whether the Treaty of Waitangi has a status in international law; what are the principles for interpreting international treaties ... These are big questions, not sensibly to be answered by an individual Judge's impressions based on argument and materials touching but not closely focussed on them".
- 41 See, for example, the conclusions drawn by Joseph, *Constitutional and Administrative Law in New Zealand* (1993) pp 43-46. In particular his comment on p 45: "The status of the Treaty must be assessed according to those customary rules of international law ascendant at the time. And these rules withheld from tribal societies juridical standing – at least for a cession of sovereignty and not some lesser estate approximating to derivative roots of title". Compare to the comments of Kingsbury, "The Treaty of Waitangi: Some International Law Aspects" in Kawharu (ed.), *Waitangi: Māori and Pākehā Perspective of the Treaty of Waitangi* (1989) pp 121ff. In addressing the assertion that the Treaty of Waitangi was a nullity and of no international legal significance, Kingsbury states on pp 121-122: "As a matter of international law, this proposition is clearly untenable. The Treaty was a valid international treaty of cession, and the parties in 1840 were recognised as having the necessary legal capacity to enter into such a treaty. This is clear from an examination of the general context of British policy towards indigenous peoples in the 1830s and 1840s, the specific instructions given by the British Government to her emissaries to New Zealand, the attitude taken by France and the United States as third party States directly interested, and subsequent international arbitral decisions".
- 42 For a discussion of relevant international legal principles, see Kingsbury, "The Treaty of Waitangi: Some International Law Aspects" in Kawharu (ed.), *Waitangi: Māori and Pākehā Perspective of the Treaty of Waitangi* (1989) p 121.
- 43 See the following Waitangi Tribunal Reports: *Motunui-Waitara Report* (1983) pp 47-49; *Orakei Report* (1987) pp 148-149.
- 44 See Articles 26 and 31(1) of the *Vienna Convention on the Law of Treaties*. Note that in the *Lands* case (CA) [1987] Richardson J at 682 refers to a statement from a Canadian judge on the international legal principle of good faith, which includes reference to the Vienna Convention articles.
- 45 See the discussion in *Lands* (CA) [1987] per Richardson J at 682.
- 46 See the following Waitangi Tribunal Reports: *Motunui-Waitara Report* (1983) pp 47-49; *Manukau Report* (1985) p 65; *Orakei Report* (1987) pp 148-149; *Ngāti Rangiteaorere Report* (1990) p 47; *Mohaka River Report* (1992) p 34.
- 47 Waitangi Tribunal, *Manukau Report* (1985) p 65.
- 48 See the discussion in Keith, "The Tribunal, The Courts and The Legislature" in *Treaty Settlements, the Unfinished Business* (1995) pp 43-44.
- 49 *Broadcasting* (CA) [1992] at 598.
- 50 *Radio Frequencies No 1* (CA) [1991] per Cooke P at 136.
- 51 See Appendix One for a current list of legislation with Treaty references.
- 52 Such as any provisions to which the Treaty clause might directly relate, or which indicated Parliament's intentions in enacting a Treaty reference, or which elevated the significance of other features of the statute (for example, the paramount objective of conservation in the Conservation Act).
- 53 *Lands* (CA) [1987] per Cooke P at 667.
- 54 Treaty of Waitangi (State Enterprises) Act 1988, section 4 and section 9.

- 55 *Whales* (CA) [1995] at 554.
- 56 *Ibid.*, at 553 and 558.
- 57 See *Lands* (CA) [1987]; *Coal* (CA) [1998]; and *Forests* (CA) [1989].
- 58 The Solicitor-General’s opinion, in *The Crown’s Obligations Under the Treaty of Waitangi as at 1992*, Memorandum for Cabinet Strategy Committee, New Zealand Solicitor General, 8 May 1992, p 20.
- 59 In the *Ngāwhā Geothermal Resources Report* (1993), the Waitangi Tribunal considered the meaning of section eight of the Resource Management Act 1991, noting on p 145 that the section does not compel compliance with the Treaty and so in the Tribunal’s view does not go far enough to protect Māori interests. The Tribunal considered that: “Implicit in the requirement to ‘take into account’ Treaty principles is the requirement that the decision-maker should weigh such principles along with other matters required to be considered, such as the efficient use and development of geothermal resources. It is difficult to escape the conclusion that the Crown in promoting this legislation has been at pains to ensure that decision-makers are not required to act in conformity with, and apply, relevant Treaty principles. They may do so, but they are not obliged to do so. In this respect the legislation is fatally flawed”. For further discussion on the application of section eight in jurisprudence concerning the Resource Management Act 1991, see the later section in this guide on Treaty principles which refers to the duty to make informed decisions.
- 60 *The Crown’s Obligations Under the Treaty of Waitangi as at 1992*, Memorandum for Cabinet Strategy Committee, New Zealand Solicitor General, 8 May 1992, p 20.
- 61 *Ibid.*, pp 15-19.
- 62 Sections of the Children, Young Persons and Their Families Act 1989 refer to the interests of whānau, hapū and iwi in respect of the welfare of their children, and the child’s corresponding interest in remaining with their whānau, hapū or iwi. See in particular sections 5 and 13.
- 63 *Barton-Prescott v Director-General of Social Welfare* (HC) [1997] at 184.
- 64 *Ibid.*, at 184.
- 65 Now called the Environment Court.
- 66 *Huakina Development Trust v Waikato Valley Authority* (HC) [1987] at 210.
- 67 It should be noted that although the *Huakina Development Trust v Waikato Valley Authority* case was decided by the High Court in 1987, the subsequent use of the Treaty as an extrinsic aid in this second approach has not yet been applied in the Court of Appeal.
- 68 *Warren v Police* (HC) [2000]; *Kohu v Police* (HC) [1989]; *Berkett v Tauranga District Court* (HC) [1992]; *R v Pairama* [1995]; *R v Fuimaono* (CA) [1996]; *R v Clarke and Another* (CA) [1998]; *Knowles v Police* (HC) [1998]; *Haira v Police* (HC) [1999]; and *R v Waetford* (CA) [1999].
- 69 For a discussion on the role of the Resident see Moon, *Hobson: Governor of New Zealand 1840-1842* (1998) pp 26-27.
- 70 Orange, *Treaty of Waitangi* (1987) p 21.
- 71 *Ibid.*, p 20.
- 72 Other historical evidence suggests that Busby was also seeking to consolidate his own authority in response to the appointment and subsequent actions of Thomas McDonnell as Additional British Resident at Hokianga in August 1835. See: Ross, “Busby and the Declaration of Independence” in *The New Zealand Journal of History* (1980) pp 83-89. An alternative interpretation of the development of the United Tribes of New Zealand, drawing on Māori oral traditions

