



MĀORI AND TREATY OF WAITANGI CULTURAL RESOURCE

HE RAUEMI TIKANGA MĀORI ME TE TIRITI O WAITANGI

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FOREWORD

Kaitiakitanga (guardianship) is the Māori philosophy behind their role as significant partners in New Zealand's primary industries. Kaitiakitanga has a correlation to, and has much to offer, MPI and our mission "to grow and protect New Zealand."

Māori are major business partners in the primary sectors with significant economic interest in land, forestry and marine assets. Growing and protecting Māori primary sector assets contributes directly to the development of New Zealand's regional economies. MPI believes that assisting Māori make the most of their assets will lead economic growth for the nation. The success of the primary industries is vital for New Zealand's economic and social prosperity.

The Treaty of Waitangi and the partnership established through this agreement is integral to the relationship between Māori and the Crown. MPI's involvement in the historical Treaty settlement negotiation process provides a platform for partnering with Māori to lift performance of land returned in settlement.

MPI is committed to building capability to enable the development of collaborative relationships with Māori. At the same time Māori are increasingly seeking productive relationships with MPI on sustainable development and a meaningful involvement in the biosecurity system.

The Māori and Treaty of Waitangi Cultural Resource is a tool to support MPI staff to understand more about Māori views and perspectives. It provides guidance as you seek to make the most of opportunities for engaging with Māori and building collaborative relationships that enhance MPI's mission.

Manaaki whenua, manaaki tangata, haere whakamua.

Care for the land, care for people, go forward.



Martyn Dunne
Director-General
Ministry for Primary Industries







HE WHAKAMARAMA EXPLANATORY NOTE

The Ministry for Primary Industries' (MPI) goal is to “Grow and Protect New Zealand.”

Māori are major business partners in the primary industries and are an integral part of the sector. Māori also have a unique relationship with the Crown through the signing of the Treaty of Waitangi. As MPI is an agent of the Crown they too have a responsibility to appropriately engage with Māori to acknowledge and provide for their interests.

The key areas of interest for Māori, in terms of the work that MPI is responsible for, includes providing opportunity for Māori to be engaged and participate in the sustainable development of New Zealand's natural resources. MPI also assists Māori to develop their resources in a way that is beneficial to both them and the wider New Zealand economy.

To achieve the interests of Māori, MPI has identified the following two strategic priorities for Māori. They are:

- » enhanced prosperity for Māori engaged with, or participating in the sector; and
- » protection of Māori biologically-based economic resources.

To assist MPI staff to achieve the above strategic priorities, *The Ministry for Primary Industries Māori and Treaty of Waitangi Cultural Resource – He Rauemi Tikanga Māori me te Tiriti o Waitangi* was developed.

This resource comprises of five main parts:

- » **Wāhanga Tuatahi:** An Introduction to Māori Beliefs, Values and Concepts
- » **Wāhanga Tuarua:** Māori Tribal Organisations – Tangata Māori
- » **Wāhanga Tuatoru:** Engaging Effectively with Māori
- » **Wāhanga Tuawhā:** A Basic Introduction to Te Reo Māori
- » **Wāhanga Tuarima:** The Treaty of Waitangi Issues Analysis Guide and Workbook.

This resource will provide a basic understanding of Māori and their culture, provide some guidance in relation to engaging with Māori, and assist in applying the Treaty of Waitangi to the work that you do at MPI.

This resource is by no means a comprehensive examination of Māori society and the Treaty of Waitangi, nor is it intended to be prescriptive. The views expressed in this resource are from a Māori perspective and should not be construed as indicating the Crown's position.

WĀHANGA TUATAHI: AN INTRODUCTION TO MĀORI BELIEFS AND CONCEPTS

TE AO MĀORI ME NGĀ TIKANGA MĀORI

<i>Ko te kore</i>	<i>The void, energy, nothingness, potential</i>
<i>Te kore te whiwhia</i>	<i>The void which nothing is possessed</i>
<i>Te kore te rawea</i>	<i>The void in which nothing is felt</i>
<i>Te kore i ai</i>	<i>The void with nothing in union</i>
<i>Te kore te wiwia</i>	<i>The space without boundaries</i>
<i>Na te kore, te Pō</i>	<i>From the void the night</i>
<i>Te Pō nui</i>	<i>The great night</i>
<i>Te Pō roa</i>	<i>The long night</i>
<i>Te Pō uriuri</i>	<i>The deep night</i>
<i>Te Pō kerekere</i>	<i>The intense night</i>
<i>Te Pō tiwhatiwha</i>	<i>The dark night</i>
<i>Te Pō te kitea</i>	<i>The night in which nothing is seen</i>
<i>Te Pō tangotango</i>	<i>The intensely dark night</i>
<i>Te Pō whawha</i>	<i>The night of feeling</i>
<i>Te Pō namunamu ki taiao</i>	<i>The night of seeking the passage to the world</i>
<i>Te Pō tahuri atu</i>	<i>The night of the restless turning</i>
<i>Te Pō tahuri mai ki taiao</i>	<i>The night turning towards the revealed world</i>
<i>Ki te whai ao</i>	<i>To the glimmer of dawn</i>
<i>Ki te ao mārama</i>	<i>To the bright light of day</i>
<i>Tīhei Mauri Ora</i>	<i>There is life</i>

TE OROKOHANGA O TE AO MĀORI – A MĀORI VIEW OF CREATION

The incantation above denotes the traditional Māori worldview and expresses the interrelatedness of all things through whakapapa (genealogy), stemming from the period in which there was nothing, the void period (Te Kore), to the world that we live in today (Te Ao Mārama).

The whakapapa identified through Māori traditional mythology places an ancestral connectedness to the natural world. Through whakapapa Māori link their ancestry back to Io (the Supreme Being), creator of all things, through to Ranginui who is personified as the Sky Father and Papatūānuku who is personified as the Earth Mother.



Māori believe that Ranginui and Papatūānuku had many children, but from these siblings emerged six dominant deities that are considered by Māori to be “ngā Atua Māori” (spiritual guardians). The names of these “Atua” and their functions include:

- Tānemahuta:** is personified as the “Atua” of the forests, their products and life within. Tāne is acknowledged as the “Atua” responsible for separating his parents and creating the first human, Hine-ahu-one (the earth-formed maiden). It is from Tāne and Hine-ahu-one that all humans are descended from.
- Rongomatāne:** is personified as the “Atua” of agriculture and peace. Rongomatāne’s realm includes cultivated crops such as the kumara, which was a highly valued plant, and peace.
- Haumiatiketike:** is the “Atua” of uncultivated foods such as the fern-root. Haumiatiketike is connected to Rongomatāne and all matters concerning the welfare of humankind.
- Tangaroa:** is personified as the “Atua” of the oceans. Tangaroa presides over the realm of the oceans, inland waters, and shoreline waters, as well as the life that inhabits them.
- Tāwhirimātea:** is personified as the “Atua” of wind, the weather and its elements. Tāwhirimātea presides over the elements, rain, wind, breezes, mist and tempests.
- Tūmatauenga:** personifies the warlike nature of humans and presides over the battlefield, be it physical or non physical in nature.

Tānemahuta is known for many feats and one of these was the creation of the first female entity (Hine-ahu-one), who some say was moulded from the sacred clay of the body of Papatūānuku.

