

Na, ko matou ko nga Rangatoru o te Whakaminenga
 rane, ka huihui nei ki Whaitangi. Ko matou hoki ko
 Tuamā ka kite nei e te ritenga o enei Kupu. Ka tangi
 tōtia e matou. Kōia ka tohunga ai o matou ingoa

ka mōtia tonu ki Whaitangi e te ono o nga ha o
 take mano, eua tohau, o te tōtau. Heke

He Tirohanga o Kawa ki te Tiriti o Waitangi

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| <ul style="list-style-type: none"> Maniapoto 25 his mark Rangihāerepo 25 his mark A. C. 8 his mark Wakūia 17 his mark Pūtiki 12 his mark Rangihūetaki 12 his mark Kaupururanga 18 his mark Hāhiora 12 his mark Haromama 8 his mark Wairua 18 his mark Nātā Ra 12 Sautari 11 his mark Mohai 4 his mark Mata 10 his mark Sarawātūate 8 his mark Tūmā 12 his mark Taupiri 5 his mark Haukākāwa 12 his mark Pōpōriari 12 his mark Katātēhōkia 12 his mark Pōma 12 his mark Tūpara 12 his mark Mohau 12 his mark | <p>May 27th 1840</p> <p>May 28th 1840</p> <p>Sorore 4
 June 11th</p> <p>Le Kaka
 June 14th / 40</p> <p>Sorore June 14th</p> <p>Wakatane June 16th</p> |
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He Tirohanga ō Kawa ki te Tiriti o Waitangi

A Guide to the Principles of the Treaty of Waitangi

as expressed by

the Courts and the Waitangi Tribunal

This guide has been prepared as a resource for policy analysts who are called upon to formulate policy and advise on the application of Treaty principles. Every effort has been made to ensure the accuracy of this publication and to provide a comprehensive selection of jurisprudence from the Courts and the Waitangi Tribunal in this area as at the date of publication. However, no liability is accepted for any inaccuracy or omission. The contents of the document are not legal advice and should not be relied upon for that purpose.

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He rangi tā Matawhāiti
He rangi tā Matawhānui

The person with a narrow vision sees a narrow horizon
The person with a wide vision sees a wide horizon

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Kupu Whakataki

He pukatohu tēnei nā Te Puni Kōkiri e whai wāhi atu ana ki te whāinga o te Kāwanatanga, arā, kia pūmau ki ngā mātāpono o te Tiriti o Waitangi. He āwhina tēnei mā ngā kaitātari kaupapa here a Te Puni Kōkiri, e whakahiato ana i ngā kaupapa here ka pā mai ki te haere ngātahi a te Karauna rātou ko te Māori ka tahi, ki te tuku whakamaherehere mō te wāhi a ngā mātāpono a te Tiriti ka rua. Ka kitea pea e ētahi atu o te rāngai tūmatanui, o waho ake rānei, he āwhina i te pukatohu nei.

Ko te pūtake o te pukatohu nei, ko te whakatakoto i ngā mātāpono o te Tiriti o Waitangi, i te tirohanga o ngā Kōti, o te Rōpū Whakamana i te Tiriti hoki; i tua atu ko te whakarato pārongo e kuhuna ai ngā mātāpono nei ki ngā take whanake kaupapa here. Ko ētahi atu o ngā take ka puta i te pukatohu nei, ko te whakaemi i ngā tohe a tēnā, a tēnā mō te tūranga o te Tiriti i raro i te ture; ko te whakatakoto i ētahi o ngā kōrero hītori o te Tiriti; ko te whakamārama hoki i ētahi o ngā ariā matua o roto o te Tiriti. Hei tāpiritanga atu, ko ētahi rauemi awhi i ngā kai-tātari kaupapa here i roto i ā rātou rangahau i ngā mātāpono o te Tiriti.