- restated in a submission to the Select Committee on Māori Fisheries from Rūnanga Ko Huirau, can also be found in Cox, *Kotahitanga: The Search for Māori Political Unity* (1993) pp 42-43. The latter evidence indicates a greater level of Māori involvement in the initiation of the Confederation of United Tribes, which according to Cox may explain Busby's uncharacteristic hasty actions and his subsequent inability to maintain the momentum of the movement.
- 73 This and subsequent references to the English text of the Declaration of Independence were cited in Orange, *The Treaty of Waitangi* (1987) pp 255-256. Orange quotes from *Facsimiles of the Declaration of Independence and the Treaty of Waitangi* (1877, reprinted by the Government Printer, 1976). The original may be found in the National Archives, Wellington.
- 74 Including also Te Hapuku from Hawke's Bay and Te Wherowhero from the Waikato. See Orange, *The Treaty of Waitangi* (1987) p 22.
- 75 *Ibid.*, p 21.
- 76 Waitangi Tribunal, *Manukau Report* (1985) p 7. See also *Warren v Police* (HC) [2000]; and *R v Pairama* [1995].
- 77 Report of the House of Commons Committee on Aborigines in British Settlements, June 26, 1837 cited in *The Treaty of Waitangi: Its Origins and Significance*, Victoria University Extension Publication No.7 (1972) p 10.
- 78 This was acknowledged in the 1835 Declaration of Independence and later in Lord Normanby's 1839 instructions to Captain Hobson.
- 79 Especially the consent of the Māori signatories to the 1835 Declaration of Independence.
- 80 "Instructions from the Marquis of Normanby to Captain Hobson 14 August 1839" in *British Parliamentary Papers: Colonies New Zealand*, Vol. 3, 1835, p 86.
- 81 *Ibid.*, p 86.
- 82 *Ibid.*, p 86.
- 83 *Ibid.*, p 86.
- 84 *Ibid.*, pp 86-87.
- 85 *Ibid.*, p 87.
- 86 Orange, *The Treaty of Waitangi* (1987) p 2.
- 87 "Instructions from the Marquis of Normanby to Captain Hobson 14 August 1839" in *British Parliamentary Papers: Colonies New Zealand*, Vol. 3, 1835, pp 87-88.
- 88 *Ibid.*, pp 85-86.
- 89 Boast, "The Treaty of Waitangi" in *Māori Land Law* (1999) p 269; see also Moss, "Te Tiriti o Waitangi: Texts and Translations" in *New Zealand Journal of History*, (1972) p 133.
- 90 There are conflicting reports on the exact number of chiefs signing at Waitangi. New Zealand historian Claudia Orange notes that some reports are as high as 52, but she considers that 43 Māori signatories is more likely. See Orange, *An Illustrated History of the Treaty of Waitangi* (1990) p 130.
- 91 Moss, "Te Tiriti o Waitangi: Texts and Translations" in *The New Zealand Journal of History* (1972) p 136.
- 92 Orange, *An Illustrated History of the Treaty of Waitangi*, (1990) p 36. See also Cox, *Kotahitanga: The Search for Maori Political Unity* (1993) pp 29-30 regarding the concerns of some non-signatory tribes.
- 93 Spiller, Finn and Boast, *A New Zealand Legal History* (1995) pp 132-133.
- 94 Richardson J noted in *Lands* (CA) [1987] at 671 that: "Given the emphasis on oral discussion and decision making and limited literacy their understanding would necessarily have depended on what

explanations were given to the particular signatories and their appreciations of the concepts involved”. In its *Waiheke Island Report* (1987) on pp 39-40 the Waitangi Tribunal referred, with approval, to a decision of the Canadian Court of Appeal concerning the interpretation of a treaty between the Crown and an Indian band (*R v Taylor and Williams* (CA) [1981] (2d) 360): “Despite the clear words of the Treaty the Court had no difficulty in referring to the surrounding circumstances, tribal needs, and recorded statements, made during negotiations, holding, following a review of those things, that there could have been no intention to part with hunting rights on the ceded lands, and that the ‘oral terms recorded in the minutes’ form part of the Treaty too”.

95 Orange, *The Treaty of Waitangi* (1987) p 89.

96 Ibid., pp 64-65.

97 Ibid., p 65.

98 Ibid., p 97.

99 Cited in Durie, “Will the Settlers Settle? Cultural Conciliation and Law” in *Otago Law Review* (1996) p 460.

100 Buick, *The Treaty of Waitangi or How New Zealand Became a British Colony* (1914) p 101.

101 Orange, *The Treaty of Waitangi* (1987) p 4.

102 Ibid., p 65.

103 See Belich, *Making Peoples: A History of the New Zealanders – From Polynesian Settlement to the End of the Nineteenth Century* (1996) pp 217-223. Belich notes evidence which suggests that by the 1850s over 60 percent of Māori counted themselves as Christians. He further notes various possible Māori motivations for ‘conversion’ to Christianity such as religious sympathies, increasing one’s mana, and better access to trading opportunities and literacy education.

104 See, for example, Orange, *The Treaty of Waitangi* (1987) who notes that the missionary William Williams, the brother of Henry Williams, was charged with taking the Treaty from the East Cape to Ahuriri (Napier) for signatories. According to Orange, he combined his treaty business with missionary work. Orange states: “Some East Coast Māori were reassured by the fact that the treaty was carried to them by William Williams” (p 72).

105 The Waitangi Tribunal, *Orakei Report* (1987) p 203, citing Adams, *Fatal Necessity: British Intervention in New Zealand 1830-1847* (1977) p 199.

106 Buick, *The Treaty of Waitangi or How New Zealand Became a British Colony* (1914) p 172.

107 Waitangi Tribunal, *Orakei Report* (1987) p 203.

108 Orange, *The Treaty of Waitangi* (1987) p 100.

109 Lord Normanby did not consider this policy to be unjust because he believed that a considerable amount of Māori land was “of no actual use, and in their hands, it possesses scarcely any exchangeable value”. The Waitangi Tribunal considers that Lord Normanby’s instructions also set limits on the Crown exercising its right to pre-emption. All dealings with Māori were to be conducted on the basis of sincerity, justice and in good faith, and Māori were not to enter contracts injurious to their interests. Instead, it was intended that Māori should retain lands essential to their livelihood and, in so doing, benefit from colonisation as their land values increased over time. See Waitangi Tribunal, *Orakei Report* (1987) pp 200 ff; also refer to “Instructions from the Marquis of Normanby to Captain Hobson, 14 August 1839” in *British Parliamentary Papers: Colonies New Zealand*, Vol. 3, 1835, p 87.