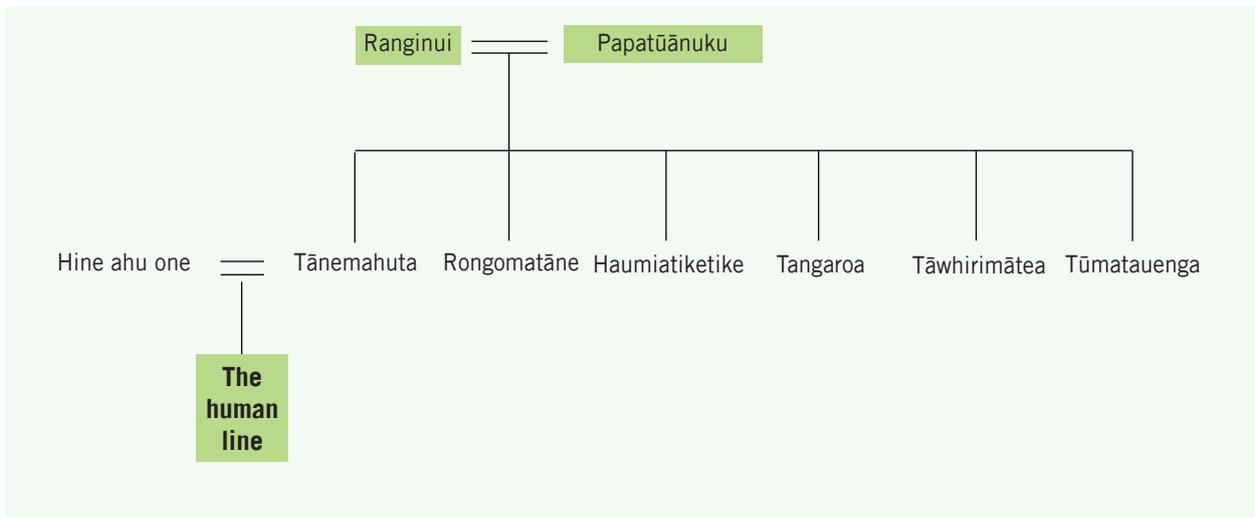


Figure 1: A genealogy diagram illustrating the descent of humans from the Atua.

Hine-ahu-one was given the breath of life (mauri) by Tānemahuta by the blowing of his breath into a number of cavities of the clay moulded woman eventually to find the appropriate one. This life-giving act is acknowledged today through the “hongī” (refer to Pōwhiri section), or pressing of noses in greeting. Tānemahuta and Hine-ahu-one begat children and it is from this that the human line was started. This act also created a link between “te ira tangata” (human principle), and “te ira Atua” (spiritual principle).

Māori believe that it is through this linkage that humans can trace their genealogy back to “ngā Atua” thus underpinning the cultural constructs that provide for Māori principles and society today.

However, as time goes on, Māori are reasserting “mana whenua” over their land. This term again is interrelated to other Māori concepts, especially with the concept of rangatiratanga. Mana whenua, like rangatiratanga, can be defined as inherited user rights, guaranteeing the “mana” to utilise, control, sustain and protect.

The whakapapa between “ngā Atua” and humans provides the framework in which Māori society over time has developed. Humans are considered to be the teina (the youngest in the family line) and it is this principle that is inherent in the responsibility of looking after the tuākana (elders in the family). Māori believe that the “Atua” look after humankind by providing sustenance and resources, and through the Māori principle of “utu” (reciprocation, obligation) Māori are obliged to reciprocate by protecting and sustainably using the resources. Effectively this means Māori have a responsibility of looking after and protecting all domains of “ngā Atua”, thus kaitiakitanga.

TIKANGA MĀORI ME NGĀ KAWA – MĀORI CULTURAL KNOWLEDGE, VALUES AND PRACTICES

For Māori to effectively perform/achieve their responsibilities of sustaining the realms of “ngā Atua” they have over time developed comprehensive tools to manage and protect their way of life. These collection of beliefs and values shape Māori behaviour and are often referred to as “tikanga”.

Tikanga can also be described as a form of cultural knowledge, that is founded upon the experiences, logic, common sense and learning that has been handed down through the generations.

However, the way in which this cultural knowledge is practiced will vary between iwi (tribe), hapū (sub-tribe) and whānau (immediate family). This is better known as “kawa” (practice of cultural knowledge).

These tools have been informed by the celestial origins and interrelatedness of all things. What follows is a more detailed explanation of some of the key environmental cultural knowledge, values and practices that exist within Māori society.





TAPU – SACRED, FORBIDDEN, SET APART

“Tapu” is commonly translated as “sacred” which is not fully accurate. Other translations include prohibited and unclean, and while individually these terms fall short of conveying the complete meaning of “tapu”, a combination of these states may suffice when attempting to conceptualise this.

Through one’s “whakapapa” to the “Atua”, a person is imbued or implanted with the “tapu” of “ngā Atua”. This kind of “tapu” is considered to be stable and does not change no matter what the external circumstances might be. This can be the “tapu” of a chief, or of a river, lake or foreshore.

Another form of “tapu” is considered to be extrinsic and occurs through interactions with “tapu” bearing agents. This kind of “tapu” can fluctuate, and the results of which can manifest as sickness or possibly death of an individual, or of stagnation and decay of environments. It is these forms of “tapu” that “karakia” (rituals) are directed at to bring balance.

“Tapu” is seen as a human construct to regulate society. Rendering certain possessions or places “tapu” is a safety measure designed to bring a sense of caution, thereby restricting access (Durie, 1998).

This prohibitive quality of “tapu” is used in the management of natural resources, through the implementations of management tools such as rāhui (prohibition, protection, conservation).

RĀHUI – PROTECTION, RESTRICTION, CONSERVATION

“Rāhui” involves the prohibition of an affected area (depending on the level of “rāhui”), and is “to restore and retain the productiveness, health and welfare of the land and people” (Mead, 1984). If an area is rendered “tapu”, a complete prohibition (“rāhui”) is set in place for a period of time, or is subject to observations until the status of the resource recovers. When this assessment has been made, the “rāhui” is lifted.

MANA – POWER, INFLUENCE, AUTHORITY, PRESTIGE, CONTROL

“Mana” and “tapu” are so closely linked and are almost interchangeable as the “mana” of a person or object will determine the comparative “tapu” of that person or object.

“Mana”, like the concept of “tapu” originates from “ngā Atua”, it is one of the most commonly used Māori concepts. When people refer to “mana”, it tends to be associated with a person in an influential role. These people are said to have the qualities of leadership, power, influence and authority, though all individuals (regardless of whakapapa) are born with an increment of “mana”.

In traditional Māori society, people who were well placed in terms of “whakapapa”, who came from a chiefly line or from important families, were said to have inherited “mana”. These individuals draw their “mana” from the prestige of their “mana tipuna” (ancestors) (Mead, 2003). This is endorsed or approved “mana”.

People can also acquire “mana” through their deeds, abilities, skills and achievements. This “mana” can be acquired by any individual regardless of their “whakapapa”. It was and is possible to rise above the limitations of “whakapapa” (Mead, 2003). This is achieved or extrinsic “mana”. The process for gaining achieved “mana” is expressed by the Māori proverb: ***Waiho, mā te iwi e whakamana. It is left to the people to determine that one receives mana.***

In this manner achieved “mana” can be seen as dynamic and endorsed to individuals by a majority.

“Mana”, inclusive of both achieved and ascribed, is a fluid dynamic that can fluctuate through actions and interactions, but cannot fall below the intrinsic level attributed to “whakapapa”.

Natural resources also have “mana”, linked by their “whakapapa” to “ngā Atua”. The “mana” from the land derives from Papatūānuku – the Earth Mother. In practice, the “mana” of natural resources are elevated to a position of importance through the oratory process, where orators’ introductions substantiate their “mana” by reciting their “whakapapa” and their landmarks which links them to the land in which they descend from. Such landmarks will include “maunga tapu” (sacred mountains), “tipuna awa” (ancestral waterways) and “marae” (specifically hapū meeting places).

