He Tirohanga ō Kawa ki te Tīriti o Waitangi
He Tirohanga ē 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
# CONTENTS

<table>
<thead>
<tr>
<th>Page</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Kupu Whakataki - introduction</td>
</tr>
<tr>
<td>9</td>
<td>Texts of the Treaty</td>
</tr>
<tr>
<td>13</td>
<td>Overview</td>
</tr>
<tr>
<td>14</td>
<td>The constitutional significance of the Treaty of Waitangi</td>
</tr>
<tr>
<td>16</td>
<td>The legal force of the Treaty today</td>
</tr>
<tr>
<td>25</td>
<td>Historical background</td>
</tr>
<tr>
<td>26</td>
<td>Introduction</td>
</tr>
<tr>
<td>26</td>
<td>The Declaration of Independence – He Whakaputanga o te Rangatiratanga o Nu Tīreni</td>
</tr>
<tr>
<td>28</td>
<td>Why a treaty?</td>
</tr>
<tr>
<td>29</td>
<td>Instructions given to Hobson for negotiating the Treaty</td>
</tr>
<tr>
<td>31</td>
<td>The Treaty signing process</td>
</tr>
<tr>
<td>31</td>
<td>Assurances and explanations given to Māori prior to signing the Treaty</td>
</tr>
<tr>
<td>33</td>
<td>Māori responses to the Treaty proposal</td>
</tr>
<tr>
<td>37</td>
<td>Events which established the British Crown’s sovereignty over New Zealand</td>
</tr>
<tr>
<td>37</td>
<td>Differences between the English and Māori texts of the Treaty</td>
</tr>
<tr>
<td>41</td>
<td>Where has the Treaty been all these years?</td>
</tr>
<tr>
<td>47</td>
<td>Key concepts in the Treaty exchange</td>
</tr>
<tr>
<td>48</td>
<td>Introduction</td>
</tr>
<tr>
<td>49</td>
<td>Tino rangatiratanga</td>
</tr>
<tr>
<td>55</td>
<td>Kāwanatanga</td>
</tr>
<tr>
<td>60</td>
<td>Taonga</td>
</tr>
<tr>
<td>65</td>
<td>Common law parallels – fiduciary duty and developmental rights</td>
</tr>
</tbody>
</table>
The Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal

Introduction

 Legislative references to the principles of the Treaty

The principle of partnership

 The Courts

 The duty to act reasonably, honourably, and in good faith

 The Waitangi Tribunal

 The principle of reciprocity

 The principle of mutual benefit

 The duty to act reasonably, honourably and in good faith

 The duty to make informed decisions

 The principle of active protection

 The principle of redress

Policy resources

A summary of policy resources

 Legislation with Treaty references

 Government policy

 Relevant government publications

 Organisational expertise

 International instruments

Appendices

Appendix One: legislation with Treaty references

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

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

Appendix Four: relevant government publications

Appendix Five: organisational expertise

Appendix Six: international instruments

Appendix Seven: glossary of Māori terms

Appendix Eight: bibliography

Appendix Nine: footnotes
Kupu Whakataki

He pukatohu tenei na Te Puni Kōkiri e whai wāhi atu ana ki te whāinga o te Kawanatanga, arā, kia pūmāki ngā mātāpono o te Tiriti o Waitangi. He āwhina tenei mā ngā kaitatari 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 pūtakane te pukatohu nei, ko te whakatakoto i ngā mātāpono o te Tiriti o Waitangi, i te tirohanga o ngā Koti, 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 hitoro 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 ērātou rangahau i ngā mātāpono o te Tiriti.

Me ki, 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 Koti, mai te Rōpū Whakamana i te Tiriti hoki, kia aronuiia te Tiriti, me te hono ā-Tiriti, kia mahi ngā taha e rua i runga i te pa, i te tika, i te ngākau marae, tētahi ki tētahi. Ko te ki anō a ngā Koti rātou ko te Rōpū Whakamana i te Tiriti, eharā i te mea kia 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 uaa ki te wehewehe i ngā mātāpono tēnā ki konā, tēnā ki konā, ko tā te pukatohu nei, he kohiko ki ngā wāhanga e māmā ai te whātotoro 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 ērā ana ki ngā tāngata whenua o te ao, a, ka whai wāhi ki te āhetepe 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 pūmāki ngā kawenga i whakaaetia e ngā whenua katoa o te ao e hāngai ana ki te mana tangata, te tīaki tiaao, ngā mahi tauhokohoko, te mana whakairo hinengaro hoki. Waihoki, he rite te kawenga o te Kāwanatanga o Aotearoa i te whakaaokaranga ture tuku iho mō te taitara tāngata whenua, tae noa ki ōna kawenga e pa ana ki ngā tāngata
A GUIDE TO THE PRINCIPLES OF THE TREATY OF WAITANGI AS EXPRESSED BY THE COURTS & THE WAITANGI TRIBUNAL

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.