- 110 Orange, *The Treaty of Waitangi* (1987) p 101.
- 111 Adams, *Fatal Necessity: British Intervention in New Zealand 1830-1847* (1977) pp 163-164.
- 112 Ibid., pp 163-164.
- 113 For a more extended discussion of Māori debating procedures during the Treaty signings and contemporary perspectives of the issues raised by Māori during the Treaty debate at Waitangi see the Waitangi Tribunal's *Muriwhenua Land Report* (1997) pp 110-115.
- 114 Ibid., p 111. On p 110 of the *Muriwhenua Land Report* (1997) the Tribunal notes: "The record is important, though again it must be treated cautiously, since the debate in Māori has not survived but only English interpretations of it".
- 115 The Waitangi Tribunal in its *Muriwhenua Land Report* (1997) notes on p 111: "It was said that the Governor was harangued with allegations, but impassioned declamation is also a standard oratorical tool. It solicits a clear position on a point of issue ... The Māori way is to clear the air by so averring, in order to compel a forthright denial". The Tribunal suggests that this oratorical tool was designed to invite the Governor to affirm that he would ensure that Māori were not left landless or be robbed of their lands. The Tribunal also notes on p 112: "Care is needed, too, with accounts that Māori complained of land loss through sales. The debate was all in Māori, there was no language equivalent for a land 'sale', and nothing survives of the Māori words used". In the Tribunal's view, the alarm about land loss may have been over-emphasized in the accounts of European observers, given that Māori in the area measured in their thousands whereas Europeans were but a few hundred in the Bay of Islands. The Tribunal considers that: "The Treaty rhetoric was rather, a warning that Māori would entertain no diminution of their authority and expected, at the very least, that power would be shared in arrangements made with the missionaries and the Governor" (p 113).
- 116 Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi* (1890) pp 17-18.
- 117 Ibid., p 19.
- 118 Ibid., p 19.
- 119 Ibid., pp 21-22.
- 120 Ibid., p 22.
- 121 Ibid., pp 25-26.
- 122 Ibid., pp 26-27.
- 123 Ibid., p 27.
- 124 Buick, *The Treaty of Waitangi or How New Zealand Became a British Colony* (1914) p 138.
- 125 Ibid., p 138.
- 126 Ibid., p 150.
- 127 See Durie, "Will the Settlers Settle? Cultural Conciliation and Law" in *Otago Law Review* (1996) p 460; see also the Waitangi Tribunal's *Muriwhenua Land Report* (1997) pp 112-113.
- 128 Buick, *The Treaty of Waitangi or How New Zealand Became a British Colony* (1914) pp 193-194.
- 129 *Lands* (CA) [1987] per Richardson J at 671; see also per Somers J at 690. Some legal historians suggest that British claims to sovereignty over New Zealand predate the Treaty, originating from the Letters Patent of 15 June 1839. The Letters Patent extended the commission of the Governor of New South Wales to include "any territory which is or may be acquired in sovereignty ... within that group of Islands ... commonly called New Zealand". See Joseph, *Constitutional and Administrative Law in New Zealand* (1993) p 44.

- 130 *Whiti Te Ra Kaihau v New Zealand Police* (HC) [2000] at 4; see also *M W Manukau and Others v Attorney-General* (HC) [2000] at 4.
- 131 Keith, “The Treaty of Waitangi in the Courts” in *New Zealand Universities Law Review* (1990) at 41; see also Brookfield, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation* (1999).
- 132 See the English translation of the Māori text of the Treaty by Professor Sir Hugh Kawharu provided earlier in the guide, also in Kawharu (ed.), *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi* (1989) p 321.
- 133 Orange, *The Treaty of Waitangi* (1987) p 41.
- 134 *Ibid.*, p 41.
- 135 Waitangi Tribunal, *Mohaka River Report* (1992) p 63.
- 136 It is noted by historian Claudia Orange that Henry Williams, a respected missionary, was responsible for translating the English Text of the Treaty into Māori, with the assistance of his son, Edward who had some facility with spoken Māori, particularly the Ngāpuhi dialect, although neither men were experienced translators. See Orange, *The Treaty of Waitangi* (1987) p 39.
- 137 See the English translation of the Māori text of the Treaty by Professor Sir Hugh Kawharu provided earlier in the guide, also in Kawharu (ed.), *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi* (1989) p 321.
- 138 See the section following on the meaning of taonga, for a discussion on the existence of intangible taonga.
- 139 The Crown’s view of pre-emption was based on the English land title system, which required that all private freehold titles emanate from the Crown. For further information on pre-emption, see Orange, *The Treaty of Waitangi* (1987) pp 100 ff.
- 140 Many commentators have described the reciprocal nature of land agreements in traditional Māori law, and have suggested that at the time of the Treaty signing, the concept of the total and permanent alienation of land may have been foreign to Māori. For a discussion of key elements of Māori customary land tenure and the values underpinning it see: Durie, “Will the Settlers Settle? Cultural Conciliation and Law” in *Otago Law Review* (1996) pp 449-462. The Waitangi Tribunal has considered whether the right of pre-emption (in effect “a valuable monopoly right”) conferred on the Crown by the Māori chiefs imposed a reciprocal duty on the Crown. In its *Orakei Report* (1987) at 206, the Tribunal considers, in light of Normanby’s instructions and the assurances given to Māori at the time of the Treaty signing, that: “... read as a whole Article two imposed on the Crown certain duties and responsibilities, the first to ensure that the Māori people in fact wished to sell; the second to ensure that they were left with sufficient land for their maintenance and support or livelihood or, as Chief Judge Durie puts it in the *Waiheke Report* (1987:77), that each tribe maintained a sufficient endowment for its foreseen needs”.
- 141 Orange, *The Treaty of Waitangi* (1987) p 112.
- 142 Durie, “Will the Settlers Settle? Cultural Conciliation and Law” in *Otago Law Review* (1996) p 460.
- 143 The Māori translation of the fourth Article was cited in a recent study paper by the Law Commission, *Māori Custom and Values in New Zealand Law* (2001) p 73.
- 144 Orange, *The Treaty of Waitangi* (1987) p 53.
- 145 For further discussion see Waitangi Tribunal, *Muriwhenua Land Report* (1997) pp 113-114; see also Durie, “Will the Settlers Settle? Cultural Conciliation and Law” in *Otago Law Review* (1996) pp 460-462.
- 146 Orange, *The Treaty of Waitangi* (1987) p 128.