KAITIAKITANGA – GUARDIANSHIP, PRESERVATION, PROTECTION, SUSTAINABILITY

Because Māori believe that humans and nature are not separate entities but related parts of a unified whole, Māori have a responsibility to protect and sustain our natural resources.

The word “kaitiakitanga” is considered to be a recent development, and has in recent times been defined by central government as “guardianship”. This definition is very narrow and only translates part of the concept to mean “ensuring the sustainability or long-term survival of resources”. However, there are a number of underlying principles that underpin this concept that have been practiced by Māori for hundreds of years.

“Kaitiakitanga” includes principles such as rangatiratanga and mana (authority and use of resources), spiritual beliefs such as tapu, rāhui, mauri (sacredness, prohibition, life-force) and social protocols such as respect, reciprocity and obligation. From these different principles the concept of “kaitiakitanga” ties together the physical, environmental, spiritual, economic and political aspects of Māori society.



RANGATIRATANGA – SELF-MANAGEMENT, LEADERSHIP, SELF-DETERMINATION, SOVEREIGNTY

“Rangatiratanga” today is about allowing Māori to determine how they live their lives – essentially the advancement of Māori people as Māori.

In more recent years there has been a resurgence of Māori wanting to have better control over their culture, resources, social and economic wellbeing (Zyglado et al, 2003) and to ensure that this is acknowledged and recognised by the Crown and all New Zealanders.

“Rangatiratanga” in relation to natural resources connects back to the concept of “kaitiakitanga”. For Māori to be able to carry out their role as “kaitiaki” (guardians) they must be able to have some autonomy in the delivery of this role if it is to be effective – this essentially means Māori should have an integral part in the decision-making processes around the management of natural resources. If Māori along with the wider community are unable to exercise this right effectively, then the sustainable use and/or protection of the natural resources is flawed and at risk of being damaged or lost forever.

MANA WHENUA – TRADITIONAL STATUS, RIGHTS AND RESPONSIBILITIES OF HAPŪ AS RESIDENTS IN THEIR ROLE

“Mana whenua” is another term that some argue is a word that government has developed to enable a Māori concept to be used in New Zealand’s legislation.

The term “mana whenua” under the Resource Management Act 1991 is defined as: “Customary authority exercised by an iwi or hapū in an identified area”.

On occasions where Māori were disenfranchised from their land, the power associated with the possession of land (ahi kā) was lost. These occasions seriously impeded the ability of tangata whenua (people of the land) to be able to live off the land and provide sustenance for their families and tribes.

MAURI – LIFE FORCE, ENERGY, LIFE PRINCIPLE

“Mauri” is generally translated as life force or life essence. “Mauri” is the binding force between the spiritual and physical. It is held by all things through whakapapa linking to the “Atua”. It is not an attribute restricted to humans. Entities such as rocks, stones, forests, lands, animals, birds, fish, oceans, rivers and mountains have their own “mauri”.

Ecosystems also collectively have “mauri”, which manifests as the ecosystem’s ability to sustain and endow life, and as such a disruption to that life force causes negative effects to the ecosystem and the resources it contains.

The maintaining and enhancing of the “mauri” of a resource or ecosystem is the focus of Māori environmental management. Where “mauri” is strong, the resources and taonga will flourish. If it is weakened or undermined, it will result in the decay of the resource, or low productivity.

CONCLUSION

The key aspect of Māori concepts and beliefs is the holistic nature of all things; that all concepts are linked, and are only effective when utilised in a holistic manner. The key linking concept is that of “whakapapa”, which links all things together, namely the genealogical link of all things to ngā Atua. It is through this that “tapu”, “rāhui”, “mana”, “kaitiakitanga”, “rangatiratanga”, “mana whenua”, “mauri”, and indeed many other Māori concepts form the basis from which Māori culture regulates and informs its decision-making processes.





WHĀNGA TUARUA: MĀORI TRIBAL ORGANISATIONS

TANGATA MĀORI

As discussed, “whakapapa” is the link that connects people to “ngā Atua”. This linkage and connection through whakapapa is a basis in which Māori societies are structured. Tribal groups are formed in different ways. Originally Māori identified themselves with the waka (canoe) on which the founding ancestor arrived from Hawaiki (the acknowledged homeland of Māori). Over succeeding generations descendants of the groups expanded and formed into whānau, hapū and iwi.

WHĀNAU – EXTENDED FAMILY

Whānau is the basic unit of Māori society into which an individual is born and socialised. A whānau can consist of up to three or four generations and is often referred to as your extended family. The word whānau can also be translated as “family” and “to give birth”.

HAPŪ – SUB TRIBE

A hapū is made up of a number of whānau and is often translated as sub-tribe. The hapū in pre-European Māori society was considered to be the most significant political units.

Hapū also translates into pregnancy again elevating and transferring into a metaphor for the genealogical connection that unites the members of the hapū.

IWI – TRIBE

The iwi or tribe is the largest political unit in Māori society. An iwi is made up of a number of hapū. A tribe normally occupies a particular area of land which has been in their possession for many generations. Iwi is also the Māori word for bones.

TANGATA WHENUA – THE PEOPLE OF THE LAND

The term “tangata whenua” is used to collectively describe the people who have a historical and ancestral connection to a place. This term also expresses the connection that exists between tangata (people) and whenua (land). This means that whānau, hapū and iwi within a particular area would be considered to be tangata whenua. For Māori, whenua and their ability to whakapapa to it, is integral to Māori identity.



MĀORI GOVERNANCE STRUCTURES

Today Māori have a number of varying governance structures that have been established to manage the interests and assets of whānau, hapū and iwi. It will be useful for MPI staff to have an understanding of these governance structures as it will assist in identifying Māori groups or occasions when MPI staff may have to engage with some of these Māori entities to assist in further developing the work of MPI.

TE TURE WHENUA MĀORI ACT 1993

A major influence on the way in which Māori governance structures have been adapted and established over the years has been through the passing of the Te Ture Whenua Māori Act 1993. The Act was developed to restrict the alienation of Māori land and to overcome the problems of fragmentation of titles among multiple owners by providing for various kinds of entities for managing the land.

The structures that are available to whānau, hapū and iwi under the Te Ture Whenua Māori Act 1993 include Māori trusts (e.g. Ahu Whenua Trusts), Māori incorporations and Māori reservations.

The main advantages of structures under Te Ture Whenua Māori Act 1993 are:

- » Māori Land Court intervention ensures accountability and protection;
- » high level of beneficiary participation;
- » the restrictions on alienation.

The main disadvantages of structures under Te Ture Whenua Māori Act 1993 are:

- » lack of commerciality;
- » can be cumbersome due to a high level of beneficiary participation;
- » Māori Land Court intervention can be time consuming and costly;
- » restrictions on alienation can impede development;
- » difficulties in obtaining finance.

MĀORI LAND TRUSTS

- » The Māori Land Court has exclusive jurisdiction to constitute trusts over Māori land and general land owned by Māori.
- » Māori land means Māori customary land and Māori freehold land.
- » General land owned by Māori means general land that is owned for a beneficial estate in fee simple by a Māori and generally registered under the Land Transfer system.
- » The main function of these trusts are to administer the trust's assets for the general benefit of the beneficiaries.
- » The trustees appointed by the Māori Land Court are responsible for:

- › carrying out the terms of the trust;
 - › the proper administration and management of the business of the trust; the preservation of the assets of the trust;
 - › the collection and distribution of the income of the trust.
- › Many trusts undertake farming activities on their own account. Activities include farming (beef and sheep), dairying, cropping, horticulture, forestry, aquaculture and fisheries.
 - › Other trusts prefer to lease out all or part of their land. In such circumstances the trustees will be responsible for monitoring the lease, collecting the rent and, where appropriate, approving distributions to the beneficiaries.
 - › There are five types of trusts that can be created including: Ahu Whenua Trusts, Whenua Tōpu Trusts, Kai Tiaki Trusts, Whānau Trusts and Putea Trusts.
 - › Many commercial operations involving Māori are carried out under Ahu Whenua Trusts or Māori Incorporations.

