

## What is the Treaty of Waitangi and what has it got to do with co-governance?

For us to understand the Treaty in today's terms we constantly need to refer to history.

When the Queen agreed to undertake the Treaty arrangements in 1840 the British Home Office instructed Captain William Hobson (who was sent to represent the Queen) to recognise that the Rangatira of the hapū had "title to the soil and to sovereignty". Her predecessor, King William 1V, had recognised the authority and rights of hapū through their Rangatira, as set out in *the 1835 Declaration of Independence He Wakaputanga o te Rangatiratanga o Nu Tireni*. The Treaty of Waitangi was an agreement between two sovereign states.

The text of the Treaty which Rangatira, on behalf of their hapū, and Captain Hobson, representing Queen Victoria, signed at Waitangi on February 6, 1840 was the Māori language text Te Tiriti o Waitangi. This text was the only one present on that day and was the text signed by the vast majority of Rangatira around the country.

In Te Tiriti, the Queen recognised the Tino Rangatiratanga (retained paramount and ultimate authority) of the Rangatira, hapū and all the people living here (article 2). It allowed for the delegation of Kāwanatanga (governorship – the duty to govern those who were living here without law) to the Crown (article 1). Through Te Tiriti, hapū through their Rangatira agreed to the appointment of a governor in order to control British settlers' behaviour and regulate their settlement. They were not looking to the Crown to exercise governorship over themselves as they already had their own long-established systems of government and law. The Crown's duty to govern included that of allocating any land that was made available. The Treaty arrangements were directed towards ensuring peace and good order and acknowledged that more immigrants will come to settle (Preamble). It accorded to Māori the same access to the laws (article 3) and customs as the people of England and protected all faiths including Māori custom and religion (article 4).

Thus this Treaty of Waitangi was between the British Crown and ngā hapū through their Rangatira. After more than 40 of the Rangatira signed at Waitangi on 6 February 1840 over 500 subsequently signed the text in te reo. The versions of the Treaty in English that appeared after 6 February 1840 were signed by approximately 40 Rangatira.

The Treaty was first dishonoured in 1842 and was declared "a simple nullity" by Justice Prendergast in 1877. The history of this country since 1840 has been deeply influenced by the attitudes in Western nations formed by the Doctrine of Discovery (released by Pope Alexander V1 in 1493) which gives context to the contemporary cultural norms of white supremacy that underpinned European exploration and "discovery".

It wasn't until the Waitangi Tribunal was established in 1975 that the colonial government established a formal approach to addressing the outcomes of these breaches of the authority of ngā hapū through their Rangatira. After the Tribunal was set up, governments established the Treaty "settlement" process which first proposed a Fiscal Envelope to "settle" claims to the Tribunal. The rejection by hapū of the governments' fiscal "settlement" process was overwhelming – a different conversation was urged. For example, the Hirangi Hui was called by Sir Hepi Te Heuheu in January 1990 to address the Fiscal envelope proposal. There the many Rangatira (including some whose hapū had not signed the Treaty in 1840) who assembled instead reaffirmed as the basis of tino rangatiratanga that te Tiriti o Waitangi is the Constitution of this country. In 2014 the Tribunal concluded that the Rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain and agreed to share power and authority with Britain – agreeing on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence.

As recently as 2015 Te Tiriti was reaffirmed as a basis for the constitution of this country in the Report of Matike Mai Aotearoa – the Independent Working Group on Constitutional Transformation which was established in 2010 by the Iwi Chairs Forum.

### **Co-governance and the Treaty**

In May 2023 the Iwi Chairs Forum, the NZ Māori Council and the Māori Women's Welfare League united in support for any model of co-governance that upholds Te Tiriti o Waitangi. They noted that the intent of co-governance (or by any other name) that upholds Te Tiriti o Waitangi involves working together and making decisions about matters that affect all of us. Co-governance - or another term - in this context is about the wellbeing of us all which acknowledges that the Indigenous people here in 1840 invited those others who wished to settle here under the terms of a Treaty that was agreed to. That establishes that those who are not Indigenous should abide by the Treaty-based Kāwanatanga outlined above.

*The United Nations Declaration on the Rights of Indigenous Peoples - Te Whakapuakitanga* - which a National government signed on behalf of this country is a further guide to what it means to uphold Te Tiriti o Waitangi as an invitation to belong in this land.

Voices are rising in this country and the Indigenous world view stands strong alongside the dominating world view inherited from Western "democracy" which relies on property rights-based, majority decision-making.

In the context of te Tiriti and He Whakaputanga co-governance can only be understood as affirming the pre-existing authority and rights of hapū to self-determination in Aotearoa New Zealand. Many groups experiencing this new way of working towards decision-making have experienced a new form of democracy emerging where the people involved feel they are making the decisions.

In conclusion, Treaty-based co-governance – or another term for a new way of working towards a better future for us all – means all five aspects of the Treaty need to be taken together as a whole and as a follow-on to the 1835 Declaration of Independence – He Wakaputanga o te Rangatiratanga o Nu Tirenī.

Preamble: Peace with justice for all

Article 1: Practising honourable KĀWANATANGA

Article 2: Promoting TINO RANGATIRATANGA by Tangata Whenua

Article 3: Maori participation in Kāwanatanga in ways determined by Māori in relation to tikanga

Article 4: Everybody's belief systems upheld

This new way of working is place-based and values-based and for those people who do not whakapapa to a Māori\* ancestor requires a particular focus on the responsibility for building an honourable Kāwanatanga and supporting the restoration of Tino Rangatiratanga by tangata whenua.

*NOTE: Māori\* as used above is in the context of current structures of society*

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