- 147 *R v Symonds* [1847].
- 148 Ibid. The Court held that the Crown’s right of pre-emption did not derive from the Treaty, but was confirmed by it. Consequently, the Māori version of the Treaty (which many argue does not convey the notion of exclusiveness inherent in the right of pre-emption in the English version), was not considered, even though Chief Justice Martin was proficient in te reo Māori.
- 149 Ibid. Referring to native (or customary) title to land in New Zealand, Justice Chapman said at 390: “ ... it cannot be too solemnly asserted that it is entitled to be respected, that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the Native occupiers. But for their protection, and for the sake of humanity, the Government is bound to maintain, and the Courts to assert, the Queen’s exclusive right to extinguish it. It follows from what has been said, that in solemnly guaranteeing the Native title and in securing what is called the Queen’s pre-emptive right, the Treaty of Waitangi ... does not assert either in doctrine or in practice anything new and unsettled”.
- 150 Belich, “The Governor and the Māori” in Sinclair, *The Oxford Illustrated History of New Zealand*, 2nd ed. (1996); see also Orange, *The Treaty of Waitangi* (1987) p 142.
- 151 Orange, *The Treaty of Waitangi* (1987) p 145.
- 152 Ibid., pp 145–150 for a useful and extended discussion.
- 153 Ibid., p 149.
- 154 Pool, *Te Iwi Māori: A New Zealand Population Past Present and Projected* (1991) p 61.
- 155 Ward, *National Overview Volume I, Waitangi Tribunal Rangahaua Whanui Series* (1997) p 8. Ward further notes that these North Island acquisitions involved Māori populations at least as large or larger than those of the South Island.
- 156 Orange, *The Treaty of Waitangi* (1987) pp 159ff.
- 157 For an in-depth discussion of the impact of the Native Land Court on Māori customary land tenure see Kawharu, *Māori Land Tenure: Studies of a Changing Institution* (1977). See also Bryan D Gilling, “Engine of Destruction? An Introduction to the History of the Māori Land Court” in *Victoria University of Wellington Law Review* Vol. 24 No. 2 (1994) p 115.
- 158 Ward, *National Overview Volume I, Waitangi Tribunal Rangahaua Whanui Series* (1997) p 8. Ward also notes that a further four million acres were purchased between 1900 and 1930, mostly under the Native Land Act 1909.
- 159 Orange, *The Treaty of Waitangi* (1987) p 3.
- 160 Ibid., p 3.
- 161 *Wi Parata v the Bishop of Wellington and the Attorney-General* [1877].
- 162 Ibid., at 78.
- 163 Ibid., at 78.
- 164 *Nireaha Tamaki v Baker* [1901].
- 165 Ibid., at 382.
- 166 See, for example, the decision in *Hohepa Wi Neera v Bishop of Wellington* (1902).
- 167 *Wallis v Solicitor-General* (CA) [1903] at 188.
- 168 For a discussion of the “Protest of Bench and Bar” see: Joseph, *Constitutional and Administrative Law in New Zealand* (1993) p 57 and Mc Hugh, *The Māori Magna Carta - New Zealand Law and the Treaty of Waitangi* (1991) pp 119-120.
- 169 Pool, *Te Iwi Māori: A New Zealand Population Past Present and Projected* (1991) notes on p 238 that war and conquest were not responsible for this decline but the “seemingly more benign process

of land alienation, mainly through purchase. This opened the way for large-scale Pākehā settlement and the exposure of Māori to the demographic impacts of social disorganisation and disease diffusion”. Pool further comments that the rapid decrease in the Māori population in the three to four decades following the signing of the Treaty was caused mainly by very high levels of mortality, indicating that Māori had still not developed immunity to common viral disorders.

- 170 Ibid., p 61.
 171 Ibid., p 61.
 172 Orange, *The Treaty of Waitangi* (1987) p 4.
 173 Ibid., p 186.
 174 Ibid., p 225.
 175 Ibid., p 228.
 176 *Te Heu Heu Tukino v Aotea District Māori Land Board* [1941].
 177 Ibid., at 596.
 178 See the earlier section on the Legal Status of the Treaty.
 179 Durie, *Te Mana, Te Kāwanatanga: The Politics of Māori Self-Determination* (1998) pp 54-55, notes that in the space of 25 years following the Second World War, 80 percent of the Māori population moved away from tribal areas to live in cities and towns.
 180 See *Lands* (CA) [1987] per Richardson J at 681, 682.
 181 *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (CA) [2000] at 304, 305.
 182 *Ngāti Apa Ki Te Waipounamu Trust v The Queen* (CA) [2000] at 699.
 183 *McRitchie v Taranaki Fish and Game Council* (CA) [1999] at 139.
 184 *Whales* (CA) [1995] at 561.
 185 In *Lands* (CA) [1987] President Cooke noted at 663 that: “The word rangatiratanga, here rendered as chieftainship, may have no precise English equivalent”.
 186 *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] at 304-305.
 187 *Lands* [1987] per Cooke P at 663.
 188 *Taiaroa and Others v Attorney-General* (HC) [1994] at 69.
 189 As noted above, the Waitangi Tribunal’s statute grants it “exclusive authority to determine the meaning and effect of the Treaty as embodied in the [two] texts and to decide issues raised by the differences between them” (Treaty of Waitangi Act 1975, section 5(2)).
 190 Refer to the later section in this guide on the partnership principle for a more thorough commentary on the Tribunal’s understanding of the Treaty principle of reciprocity.
 191 Waitangi Tribunal, *Māori Development Corporation Report* (1993) p 33.
 192 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 187.
 193 Ibid., p 187.
 194 Waitangi Tribunal, *Māori Electoral Option Report* (1994) pp 3-4.
 195 Waitangi Tribunal, *Ngāi Tahu Sea Fisheries Report* (1992) p 269; see also the *Turangi Township Report* (1995) pp 284-286; the *Te Arawa Representatives Geothermal Resources Report* (1993) p 31; the *Ngāi Tahu Report* (1991) pp 236-237; and the *Taranaki Report* (1996) p 20.
 196 Waitangi Tribunal, *Turangi Township Report* (1995) p 285.
 197 Ibid., p 285; see also the *Ngāwhā Geothermal Resources Report* (1993) in which the Tribunal states on p 102: “While the needs of both cultures must be provided for and compromise may be necessary in some cases to achieve this objective, the Treaty guarantee of rangatiratanga requires a high priority for Māori interests when proposed works may impact on Māori taonga”.