Other governance structures that MPI staff should be familiar with include but are not limited to; the Federation of Māori Authorities, Rūnanga/Māori Trust Boards, and marae committees.

FEDERATION OF MĀORI AUTHORITIES (FoMA)

- › FoMA is easily New Zealand's largest Māori business network with a membership of Māori incorporations, Māori land trusts, Māori trust boards and rūnanga, and emerging communally owned entities.
- › FoMA's mission is to foster and promote the development, sound management and economic advancement of Māori authorities and in turn, the wider Māori communities they benefit.

RŪNANGA/MĀORI TRUST BOARDS

- › An elected collective body representing iwi, hapū and whānau groups.
- › Authorised to speak on behalf of tangata whenua.
- › Set up incorporated societies, charitable trusts, or other legal framework.

MARAE COMMITTEES

- › The marae committee has the responsibility of the day-to-day running of the marae and are elected by descendants of the marae. But, more importantly, they are the eyes and ears of the entities referred to.

The governance structures discussed above are only a few but are important to the work of MPI. There are a number of Māori organisations that may be more relevant to engage with depending on the kind of work that is being progressed. To ensure that you engage with the appropriate people please contact MPI's Te Tauaki Puawai (TTP) Committee as they will be able to provide advice as to the relevant organisations according to the issue within a Māori context.





WĀHANGA TUATORU: ENGAGING EFFECTIVELY WITH MĀORI

HE WHAKAMOHIOTIA KI NGĀ TANGATA MĀORI

INTRODUCTION

A necessary part of being responsive to Māori is effectively engaging and communicating with Māori – knowing when to, knowing how to and knowing why it is necessary. Whether meeting with Māori on the marae or in a boardroom to discuss policy initiatives, or working with a hapū in relation to a biosecurity incursion response, or handling Māori taonga at the border, there are a number of processes and protocols that MPI staff should have prior knowledge about, in order to show the necessary respect to the people you are engaging with. What follows are a few guidelines to assist MPI staff when engaging with Māori.

WHY ENGAGING WITH MĀORI IS IMPORTANT

As stated in the introduction of this resource Māori are major business partners in the primary sector and need to be involved in any policy that is being developed. Māori also have a relationship with the Crown through the Treaty of Waitangi. Finally Māori have vested interests, economic, social, cultural and environmental, in the management and protection of our natural resources. All these aspects therefore point to the need to engage with Māori.

Through the signing of the Treaty of Waitangi, Māori developed a unique partnership with the Crown and, as MPI is an agency of the Crown, it has a fiduciary duty to appropriately engage with Māori to recognise and provide for their interests. The key areas of interest for Māori, in terms of MPI's work includes being able to engage and participate in the sustainable development of New Zealand's natural resources, and provide opportunities for Māori to develop their resources in a way that is beneficial to them and their people.

It is important to note that the sustainable management of natural resources is closely aligned to the kaitiakitanga concept; therefore Māori will hold a view that any work undertaken by MPI will have a Māori element to it.

To be able to provide for Māori interests, MPI staff must first develop strong and trustful relationships with Māori. This relationship should be built on mutual co-operation and trust, the basic principle of reasonableness and good faith.

WHICH MĀORI GROUPS SHOULD BE ENGAGED?

When an MPI matter has been identified to potentially be of interest to Māori, there are a number of reactions by staff that may coincide. Often staff unfamiliar with engaging with Māori (like anything in life) are wary and unsure about how to best approach the situation. If this is the case the MPI staff member should contact the TTP Committee in the first instance to obtain advice on how best to engage. Deciding on how and with whom to engage with is often a difficult task and should be made on a case-by-case basis. The following questions and examples may help with decisions:

What is the purpose?

- » Is the purpose to inform Māori about an incursion response or a biosecurity-related incident in their particular area; or
- » Is it to obtain Māori ongoing input into the development of policy; or
- » Raising public awareness amongst Māori treaty/business partners.

Consider what might be the best approach to achieve your purpose

- » It is important that Māori are consulted. Examples on how to do this include:
 - › Informing – specific hui with Māori at a venue they have chosen.
 - › Ongoing input – establishment of an Advisory Group.
 - › Public awareness – develop a database so that regular emails or newsletters can be sent to Māori treaty partners.

Who are the appropriate individuals, groups or organisations?

- » It is very important that Māori are given the opportunity to recommend their own representative rather than MPI determining whom it considers to be appropriate.
- » An individual Māori member of staff, a single Māori person or a Māori consultant, are not adequate representatives of Māori views. It is also insufficient to consult with Māori units in other government departments. Although they may have good access to Māori views for their own analysis, it is not their responsibility to be providers.





OTHER CONSIDERATIONS WHEN ENGAGING WITH MĀORI

HUI FATIGUE

Remember Māori receive many requests to participate in engagement and consultation processes at both a local and national level. MPI staff should think through the benefits of Māori participating and possibly link up with similar kinds of work happening within MPI and other government agencies.

RESOURCING

Consideration needs to be given to resourcing engagement with Māori.

If a meeting for example, is targeted within a particular region, then obviously resourcing would be minimal and may include a few flights for MPI staff to and from the area in which you plan to have your meeting.

However, if your issue has a national interest and there is the potential to have a number of meetings, resourcing will be significantly increased. Costs can include travel, accommodation, venue hire, meals, koha for the marae, and facilitators.

GENUINE COMMUNICATION

Kanohi-ki-te-kanohi (face-to-face) communication is generally the preferred form of communication for Māori. Māori prefer to engage with staff members with authority, who are experts on the topic but more importantly, have a key role in the decision-making process.

Sufficient time must be given to Māori to absorb any information received. Further time may be required to deliver information back to an individual's respective whānau, hapū or iwi for further consultation and comment.

To communicate effectively, any written material should not contain any jargon and be appropriate to a Māori audience. Consider presenting information graphically, particularly summarising the key points using visual aids.

Māori must be given the opportunity to provide effective input into the communication process. An inability to provide effective input will create doubt that their views are being genuinely sought. If this occurs it is likely that MPI will meet resistance if a proposal is presented to Māori which does not include any input from Māori.

FEEDBACK

Reporting the results of the consultation back to Māori is an important stage of the consultation process. Māori want to know how their views were incorporated into policy and, if not, why not. Feedback also gives Māori the opportunity to comment on the policy they have participated in developing, and it allows them to feel that their contribution has been recognised.

Providing feedback will contribute to the development of a positive working relationship with Māori.

ATTENDANCE OF MPI STAFF

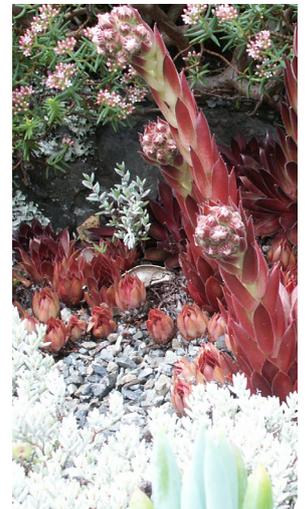
It is important that MPI staff meeting with Māori have the seniority to respond to Māori on issues of concern which may arise. Consideration should be given to the numbers of staff attending and, just as important, informing the hosts of those staff numbers attending.