Me kī, ko te take nui o ngā mātāpono o te Tiriti, ko ngā whakahaere i waenganui i te Karauna rāua ko te Māori. Ko te whakahau mai ngā Kōti, mai te Rōpū Whakamana i te Tiriti hoki, kia aronuitia te Tiriti, me te hono ā-Tiriti, kia mahi ngā taha e rua i runga i te pai, i te tika, i te ngākau mārie, tētahi ki tētahi. Ko te kī anō a ngā Kōti rātou ko te Rōpū Whakamana i te Tiriti, ehara i te mea kua kōhatu kē te takoto o ngā mātāpono nei, whāia, tērā pea ka rerekē haere ā te wā. I runga i tērā o ngā whakaaro, kāore i takoto e rātou tētahi rārangi o ngā mātāpono nei. Waihoki, ka haere tonu ā rātou rangahau i ngā whakamāramatanga mō ngā nekenekenga hou. Ahakoa te mea he uaua ki te wehewehe i ngā mātāpono tēnā ki konā, tēnā ki konā, ko tā te pukatohu nei, he kohikohi ki ngā wāhanga e māmā ai te whātoro atu. Tērā pea, he hanganga tika i tua atu o tēnei.

He wāhi nui tō te Tiriti i roto i tā tātou anga ture, me te mea anō, kāore ia e noho ki tētahi āhua mō ake; ka huri, ka rerekē, ka whanake tōna tino, pēneki tonu i ētahi atu mātāpono, tikanga ā-ture. Kāore e kore ka haere tonu ngā whitiwhiti kōrero puta noa i te motu, mō ngā kaupapa ture, ngā matatika me te ia o te whakahaere o ngā take e pā ana ki te Tiriti.

Kei te tautokona e te Tiriti ētahi anō mātāpono ture e pā ana ki ngā tāngata whenua o te ao, a, ka whai wāhi ki te hātepe hanga kaupapa here. Hei tauira atu, he wāhi nui whakahirahira kua whakatakotoria i roto i ētahi whakaritenga o ngā whenua o te ao, ki ngā tāngata whenua me ngā iwi iti o tēnā, o tēnā whenua. Kua whakaae ētahi o ngā whenua nei, kia whakatairangatia ngā tāngata katoa, tae noa ki ngā tūmomo iwi nei, mā te noho pūmau ki ngā kawenga i whakaetia e ngā whenua katoa o te ao e hāngai ana ki te mana tangata, te tiaki taiao, ngā mahi tauhokohoko, te mana whakairo hinengaro hoki. Waihoki, he rite te kawenga o te Kāwanatanga o Aotearoa i te whakaakoranga ture tuku iho mō te taitara tangata whenua, tae noa ki ōna kawenga e pa ana ki ngā tāngata

whenua, me te tiaki i ngā pānga o te tangata whenua, ki te kawenga o ngā Kāwanatanga o ngā whenua pēnei i a Kānata, i a Amerika, i a Ahitereiria. Ehara i te mea mā te Tiriti o Waitangi ka tū, ka hinga rānei ēnei whitiwhitinga kōrero, engari he whakaata noa mai kei ngā koko katoa o te ao ēnei ariā e rere ana.

Kia maumahara, ehara i te mea e tuku whakamaherehere ture ana te pukatohu nei, e noho ana rānei ia hei whakatakatoranga kaupapa here a te Kāwanatanga, ehara hoki i te mea mā te pukatohu nei e whakawātea i te tūranga nui o ngā tuhituhinga ake. Hei ētahi wā, he mea pai ki te anga atu te titiro a te kai-tātari kaupapa here ki tua atu o ngā kaupapa here o te wā, e aha, e tareka ai te whanaketanga o aua kaupapa here. Me kī, koiane te tino take i hangaia te pukatohu nei, arā, i te kitenga atu i te iti o te māramatanga i ētahi wāhi o te hātepe whakahiato kaupapa here e hāngai ana ki te Tiriti. Kia maumahara, ehara tēnei pukatohu i te waka kawē kaupapa here, ehara hoki tana kaupapa i te whakaata i ngā tirohanga Māori. Me whai wāhi tika te tirohanga Māori ki ngā tūhonga kaupapa here katoa mō te Tiriti; i koneki me noho ngā taha e rua ki te whitiwhiti kōrero. Ko tā te pukatohu, he tautoko i ngā tūhonga ka whanakehia, kia aha, kia hua ake ngā whitiwhitinga kōrero ka tūpono ki te Māori. He maha ngā takenga mai o te kaupapa here – te ao tōrangapū, ōhanga, te ture, te aha noa; tae rawa ki ngā tautohetohe i hua ake i muri o te whākina mai o ngā whāinga o ngā Kōti, o te Rōpū Whakamana i te Tiriti hoki. Ko tā te pukatohu nei, he whakaraupapa i ngā kōrero katoa mai te takenga kotahi, arā, ngā whāinga o ngā Kōti me te Rōpū Whakamana i te Tiriti e pā ana ki ngā mātāpono o te Tiriti.