- 198 Waitangi Tribunal, *Ngāwhā Geothermal Resources Report* (1993) p 101.
- 199 Waitangi Tribunal, *Te Arawa Representatives Geothermal Resources Report* (1993) p 32.
- 200 Waitangi Tribunal, *Wānanga Capital Establishment Report* (1999) pp 47-48.
- 201 Waitangi Tribunal, *Mangonui Sewerage Report* (1988) p 5.
- 202 Waitangi Tribunal, *Te Whānau o Waipareira Report* (1998) p 26.
- 203 Waitangi Tribunal, *Manukau Report* (1985) p 67.
- 204 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 181; see also the *Ngāwhā Geothermal Resources Report* (1993) p 19.
- 205 Waitangi Tribunal, *Orakei Report* (1987) p 149.
- 206 *Ibid.*, p 149; see also Waitangi Tribunal, *Ngāi Tahu Report* (1991) p 824; and *Mohaka River Report* (1992) p 100.
- 207 Waitangi Tribunal, *Taranaki Report* (1996) p 20.
- 208 *Ibid.*, p 20.
- 209 *Ibid.*, p 5, see also pp 19 ff.
- 210 Waitangi Tribunal, *Te Whānau o Waipareira Report* (1998) p 22.
- 211 *Ibid.*, p 26.
- 212 *Ibid.*, p 25.
- 213 *Ibid.*, p 25.
- 214 *Ibid.*, p 214.
- 215 *Ibid.*, p 23.
- 216 *Ibid.*, p 25.
- 217 *Lands* (CA) [1987] per Cooke P at 664.
- 218 See the following section of this guide which discusses the Waitangi Tribunal's understanding of the principle of reciprocity.
- 219 *Lands* (CA) [1987] per Somers J at 691.
- 220 *Ibid.*, at 690.
- 221 *Ibid.*, at 690.
- 222 *Ibid.*, at 690.
- 223 *Lands* (CA) [1987] per Bisson J at 716.
- 224 *Lands* (CA) [1987] per Cooke P at 664.
- 225 *Ibid.*, at 665-666.
- 226 *Whales* (CA) [1995] at 558.
- 227 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 186.
- 228 *Ibid.*, p 232; see also *Te Arawa Representatives Geothermal Resources Report* (1993) p 32; and *Manukau Report* (1985) pp 66-67.
- 229 Waitangi Tribunal, *Mohaka River Report* (1992) p 65.
- 230 Waitangi Tribunal, *Ngāti Rangiteaorere Report* (1990) p 31.
- 231 Waitangi Tribunal, *Ngāi Tahu Report* (1991) p 228.
- 232 Waitangi Tribunal, *Turangi Township Report* (1995) pp 284-286.
- 233 Waitangi Tribunal, *Orakei Report* (1987) p 189.
- 234 Waitangi Tribunal, *Manukau Report* (1985) pp 66-67.
- 235 *Ibid.*, p 73.
- 236 Waitangi Tribunal, *Te Arawa Geothermal Representatives Geothermal Resources Report* (1993) p 34.
- 237 Waitangi Tribunal, *Ngāwhā Geothermal Resources Report* (1993) pp 134-144.
- 238 See the English translation of the Māori text of the Treaty by Professor Sir Hugh Kawharu provided earlier in the guide, also in Kawharu (ed.), *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi* (1989) pp 320-321.
- 239 *Broadcasting Assets* (PC) [1994] at 517.
- 240 Waitangi Tribunal, *Kaituna River Report* (1984) p 13; see also the *Muriwhenua Fishing Claim Report* (1988) where in regarding the Māori text of the Treaty the Tribunal states on p 174: "It is at once apparent

- that estates, forests and fisheries are not specifically mentioned, but ‘taonga’ covers them all”.
- 241 *Broadcasting Assets* (PC) [1994] at 517.
- 242 *Ibid.*, at 517.
- 243 *Ibid.*, at 519.
- 244 *Coal* (CA) [1989] at 529.
- 245 *Whales* (CA) [1995] at 561.
- 246 *Barton-Prescott v Director-General of Social Welfare* (HC) [1997] at 184.
- 247 Waitangi Tribunal, *Motonui-Waitara Report* (1983) p 50; *Kaituna River Report* (1984) p 13; *Manukau Report* (1985) p 67; *Te Reo Māori Report* (1986) p 20.
- 248 Waitangi Tribunal, *Motonui-Waitara Report* (1983) p 50.
- 249 *Ibid.*, p 50; see also *Muriwhenua Fishing Claim Report* (1988) p 174.
- 250 Waitangi Tribunal, *Manukau Report* (1985) p 70.
- 251 Waitangi Tribunal, *Wānanga Capital Establishment Report* (1999) p xii.
- 252 Waitangi Tribunal, *Orakei Report* (1987) p 188; see also the *Te Reo Māori Report* (1986) in which the Tribunal concluded on p 20 that te reo Māori “is an essential part of the culture and must be regarded as a valued possession”.
- 253 Waitangi Tribunal, *Kiwifruit Marketing Report* (1995) pp 11-12.
- 254 *Ibid.*, p 13.
- 255 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 180. This section was excerpted and endorsed in the Tribunal’s *Ngāi Tahu Fisheries Report* (1992) p 98.
- 256 Waitangi Tribunal, *Ngāwhā Geothermal Resources Report* (1993) pp 100–102.
- 257 Waitangi Tribunal, *Te Whānau o Waipareira Report* (1998) p 23.
- 258 Waitangi Tribunal, *Radio Spectrum Final Report* (1999) p 51.
- 259 *Ibid.*, p 51.
- 260 *Ibid.*, p 59.
- 261 *Ibid.*, p 59.
- 262 *Ibid.*, p 63.
- 263 McDowell and Webb, *The New Zealand Legal System: Structures, Processes and Legal Theory* (1995) p 201.
- 264 *Lands* (CA) [1987] per Cooke at 664.
- 265 *Sealords* (CA) [1993] at 301; note that in the 1996 *Radio NZ* case, Thomas J of the Court of Appeal held in a dissenting judgment at 182: “Māori also have a positive responsibility of a fiduciary nature under the treaty towards the Crown. They cannot sit on their hands”.
- 266 *Ibid.*, at 306.
- 267 *Ibid.*, at 306.
- 268 *Dams* (CA) [1994] at 24.
- 269 *Ibid.*, at 26.
- 270 *Ibid.*, at 25.
- 271 *Te Rūnanga o Muriwhenua Inc v Attorney-General* (CA) [1990] at 655.
- 272 *Ibid.*, at 655.
- 273 Waitangi Tribunal, *Māori Development Corporation Report* (1993) p 82.
- 274 Waitangi Tribunal, *Te Maunga Railways Land Report* (1994) p 68.
- 275 Waitangi Tribunal, *Turangi Township Report* (1995) p 289.
- 276 *Ibid.*, pp 289-290.
- 277 Waitangi Tribunal, *Te Maunga Railways Land Report* (1994) p 67.
- 278 Waitangi Tribunal, *Māori Development Corporation Report* (1993) p 32.