TYPES OF MEETINGS WITH MĀORI

Engagement where participants feel they are contributing to a useful process is more likely to deliver better outcomes overall.

Engagement can vary depending on the purpose of the meeting. The following table outlines some of the different types of meetings that you might consider or encounter when working with Māori.

TYPE	PROCEDURE
Roundtable	Representatives participate in a preliminary discussion on issues. These meetings may be held at a MPI office or at a venue determined suitable by Māori.
Local Hui	Meeting with local iwi, hapū, and/or Māori authorities on a particular issue to obtain their views and input.
Regional Hui	Māori groups are asked to meet together at a regional hui. The regions may be based on iwi regions depending on the topic to be discussed and the purpose of the hui. Involvement of tangata whenua at these meetings is crucial. It is also important to ask the tangata whenua first whether it is appropriate to hold the hui in their area.
Marae	Depending on the issue there will be times where the tangata whenua will find it more appropriate to hold the meeting on a marae. If this occurs attendees will have to be aware of the pōwhiri processes (see below for more detail).





PŌWHIRI PROCESS

A traditional Māori welcome on to a marae is called a pōwhiri (or pōhiri). Marae are not the only places where pōwhiri may take place – nowadays pōwhiri can happen anywhere that hosts (tangata whenua) may choose to formally greet a group of visitors (manuhiri).

The following are six basic steps of the pōwhiri process that are by no means prescriptive. Note that the order may change and vary depending on the different hapū or iwi.

KARANGA

The karanga is an exchange of calls that takes place during the time a visiting group moves onto the marae or into the formal meeting area. The karanga is initiated by the hosts and usually indicates the start of the pōwhiri. It is protocol to expect a karanga from the manuhiri (visitors) in response to the hosts.

WHAIKŌRERO

The purpose of the whaikōrero is to acknowledge and weave together the past, present, and future, by acknowledging the creator, guardians and the world of the living and dead. This is also the time where the kaupapa (the reason) of the gathering is introduced. It is important to note that the order of the speakers will differ between different iwi and hapū.

WAIATA

The purpose of the waiata is to generally support speakers in the establishing and confirming mana whenua, mana tangata through whakapapa and oral history. (Examples of waiata can be found under the “Preparation for meeting with Māori” section).

KOHA

A koha is a gift, generally an envelope of money that is laid on the ground by the last speaker for the manuhiri (visitors). A local kuia (female elder) may karanga as an expression of thanks. A male from the tangata whenua will pick up the koha (MPI’s policy for the giving of koha is outlined in the “Preparation for meeting with Māori” section).

HONGI

Hongi – the pressing of noses signifies the joining together of tangata whenua and manuhiri. Tangata whenua invite the manuhiri to come forward to shake hands (harirū) and hongi. This act also symbolises the giving of life by Tānemahuta as discussed at the beginning of this resource.

HĀKARI

This is the final stage of the pōwhiri. It is the stage where the tapu of the pōwhiri is removed by the sharing of kai (food). To assist with this process a karakia is said, to bless the food. A karakia for food can be found under the “Preparation for meeting with Māori” section. The hākari is usually held at the end of the hui.

Remember to always check with the local iwi/hapū about the appropriate processes and protocols.

PREPARATION FOR MEETING WITH MĀORI

KARANGA

If you are informed that a pōwhiri will be conducted, it will be necessary to organise a person who will conduct the karanga. This person will respond on behalf of the group to the host group. If no one is available, discuss this with the host people. They will advise the best way to deal with this situation.

WHAIKŌRERO

MPI staff will need to decide who, and how many will speak on behalf of MPI before arriving at the meeting. Again, if no one is available, discuss this with the host people. They will advise the best way to deal with this situation.

WAIATA

When meeting with Māori there will be a number of times where it will be expected that you will stand and sing a waiata. It may be in support of a person who has spoken on your behalf, after you have given your mihimihi (introduction), or after an opening or closing karakia.

(To listen to how the waiata are sung please refer to the enclosed CD).





TE AROHA

*Te aroha
te whakapono
me te rangimarie
tātou tātou e*

*The love
The blessings
And the sentiments of peace
For us all*

MĀ WAI RA

*Mā wai ra e taurima
te marae i waho nei
mā te tika
mā te pono
me te aroha e*

*Who will stand to deliver
On the marae now
Let it be justice
Let it be truth
And let it be love*

EHARA I TE MEA

*Ehara i te mea
Nō inaianei te aroha
Nō ngā tūpuna
I tuku iho, i tuku iho*

*It is not
Recent the love
It is from the ancestors
From early times*

KOHA

As discussed above koha is a gift, a token, or a contribution given to the host people for their hospitality. Traditionally food from the visitor's homeland was given as a koha, however, today it is more likely that money will be exchanged to reflect this traditional custom.

Koha must not be confused with payment of services such as the cost of using the marae or other venue, meals, and accommodation. **Koha should be given in addition to these services.** Guidance as to an appropriate amount for koha should be discussed with the MPI TTP Committee.

Under MPI's operational policy for the giving of koha, staff are required to obtain pre-approval from the manager you report to. When this approval has been obtained, make contact with MPI Finance where a cheque will be generated, once approval has been received.

KARAKIA

Karakia are often conducted when meetings are opened and closed and before food is eaten. If you are organising a meeting with Māori this protocol should be considered. Depending on who is in attendance you may consider asking a kaumātua (elder) or someone else who has attended the meeting to conduct the karakia, or alternatively refer to the examples that have been provided below.

(Pronunciation of these karakia can be found on the enclosed CD).

KARAKIA TĪMATANGA – OPENING PRAYER

<i>Whakataka te hau ki te uru</i>	<i>Cease the winds from the west</i>
<i>Whakataka te hau ki te tonga</i>	<i>Cease the winds from the south</i>
<i>Kia mākinakina ki uta</i>	<i>Let the breezes blow over the land</i>
<i>Kia mātaratara ki tae</i>	<i>Let the breezes blow over the ocean</i>
<i>Kia hī ake ana te ataakura</i>	<i>Let the red-tipped dawn come</i>
<i>He tio, he huka, he hauhu</i>	<i>With the sharpened air, the touch of frost and the promise of a glorious day</i>
<i>Tihei Mauri Ora</i>	<i>This is life</i>

KARAKIA WHAKAMUTUNGA – CLOSING PRAYER

<i>Unuhia, unuhia</i>	<i>Withdraw, withdraw now</i>
<i>I mua waka, i roto waka</i>	<i>From the front of the waka, from inside of the waka</i>
<i>I a Tānemāhuta</i>	<i>Of Tānemahuta</i>
<i>Nā Rongo, nā Tāne</i>	<i>By Rongo, By Tāne</i>
<i>Ki te hau tapu a Tū</i>	<i>To the sacred winds of Tu</i>
<i>Ki te whaiao, ki te ao mārama</i>	<i>To the world of light</i>
<i>Tūturu o whiti whakamaua kia tina ... tina</i>	<i>Bind together strongly so may stand firm</i>
<i>Haumi ē, hui ē, tāiki ē</i>	<i>Let all join, gather be one</i>

KARAKIA KAI – PRAYER FOR FOOD

<i>Nau mai e ngā hua e hora nei</i>	<i>Come all these riches laid out here before us</i>
<i>O te wao</i>	<i>Of the forest</i>
<i>O te ngakinga</i>	<i>Of the cultivations</i>
<i>O te waitai</i>	<i>Of the sea</i>
<i>O te wai Māori</i>	<i>Of the freshwater</i>
<i>Nā Tāne</i>	<i>From Tānemāhuta</i>
<i>Nā Rongo</i>	<i>From Rongomatāne</i>
<i>Nā Tangaroa</i>	<i>From Tangaroa</i>
<i>Nā Maru</i>	<i>From Maru</i>
<i>Ko Ranginui e tū iho nei</i>	<i>Ranginui resides above</i>
<i>Ko Papatūānuku e takoto ake nei</i>	<i>Papatūānuku dwells below</i>
<i>Tūturu whakamaua kia tina ... tina</i>	<i>Bind together strongly so we may stand firm</i>
<i>Hui ē, taiki ē</i>	<i>Let all join, gather be one</i>

MIHIMIHI – PERSONAL INTRODUCTIONS

Often at meetings with Māori, they will want to know where you are from and who you are. The following are examples that you may want to use when introducing yourself.