Ko ngā kaituhi o te pukatohu nei ko Frances Hancock rāua ko Kirsty Gover, he kaitātari kaupapa here matua; ka nui ngā āwhina mai ngā kaimātai o roto, o waho hoki o Te Puni Kōkiri.

Introduction

Te Puni Kōkiri offers this guide as a contribution towards the Government’s stated goal of upholding the principles of the Treaty of Waitangi. It is addressed to Te Puni Kōkiri policy analysts, who are called on to formulate policy which impacts on the Crown-Māori relationship and to advise on the application of Treaty principles. Others in the state sector and outside government may also find the guide a useful resource.

The purpose of the guide is to outline the principles of the Treaty as expressed by the Courts and Waitangi Tribunal, and to provide other information that might facilitate the application of these principles in policy development. The guide also canvases current debates on the constitutional and legal status of the Treaty, provides an overview of the historical background of the Treaty and explains key concepts in the Treaty exchange. It includes as appendices additional resources to assist analysts in addressing the principles of the Treaty in their work.

Treaty principles are primarily concerned with the way in which the Crown and Māori behave in their interactions with one another. The Courts and the Tribunal emphasize the need for recognition and respect in the Treaty partnership and stress the parties’

shared obligation to act reasonably, honourably and in good faith towards each other. The Courts and Tribunal have emphasized that the principles of the Treaty are not set in stone and that they may change as the Treaty partnership evolves. Accordingly, they have not developed an exhaustive list of principles and continue to refine their explanations in response to new circumstances. While the principles are interdependent and are not easily compartmentalised, the guide is intended to categorize them in an accessible and logical way. Other constructions may be equally viable.

The Treaty is an integral part of our constitutional framework and its status will continue to evolve along with other constitutional principles and norms. Constitutional, legal, ethical, and procedural issues associated with the Treaty are likely to remain a focus of discussion and be debated in various settings.

The Treaty is supported by other principles of law affecting indigenous peoples, which are relevant to the policy-making process. For example, some international instruments accord to indigenous peoples and minority cultures special recognition. Some States have agreed to recognise the entitlements of these groups in their adherence to international obligations in the fields of human rights, environmental protection, trade and intellectual property. Similarly, the common law doctrine of aboriginal title and the obligations of the Crown in respect of indigenous peoples are shared by States such as Canada, the United States and Australia. These sources of debate do not depend on the Treaty of Waitangi, but rather demonstrate the universality of the ideas contained in it.

It is important to note that this guide is neither legal advice, nor a statement of government policy. It is also not intended as a substitute for referral to the original sources. Advisers must sometimes look beyond existing policy in order to develop it, and it is precisely because policy on the Treaty remains unformed in many areas that we believe such a guide is needed. The guide does not, however, propose policy, and does not purport to reflect Māori views. Any policy proposal on the Treaty must of course be properly informed by Māori perspectives, which may require consultation. The guide is offered rather as an aid to developing proposals upon which fruitful consultation with Māori might occur. Policy grows from many sources - political, economic, legal, amongst others. The debates generated by the findings of the Courts and the Tribunal are themselves a source of policy. This book tries to convey in an organised fashion, just one source, the findings of Courts and the Waitangi Tribunal on the principles of the Treaty.

This guide was authored by senior policy advisers, Frances Hancock and Kirsty Gover; and benefited greatly from the contributions of peer reviewers within and outside Te Puni Kōkiri.