- 279 *Whales* (CA) [1995] at 560.
- 280 *Ibid.*, at 560.
- 281 *Ibid.*, at 543.
- 282 *Dams* (CA) [1994] at 21.
- 283 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 234. In this report, the Tribunal refers to the Canadian Supreme Court decision in *Simon v The Queen* (1985) 24 DLR (4th) 390, 402, and to the Declaration on the Right to Development adopted on 4 December 1986 by 146 States (including New Zealand) in resolution 41/128 of the United Nations General Assembly.
- 284 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 235.
- 285 *Ibid.*, p 235.
- 286 *Ibid.*, p 194.
- 287 *Ibid.*, pp 194-195; for a more detailed discussion of this principle see the following Treaty Principles section of this guide.
- 288 *Ibid.*, p 234.
- 289 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 234.
- 290 Waitangi Tribunal, *Ngāi Tahu Sea Fisheries Report* (1992) p 299.
- 291 *Ibid.*, pp 299-301.
- 292 *Ibid.*, p 271.
- 293 Waitangi Tribunal, *Radio Spectrum Final Report* (1999) p 51.
- 294 *Ibid.*, p 52.
- 295 *Ibid.*, pp 57 ff.
- 296 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 195.
- 297 Waitangi Tribunal, *Ngāi Tahu Sea Fisheries Report* (1992) p 274.
- 298 *Broadcasting* (CA) [1992] per McKay J at 590, citing Cooke P in *Lands* (CA) [1987].
- 299 See section 5 (2) Treaty of Waitangi Act 1975.
- 300 See section 6 Treaty of Waitangi Act 1975.
- 301 *Lands* (CA) [1987] per Cooke P at 661.
- 302 *Ibid.*, at 662. See also *Te Rūnanga o Muriwhenua v Attorney-General* (CA) [1990] at 651 on this point and for a more general discussion on the weight to be given to Tribunal findings as evidence in the Court of Appeal.
- 303 *Te Rūnanga o Muriwhenua v Attorney-General* (CA) [1990] per Cooke at 651, 652. This does not apply to the binding powers of the Tribunal in respect of certain lands transferred to state enterprises under the State-Owned Enterprises Act 1986, as set out in section nine of the Treaty of Waitangi (State Enterprises) Act 1988.
- 304 *Lands* (CA) [1987] per Cooke P at 663.
- 305 *Broadcasting Assets* (PC) [1994] per Lord Woolf at 513.
- 306 Waitangi Tribunal, *Orakei Report* (1987) p 209.
- 307 Waitangi Tribunal, *Te Roroa Report* (1992) p 32.
- 308 Waitangi Tribunal, *Kaituna River Report* (1984) p 18.
- 309 Waitangi Tribunal, *Muriwhenua Land Report* (1997) p 386. Refer also to the Tribunal's *Mohaka River Report* (1992) p.77; and *Lands* (CA) [1987] per Somers J at 693.
- 310 See Waitangi Tribunal, *Te Roroa Report* (1992) p 30.
- 311 In the *Muriwhenua Land Report* (1997), the Tribunal noted on p 388: "The principles of the Treaty flow from its words and the evidence of the surrounding sentiments, including the parties' purposes and goals".
- 312 *Te Rūnanga o Muriwhenua v Attorney-General* (CA) [1990] per Cooke P at 656.
- 313 *Radio NZ* (CA) [1996] per Thomas J at 169.
- 314 *Lands* (CA) [1987] per Cooke P at 664; see also *Lands* per Richardson J at 682; per Somers J at 692-693; and per Casey J at 702.
- 315 *Sealords* (CA) [1993] at 304.

- 316 *Lands* (CA) [1987] per Somers J at 693.
- 317 *Forests* (CA) [1989] at 152.
- 318 Cooke, “Introduction” in *New Zealand Universities Law Review* (1990) p 6.
- 319 *Ibid.*, p 6.
- 320 *Lands* (CA) [1987] per Cooke P at 667.
- 321 *Ibid.*, at 664.
- 322 *Coal* (CA) [1989] per Cooke P at 527.
- 323 *Ibid.*, at 529.
- 324 *Lands* (CA) [1987] per Cooke P at 664.
- 325 *Ibid.*, at 665-666.
- 326 *Broadcasting Assets* (PC) [1994] at 517.
- 327 *Ibid.*, at 517.
- 328 *Māori Electoral Option* (CA) [1995] at 411.
- 329 *Lands* (CA) [1987] per Casey J at 703.
- 330 *Lands* (CA) [1987] per Richardson J at 682.
- 331 The Waitangi Tribunal’s *Manukau Report* (1985) concerned a claim about the despoliation of the Manukau Harbour and the loss of certain surrounding lands of the Manukau tribes.
- 332 *Ibid.*, p 70; see also *Ngāi Tahu Report* (1991) Vol. 2 p 240.
- 333 See preceding section on fiduciary duty.
- 334 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 192. This report concerned the loss or impairment of fishing interests and rights of the tribes of the Muriwhenua area. This point is also reiterated in the *Ngāi Tahu Sea Fisheries Report* (1992) p 273.
- 335 Waitangi Tribunal, *Māori Development Corporation Report* (1993) pp 33, 113 ff.
- 336 Waitangi Tribunal, *Orakei Report* (1987) p 183; see also *Motunui-Waitara Report* (1983) p 52.
- 337 Waitangi Tribunal, *Taranaki Report* (1996) pp 18-21. This report concerned the historical relationship between Taranaki Māori and the Crown, including the Crown’s expropriation of Taranaki Māori lands.
- 338 Waitangi Tribunal, *Wānanga Capital Establishment Report* (1999) p 44. This report dealt with a claim for equitable funding of three tertiary educational institutions established as wānanga under the Education Act 1989.
- 339 Waitangi Tribunal, *Muriwhenua Land Report* (1997) p 114.
- 340 Waitangi Tribunal, *Te Whānau o Waipareira Report* (1998) sum. 8, p xxvi. This report concerned claims by Te Whānau o Waipareira that they were prejudiced by the policies and operations of the Community Funding Agency of the Department of Social Welfare.
- 341 *Ibid.*, p 16.
- 342 Waitangi Tribunal, *Ngāwhā Geothermal Resource Report* (1993) p 137.
- 343 Waitangi Tribunal, *Mangonui Sewerage Claim Report* (1988) p 4. This report concerned a local sewerage scheme and the proposed siting of treatment ponds on Ngāti Kahu land in the far north. See also *Ngāwhā Geothermal Resources Report* (1993) p 137, wherein the Tribunal reiterates its view that: “in conformity with the Treaty principle of partnership, the needs of both cultures must be provided for and compromise needed in some cases to achieve this objective. At the same time the Treaty guarantee of rangatiratanga requires high priority for Māori interests when proposed works may impact on Māori taonga”.
- 344 Waitangi Tribunal, *Radio Frequencies Report* (1990) pp 42-43. This report concerned claims related to the allocation of radio spectrum to Māori.
- 345 *Ibid.*, p 43.
- 346 Waitangi Tribunal, *Ngāi Tahu Sea Fisheries Report* (1992) pp 194-95.