(Pronunciation of these introductions can be found on the enclosed CD).

MIHI POTO – BASIC INTRODUCTION

<i>Tēnā koutou katoa</i>	<i>Greetings to you all</i>
<i>Ko (first and surname) ahau</i>	<i>My name is (first and surname)</i>
<i>Nō (place where you are from) ahau. e.g. Whanganui-a-Tara</i>	<i>I come from (place where you are from). e.g. Wellington – Poneke</i>
<i>Kei te mahi ahau mo te (place where you work). e.g. Manatū Ahu Matua</i>	<i>I work at (place where you work) e.g. Ministry for Primary Industries</i>
<i>Tēnā koutou katoa</i>	<i>Greetings to you all</i>

HE PEPEHA – AN EXTENDED INTRODUCTION

<i>Ko (name of your mountain) te maunga</i>	<i>(name of your mountain) is my mountain</i>
<i>Ko (name of your river) te awa</i>	<i>(name of your river) is my river</i>
<i>Ko (name of your sub-tribe) te hapū</i>	<i>(name of your sub-tribe) is my sub-tribe</i>
<i>Ko (name of you tribe) te iwi</i>	<i>(name of you tribe) is my tribe</i>
<i>Ko (name of your homeland) te tūrangawaewae</i>	<i>(name of your homeland) is my homeland</i>
<i>Ko (first and surname) ahau</i>	<i>My name is (first and surname)</i>

MODE OF DRESS

For the formalities on the marae as in pōwhiri, there is an expected dress code for marae host/visitor interaction. Women wear long or medium length skirts or dresses, rather than trousers. Men should always wear trousers. Both these modes of dress are a mark of respect for the marae protocol.

WĀHANGA TUAWHA: TE REO MĀORI – A BASIC INTRODUCTION TO MĀORI LANGUAGE

In the last 200 years the Māori language has struggled to survive, but through the persistence of our Māori people, we can still enjoy this unique language that is only spoken here in Aotearoa – New Zealand.

This section of the resource will provide a basic introduction to the Māori language – Te Reo Māori, by guiding your pronunciation of Māori words and providing you with a few everyday words that we encourage you to use as much as you can during your day-to-day work. The more familiar you become with something, the easier it will become.

Give it a go – mahi atu

PRONUNCIATION

In comparison to English, the Māori alphabet differs in that it is relatively brief. It is made up of eight consonants, two digraphs and five vowels.

Consonants – “Orokati”

H K M N P R T W

Most of the Māori consonants sound similar to the English sound but there are several that need special attention and practice.

R is very short and slightly rolled

Digraph (two consonants representing one sound) – “Pūrua”

WH is pronounced as a soft “F”

NG is pronounced as the NG in SINGER

Vowels – “Oro Puare”

A E I O U

The vowel sounds in Māori differ from English. For example:

A pronounced aa as in **are**

E pronounced ea as in **there**

I pronounced ee as in **three**

O pronounced aw as in **or**

U pronounced uu as in **two**





Macrons – Ngā Tohutō

The macron is used to denote vowel length, in particular a long-vowel sound. When correctly written or typed, the long-vowel sound is indicated by a horizontal bar positioned above the lengthened vowel (for example, the word Māori).

The use of the macron can not only change the sound of the word but also the meaning. For example, the word keke means “cake”, whereas the word kēkē means “armpit”.

He Waiata – A song for pronunciation

The following song will help you “loosen up your tongue” and help you to correctly pronounce the Māori consonants and vowels.

(To listen to how the waiata is sung please refer to the enclosed CD).

A-ha-ka-ma-na-pa-ra-ta-wa-ngā-wha

E-he-ke-me-ne-pe-re-te-we-nge-whe

I-hi-ki-mi-ni-pi-ri-ti-wi-ngi-whi

O-ho-ko-mo-no-po-ro-to-wo-ngo-who

A – E – I – O – U

U-hu-ku-mu-nu-pu-ru-tu-wu-ngu-whu

SIMPLE EVERYDAY PHRASES

These greetings can be used when interacting with people face-to-face or when sending emails:

Mōrena	Good Morning
Āta marie	Good Morning
Haere mai	Welcome/Enter
Nau mai	Welcome
Kia ora	Hello/Thank you
Kia ora	Hello everyone
Tēnā koe	Hello (formal greeting)
Tēnā kōrua	Hello you two

You may want to consider the following when saying good bye or signing off an email you have written:

Hei konā	Regards
Haere rā	Goodbye
E noho rā	Saying good bye (when you are staying and the person is leaving)
Pō marie	Good night
Mā te wā	Until next time, mate (informal)
Kia ora ra e hoa	Catch ya later mate (informal)

Here are a couple of other phrases that you may want to try out with your work colleagues or family members.

“Don’t be shy to give it a go” – Kāua e whakamā, mahi atu

Kei te pēhea koe?	How are you?
Ka nui te ora	I am great
Ka pai, me koe?	I’m good and you?
He tino pai koe ki te awhi	You have been very helpful
He aha te wā?	What is the time?
He kapu ti, kāwhe rānei?	Would you like a cup of tea or coffee?
Āe, he kapu ti/kāwhe māku	Yes, I would like a cup of tea/coffee.



NGĀ TAPUTAPU – EVERYDAY OBJECTS

Pene rakau	Pencil
Pūkohi	Folder
Tēpu	Desk
Rātaka	Diary
Rorohiko	Computer
Pukapuka	Book
Kaita	Printer
Pene	Pen
Papa patopato	Keyboard
Paenga	Shelf
Pane whakaata	Monitor
Weropepa	Hole punch
Pounamu	Bottle
Rāpihi	Rubbish
Kutikuti	Scissors
Toroa	Drawer
Tohu	Stamp
Makatiti	Stapler
Tūru	Chair
Waea	Phone

CUT OUT THE FOLLOWING MĀORI WORDS TO LABEL YOUR DESK

Papa patopato	Pene	Tēpu	Tohu
Pukapuka	Waea	Rāpihi	Kaita
Pane whakaata	Rorohiko	Tūru	Pūkohi
Pene rakau	Paenga	Weropepa	Toroa
Makatiti	Rātaka	Kutikuti	Pounamu

NUMBERS, DAYS AND MONTHS

TE MAHI KAUTE – COUNTING IN MĀORI

1. <i>tahi</i>	11. <i>tekau mā tahi</i>	30. <i>toru tekau</i>
2. <i>rua</i>	12. <i>takau mā rua</i>	40. <i>whā tekau</i>
3. <i>toru</i>	13. <i>tekau mā toru</i>	50. <i>rima tekau</i>
4. <i>whā</i>	14. <i>tekau mā whā</i>	60. <i>ono tekau</i>
5. <i>rima</i>	15. <i>tekau mā rima</i>	70. <i>whitu tekau</i>
6. <i>ono</i>	16. <i>tekau mā ono</i>	80. <i>waru tekau</i>
7. <i>whitu</i>	17. <i>tekau mā whitu</i>	90. <i>iwa tekau</i>
8. <i>waru</i>	18. <i>tekau mā waru</i>	100. <i>kotahi rau</i>
9. <i>iwa</i>	19. <i>tekau mā iwa</i>	101. <i>kotahi rau mā tahi</i>
10. <i>tekau</i>	20. <i>rua tekau</i>	1000. <i>kotahi mano</i>