- This report concerned Ngāi Tahu sea fishing interests and Treaty rights.
- 347 Ibid., pp 273-74.
- 348 Ibid., pp 306-307.
- 349 Ibid., p 307.
- 350 Ibid., pp 307-308.
- 351 Waitangi Tribunal, *Radio Spectrum Final Report* (1999) p 52. This report concerned the allocation of radio spectrum to Māori and upheld an earlier Tribunal finding that the Crown should reserve a fair and equitable portion of radio frequencies for Māori (see pp 52 ff).
- 352 Waitangi Tribunal, *Radio Spectrum Final Report* (1999), pp 41 and 51.
- 353 Waitangi Tribunal, *Orakei Report* (1987) p 207. The *Orakei Report* concerned the alienation of ancestral land essential to Ngati Whatua's survival and development.
- 354 Waitangi Tribunal, *Mohaka River Report* (1992) p 65. This report relates to a claim concerning the erosion of Ngāti Pahauwera's river rights.
- 355 Waitangi Tribunal, *Taranaki Report* (1996) p 20.
- 356 Ibid., p 55.
- 357 Ibid., pp 8-9 and 55.
- 358 Ibid., p 55.
- 359 Ibid., p 55.
- 360 Waitangi Tribunal, *Te Whānau o Waipareira Report* (1998) p 231.
- 361 See earlier section in the guide on the Legal Status of the Treaty, particularly discussion relating to Treaty clauses in legislation.
- 362 *Lands* (CA) [1987] per Richardson J at 682.
- 363 Ibid., at 682-683.
- 364 *Lands* (CA) [1987] per Cooke P at 665.
- 365 *Lands* (CA) [1987] per Somers J at 693.
- 366 *Lands* (CA) [1987] per Richardson J at 683.
- 367 *Mason-Riseborough v Matamata-Piako District Council* (EC) [1997] at 12.
- 368 *Forests* (CA) [1989] at 152.
- 369 Ibid., at 152.
- 370 Ibid., at 152.
- 371 *Wellington International Airport Ltd v Air New Zealand* (CA) [1993] per Cooke P at 672; see also at 674-676.
- 372 *New Zealand Fishing Industry v Minister of Agriculture and Fisheries* (CA) [1988] at 551.
- 373 *Wellington International Airport Ltd v Air New Zealand* (CA) [1993] per Cooke P at 676.
- 374 Section four of the Conservation Act 1987 states: "This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi".
- 375 *Whales* (CA) [1995] per Cooke P at 560. See *Lands* (CA) [1987] especially at 664, 674, 682, 693, 703, 717; and also *Radio NZ* (CA) [1996] per Thomas J at 169.
- 376 *Whales* (CA) [1995] per Cooke P at 560. It should be noted that, in delivering its judgment, the Court emphasized (at 562): "that it is the particular combination of features that has influenced us. The combination may well be unique. The precedent value of this case for other cases of different facts is likely to be very limited".
- 377 *Whales* (CA) [1995] at 560.
- 378 *Watercare Services v Minhinnick* (CA) [1998] at 307.
- 379 As noted earlier, section eight of RMA reads: "In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the

- Treaty of Waitangi (Te Tiriti o Waitangi)”.
 380 See *Quarantine Waste (NZ) Ltd v Waste Resources Ltd* (HC) [1994] at 542: “... in the circumstances of this case the failure to undertake a direct consultation did not bring about a situation in which Manukau omitted to consider or take into account a material and relevant factor”.
 381 *Te Rūnanga o Tauramere v Northland Regional Council* (PT) [1996] at 77.
 382 *Ibid.*, at 94. See also *Ngātiwai Trust Board v Whangarei District* (EC) [1994] at 274: “It may be thought trite to repeat what has been more eloquently recorded in superior forums, but clearly the Treaty involves a solemn partnership, with a consequent duty to consult over significant issues arising. Failure to consult in the past has effectively meant lack of due recognition of the close binding relationship and need for continuing bilateral commitment which the Treaty established”.
 383 *Te Rūnanga o Tauramere v Northland Regional Council* (PT) [1996] at 95.
 384 *Wellington Rugby Football Union Incorporated v Wellington City Council* (PT) [1993] per Judge Kenderdine at 22-23.
 385 *Hanton v Auckland City Council* (HC) [1994] at 301.
 386 *Ibid.*, at 301.
 387 *Ibid.*, at 301.
 388 *Rural Management Limited v Banks Peninsula District Council* (EC) [1994] at 423.
 389 *Ibid.*, at 423.
 390 *Ngāti Kahu v Tauranga District Council* (EC) [1994] at 510.
 391 Waitangi Tribunal, *Manukau Report* (1985) p 87.
 392 Waitangi Tribunal, *Mangonui Sewerage Report* (1988) p 4.
 393 *Ibid.*, p 41.
 394 *Ibid.*, pp 47-48.
 395 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 217.
 396 Waitangi Tribunal, *Radio Frequencies Report* (1990) p 44.
 397 *Ibid.*, p 45.
 398 *Ibid.*, p 45.
 399 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 157.
 400 Waitangi Tribunal, *Ngāi Tahu Report* (1991) p 245. This report dealt with grievances arising from Crown land purchases of extensive areas of Ngāi Tahu territory and the Crown’s failure to reserve and protect Ngāi Tahu rights over mahinga kai (food resources). For a more detailed discussion of the Tribunal’s view of consultation with Māori on planning and environmental matters see sections I7.6.10 and I7.6.11 pp 914-916 in the *Ngāi Tahu Report*.
 401 Waitangi Tribunal, *Ngāi Tahu Sea Fisheries Report* (1992) p 272.
 402 Waitangi Tribunal, *Ngāwhā Geothermal Resources Report* (1993) pp 101-102.
 403 Waitangi Tribunal, *Te Whānau o Waipareira Report* (1998) pp 225-6; see also pp 226-227.
 404 *Ibid.*, pp 225-226.
 405 *Ibid.*, pp 225-227.
 406 Kawharu (ed.), *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi* (1989) pp 316-317; see also the discussion of the translation in the *Lands* case [1987] per Cooke at 662-663.
 407 *Ibid.*
 408 *Ibid.*
 409 *Lands* (CA) [1987] per Cooke P at 664.
 410 *Broadcasting* (CA) [1992] at 587.
 411 *Broadcasting Assets* (PC) [1994] at 519.
 412 *Ibid.*, at 517.

- 413 Ibid., at 517.
- 414 *Whales* (CA) [1995] at 553, 561. This comment was quoted with approval by Thomas J in his dissenting judgment in *Radio NZ* (CA) [1996] at 182. This matter is taken up in the previous section under the duty to make informed decisions.
- 415 *Taiaroa and Others v Attorney-General* (HC) [1994] at 69.
- 416 Waitangi Tribunal, *Manukau Report* (1985) p 70. See also the Tribunal's *Orakei Report* (1987) p 149.
- 417 Waitangi Tribunal, *Waiheke Island Report* (1987) p 39. See also the *Ngāi Tahu Report Vol. 2* (1991) p 241: "Although in the early years of land purchase by the Crown it would have been unrealistic to expect the boundaries of a proposed purchase to be fixed by survey, it is implicit in the notion of consent that the Māori owners knew with reasonable certainty the area of land they were being asked to sell. The onus unquestionably lay on the Crown to ensure this. The duty of active protection required no less".
- 418 Waitangi Tribunal, *Mohaka River Report* (1992) p 77.
- 419 Waitangi Tribunal, *Te Whanganui-ā-Orotu Report* (1995) p 197.
- 420 Waitangi Tribunal, *Muriwhenua Land Report* (1997) p 388.
- 421 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 26.
- 422 Waitangi Tribunal, *Ngāi Tahu Sea Fisheries Report* (1992) p 270.
- 423 Waitangi Tribunal, *Te Reo Māori Report* (1996) p 20.
- 424 Waitangi Tribunal, *Māori Electoral Option Report* (1994) p 15.
- 425 Waitangi Tribunal, *Ngāti Rangiteaorere Report* (1990) pp 30–32.
- 426 Waitangi Tribunal, *Te Maunga Railways Report* (1994) p 67.
- 427 Waitangi Tribunal, *Ngāwhā Geothermal Resources Report* (1993) pp 100–102. These points are quoted with approval in the Tribunal's *Te Arawa Representative Geothermal Resource Report* (1993) pp 31–32.
- 428 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 219.
- 429 Waitangi Tribunal, *Fisheries Settlement Report* (1992) p 22; see also pp 8–11 for more detailed discussion of the Tribunal's understanding of the abrogation or extinguishment of Treaty fishing rights and the ongoing Treaty obligation to actively protect Māori fishing interests.
- 430 Ibid., p 11.
- 431 Ibid., p 24.
- 432 Waitangi Tribunal, *Te Whānau o Waipareira Report* (1998) p 16.
- 433 Ibid., p 16.
- 434 Ibid., p 21.
- 435 *Lands* (CA) [1987] per Cooke P at 664–665. Note in *Te Rūnanga o Muriwhenua Inc. v Attorney-General* (CA) [1990] at 651 the Court held that: "... outside the context of its powers of resumption the findings and recommendations of the Tribunal are not binding on the Crown of their own force".
- 436 *Lands* (CA) [1987] per Somers J at 693. This statement was acknowledged in the Tribunal's *Ngāwhā Geothermal Resources Report* (1993) at p 101.
- 437 *Lands* (CA) [1987] per Richardson J at 674.
- 438 *Lands* (CA) [1987] per Bisson J at 717.
- 439 *Lands* (CA) [1987] per Richardson J at 703–704.
- 440 *Coal* (CA) [1989] per Cooke P at 530.
- 441 *Broadcasting* (CA) [1992] per Cooke P at 583. See also *Taiaroa and Others v Attorney-General* (HC) [1994] per McGechan J at 70 for a similar comment made in a later case in the High Court.
- 442 *Dams* (CA) [1994] at 25.
- 443 Ibid., at 25.
- 444 *Radio NZ* (CA) [1996] at 188.
- 445 Waitangi Tribunal, *Manukau Report* (1985) p 99.

- 446 Ibid., p 98.
- 447 Ibid., pp 26 and 98-99.
- 448 Waitangi Tribunal, *Waiheke Island Report* (1987) p 36.
- 449 Ibid., pp 40-41.
- 450 Ibid., p 47. This comment was repeated in the *Muriwhenua Fishing Claim Report* (1988) p xxi.
- 451 Waitangi Tribunal, *Mangonui Sewerage Report* (1988) p 60.
- 452 Waitangi Tribunal, *Orakei Report* (1987) p 262.
- 453 Waitangi Tribunal, *Muriwhenua Fishing Claim Report* (1988) p 217.
- 454 Ibid., p xxi. The Tribunal also concluded on p 240 of the same report that: “Special account must be taken of the Muriwhenua dependence on the seas, the small land area available to them, the lack of alternative industries in the district and the need to rebuild their communities”.
- 455 Waitangi Tribunal, *Ngāi Tahu Report* (1991) Vol. I pp 243-244, Vol. III p 1052; *Ngāwhā Geothermal Resource Report* (1993) p 101; *Ngāi Tahu Sea Fisheries Report* (1992) pp 272-273; *Māori Development Corporation Report* (1993) p 114; *Turangi Township Report* (1995) p 288.
- 456 See, as an alternative example to the Taranaki case study which follows, the final reports of the Waitangi Tribunal: *Ngāi Tahu Report* (1991) Vol. III pp 1954 ff; or *Wānanga Capital Establishment Report* (1999), see especially pp 53 ff.
- 457 Waitangi Tribunal, *Ngāi Tahu Report* (1991) p 245.
- 458 Waitangi Tribunal, *Taranaki Report* (1996). Following the publication of this interim report, Taranaki iwi proceeded to direct negotiations with the Crown.
- 459 Ibid., p 312.
- 460 Ibid., p 276.
- 461 Ibid., pp 314-315.
- 462 Ibid., p 315.
- 463 Goals cited on the website of the Department of the Prime Minister and Cabinet on 4 April 2001.
- 464 Published by the Government on 20 July 2000 and cited on the website of the New Zealand Government Executive on 4 April 2001.
- 465 *The Royal Commission on Social Policy*, 1988, p 49.
- 466 Background information on the Cabinet Manual was cited on the website of the Department of the Prime Minister and the Cabinet on 10 April 2001.
- 467 *Step by Step Guide: Cabinet and Cabinet Committee Process* (2001)
- 468 These functions were cited on the website of the Office of Treaty Settlements on 4 April 2000.
- 469 Information on the role of the Treasury was taken from its 1999 *Post Election Brief to the Incoming Minister* as cited on its website on 5 April 2001.