NGĀ RĀ O TE WIKI – DAYS OF THE WEEK

DAYS	MODERN	TRADITIONAL
Monday	Mane	Rāhina
Tuesday	Tūrei	Rātu
Wednesday	Wenerei	Rāapa
Thursday	Tāite	Rāpare
Friday	Paraire	Rāmere
Saturday	Hātarei	Rāhoroi
Sunday	Rātapu	Rātapu

NGĀ MARAMA O TE TAU – MONTHS OF THE YEAR

MONTHS	MODERN	TRADITIONAL
January	Hānuere	Kohitātea
February	Pepuere	Hui Tānguru
March	Maehe	Poutū-te-rangi
April	Āperira	Paenga Whāwhā
May	Mei	Haratua
June	Hune	Pipiri
July	Hūrae	Hōngongoi
August	Ākuhata	Here-turi-kōkā
September	Hepetema	Mahuru
October	Oketopa	Whiringa-ā-nuku
November	Noema	Whiringa-ā-rangi
December	Tīhema	Hakihea





FURTHERING YOUR TE REO MĀORI

There are many institutions in your region providing te reo Māori courses for you to further your basic knowledge and use of te reo in your workplace or for personal interest. A few of these are listed below:

TE ATAARANGI

Freephone: 0800 282272

Online: www.teataarangi.org.nz

THE CORRESPONDENCE SCHOOL – TE AHO O TE KURA POUNAMU

Freephone: 0800 65 99 88

Online: www.tekura.school.nz

OTHER POTENTIAL TRAINING PROVIDERS

Contact your local university, polytechnic or secondary school for course details.

WAHANGA TUARIMA: TREATY OF WAITANGI ISSUES ANALYSIS GUIDE AND WORKBOOK

INTRODUCTION

This Treaty of Waitangi Issues Analysis Guide (the Guide) and the following section, the Treaty of Waitangi Workbook (the Workbook) is to be used by MPI staff to assist with understanding and identification of Treaty issues within their day-to-day work.

This Guide comprises four main parts:

- » **Part 1:** Background Information on the Treaty of Waitangi.
- » **Part 2:** Treaty of Waitangi Issues Analysis Framework.
- » **Part 3:** Useful Resources.
- » **Part 4:** The Treaty of Waitangi Workbook.

Part One (*Background Information on the Treaty of Waitangi*) provides the historical context of the Treaty of Waitangi, what activities led to the signing of the Treaty, how it has been interpreted by Māori, the Crown and through the courts.

Part Two (*Treaty of Waitangi Issues Analysis Framework*) provides a step-by-step process to assist MPI staff to identify Treaty of Waitangi issues in policy development. It achieves this by providing a suite of prompt questions designed to identify Treaty issues. This is the working part of the Guide and is most relevant to the following section, the Treaty of Waitangi Workbook.

Part Three (*Useful Resources*) provides resources that may assist the analyst to further investigate the implications and magnitude of Treaty of Waitangi issues.

Part Four (*The Workbook*) supplements the guide by using a series of hypothetical examples that demonstrate how the Issues Analysis Framework can be applied in MPI business.

The Guide and the Workbook are intended to complement the skills of the analyst. They are limited only to helping identify if, and what, Treaty issues may exist. They do not offer advice on how to respond to those Treaty issues. Where uncertainty exists, advice should be sought from the MPI TTP Committee, experienced senior analysts, managers or the MPI Legal Services Team.

It is important to note that the Guide and the Workbook are also beneficial to MPI staff involved in decision-making, strategy development and risk management.

Finally, the Guide and the Workbook are not an extensive account of the history of New Zealand, nor is it a definitive statement of Māori or Crown understanding of the Treaty of Waitangi obligations or interests.



PART ONE: BACKGROUND

INFORMATION ON THE TREATY OF WAITANGI

THE LEAD UP TO THE SIGNING OF THE TREATY OF WAITANGI

Relationships between Māori and European started as early as 1769 with the arrival of Captain James Cook. Cook found a land of independent tribes who thought of themselves as tangata Māori – the ordinary people, the people of the land. For Māori, Cook’s arrival meant the beginning of new relationships, both within the country and with the world beyond¹.

A barter trade system was quickly established between the newcomers who needed provisions, and Māori, who saw the value of household items such as scissors and nails². Thus, a trade relationship began.

The next wave of people to reach New Zealand’s shores in the early 1800s were the whalers and sealers who were interested in exploiting the abundant natural resources. These trade-settlers were a varied lot – the adventurers who frequented most frontier societies, a sprinkling of escaped convicts and some Pākehā-Māori (Pākehā who had “gone native”)³.

Soon after, the missionaries arrived with the intention of converting Māori to Christianity.

The European impact on Māori was considerable. Tensions grew over misunderstandings, particularly those related to land purchases. New Zealand soon became a “lawless frontier”, highlighted by the trade in preserved heads and the “Elizabethan Affair”⁴. Settlers, traders, missionaries and some Māori also became frustrated with the level of intertribal fighting.

Requests were made by various groups, including some Māori, settlers, missionaries and the New Zealand Company (a land purchasing company) to the British Government to intervene.

Although initially reluctant to intervene, in 1832 the British Colonial Office appointed James Busby as British Resident to New Zealand. According to official records, the protection of the trading partnership – important by now to both British subjects and Māori – was the key factor in this decision⁵.

As Resident, Busby’s main duties were to protect “well disposed” traders and settlers, prevent “outrages” on Māori and to apprehend escaped convicts. However, Busby had no means of enforcing his authority because he was not provided with adequate funds or military resources⁶.

1 Orange, C (2004). *An Illustrated History of the Treaty of Waitangi*, p 4.

2 Orange, p 4.

3 Orange, p 4.

4 The British captain and crew of the ship Elizabeth made a deal with Te Rauparaha – a chief from Ngāti Toa of Kāpiti. In return for a cargo of flax, they took Te Rauparaha and his war party to his unsuspecting enemy (Ngāi Tahu) in the South Island. Many Ngāi Tahu were killed, including a chief Te Maiharanui, who was slowly tortured to death.

5 Orange, p 13.

6 Orange, p 13.

Declaration of Independence

Busby was instructed to introduce a “settled form of government” among Māori. He was convinced that this could only be achieved through the exercise of a “collective” Māori sovereignty. On 28 October 1835, Busby called a meeting at Waitangi with the intention of persuading Māori chiefs to sign a Declaration of Independence.

The Declaration of Independence of New Zealand was a document written in the Māori language, titled *He Wakaputanga o te Rangatiratanga o Nu Tirene*.

The Declaration, among other things, declared that all sovereign power and authority in the land – “Ko te Kingitanga ko te mana i te w[h]enua” – resided with the chiefs “in their collective capacity”, expressed as the United Tribes of New Zealand. In return for the “friendship and protection” that Māori were to give British subjects in New Zealand, the chiefs invited the King of England to “continue to be the parent [matua⁷] of their infant state and ... its Protector from all attempts upon its independence”.

The need for the Declaration appears to have been triggered by the activities of a Frenchman, Charles de Thierry, who claimed that he would set up a “sovereign and independent state” in the Hokianga district.

De Thierry’s actions caused considerable concern to local rangatira (chiefs). Busby seems to have used this threat as an opportunity to carry out the part of his instructions that asked him to set up a “settled form of government” among the Māori people.

Busby saw the Declaration as a step towards making New Zealand a British possession; the chiefs as a guarantee by the Crown of their independence and as a strengthening of their relationship with the British Crown and a promise of protection. Busby and the chiefs may, therefore, have had different objectives with the Declaration.

Symbolically, the Declaration has come to mean a great deal to many Māori. In retrospect, Māori have looked to the Declaration as British recognition of an independent Māori nation. They have also used it on occasion as the foundation for their assertion of autonomous rights, or mana motuhake. Some historians suggest that, irrespective of the initial impetus, it is important to look to the actions of the chiefs in choosing to sign. In this respect, the Declaration is seen as a significant step towards nationhood, even if in embryonic form. The Declaration of Independence was initially signed by 34 northern chiefs at Waitangi on 28 October 1835. Signings continued, however, and when the last chief had signed it on 22 July 1839 there were a total of 52 prominent names on the Declaration.

⁷ One Māori scholar has noted that “matua” should not be translated as the paternalistic meaning of father, but rather, is referring to the experience of the father and the inexperience of Māori in this area of government.

Text of the Declaration of Independence

1. KO MATOU, ko nga Tino Rangatira o nga iwi o Nu Tireni i raro mai o Hauraki kua oti nei te huihui i Waitangi i Tokerau i te ra 28 o Oketopa 1835, ka wakatapu i te Rangatiratanga o to matou wenua a ka meatia ka wakatapuia e matou he Wenua Rangatira, kia huaina, Ko te Wakaminenga o nga Hapu o Nu Tireni.

2. Ko te Kingitanga ko te mana i te wenua o te wakaminenga o Nu Tireni ka meatia nei kei nga Tino Rangatira anake i to matou huihuinga, a ka mea hoki e kore e tukua e matou te wakarite ture ki te tahi hunga ke atu, me te tahi Kawanatanga hoki kia meatia i te wenua o te wakarite ana ki te ritenga o o matou ture e meatia nei matou i to matou huihuinga.

3. Ko matou ko nga tino Rangatira ka mea nei kia huihui ki te runanga ki Waitangi a te Ngahuru i tenei tau i tenei tau ki te wakarite ture kia tika te hokohoko, a ka mea ki nga tauwi o runga, kia wakarerea te wawai, kia mahara ai ki te wakaoranga o to matou wenua, a kia uru ratou ki te wakaminenga o Nu Tireni.

4. Ka mea matou kia tuhituhia he pukapuka ki te ritenga o tenei o to matou wakataputanga nei ki te Kingi o Ingarani hei kawae atu i to matou aroha nana hoki i wakaae ki te Kara mo matou. A no te mea ka atawai matou, ka tiaki i nga pakeha e noho nei i uta, e rere mai ana i te hokohoko, koia ka mea ai matou ki te Kingi kia waiho hei matua ki a matou i to matou Tamarikitanga kei wakakahoretia to matou Rangatiratanga.

KUA WHAKAAETIA katoatia e matou i tenei ra i te 28 Oketopa, 1835, ki te aroaro o te Reireneti o te Kingi o Ingarani.

1. **WE**, the hereditary chiefs and heads of the tribes of the Northern parts of New Zealand, being assembled at Waitangi in the Bay of Islands on this 28th day of October, 1835, declare the Independence of our country, which is hereby constituted and declared to be an Independent State, under the designation of the United Tribes of New Zealand.

2. All sovereign power and authority within the territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes in their collective capacity, who also declare that they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of government to be exercised within the said territories, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in Congress assembled.

3. The hereditary chiefs and heads of tribes agree to meet in Congress at Waitangi in the autumn of each year, for the purpose of framing laws for the dispensation of justice, the preservation of peace and good order, and the regulation of trade; and they cordially invite the Southern tribes to lay aside their private animosities and to consult the safety and welfare of our common country, by joining the Confederation of the United Tribes.

4. They also agree to send a copy of this Declaration to His Majesty the King of England, to thank him for his acknowledgement of their flag; and in return for the friendship and protection they have shown, and are prepared to show, to such of his subjects as have settled in their country, or resorted to its shores for the purposes of trade, they entreat that he will continue to be the parent of their infant State, and that he will become its Protector from all attempts upon its independence.

AGREED TO unanimously on this 28th day of October, 1835, in the presence of His Britannic Majesty's Resident.

Most historians agree that at the time the Declaration had very little practical effect. Even before they left the meeting that drew up the Confederation constitution, the chiefs made it clear that they would not subordinate their mana to that of the Confederation. There is no evidence that the Confederation was ever convened again, except at the time of the signing of the Treaty of Waitangi in February 1840.

The primary purpose of the Treaty, it seems, was to revoke the Declaration so as to permit the transmission of sovereignty to Queen Victoria. For that purpose, the names of the chiefs who had signed the Declaration (or their successors) were called up first to sign the Treaty, and their names are at the head of the Treaty of Waitangi⁸.

The effect of the Declaration of Independence

OVERVIEW SECTION OF THE TREATY OF WAITANGI

The Treaty of Waitangi: An explanation

Since its signing in 1840, the Treaty of Waitangi, or more specifically its interpretation, remains a source of debate and controversy. This section of the Guide provides context for this debate which will assist the analyst in understanding why the Crown and Māori sometimes have differing views on the existence, nature and significance of a Treaty issue.

It is well known that there are two versions of the Treaty, the English and Māori language versions respectively. Both versions are recognised in law by section 2 of the Treaty of Waitangi Act 1975. The nature and importance of the differences between the texts, however, and the extent to which these have guided the perspectives of today's Treaty analysts and commentators, is perhaps less recognised.

Treaty-based issues are not a recent phenomena, but date back almost to the signing of the Treaty. It is only in the past 30 years, however, that significant attention has been given to the interpretation of the Treaty and its Articles. The Waitangi Tribunal, the courts and academia have all contributed to this development. Analysis and case law in relation to understanding the Treaty are continuing to evolve.

When one examines the different versions of the Treaty, it becomes clear why its interpretation has been at the centre of intense, and sometimes emotional, debate.

Differences in the Māori and English translation of key aspects of the text have led to different perceptions and understandings between the partners of the arrangement it is considered to uphold. Commentators on the English version of the Treaty interpret it as an agreement between the Crown and the native chiefs and tribes of New Zealand, whereby the chiefs ceded their sovereignty over their territories and gave the Crown the exclusive right to purchase their land.

⁸ See www.treatyofwaitangi.govt.nz.

In return, the chiefs received a guarantee by the Crown to respect their ownership of tribal lands, forests, fisheries and other tribal resources, along with all the rights and privileges of British subjects⁹.

The key debate over interpretation arises out of the Māori text of the Treaty, and the differences between this and the English version. In particular, the Māori text does not refer to the passing of sovereignty to the British Crown. Instead, Article I of the Māori version refers to “kawanatanga”, a concept that could be translated as governorship. The crux of the debate is that kawanatanga is seen by many Māori to be of quite a different nature than sovereignty. Many Māori consider that, by ceding kawanatanga, their ancestors were ceding something less than sovereignty, which is the term used in the English version.

In addition, Article II of the Māori text guarantees Māori “te tino rangatiratanga” over all their lands, homes and treasured possessions. This is interpreted by many Māori as customary authority or sovereignty over such things, a much different relationship than that described by retaining property ownership. Many Māori assert that, in accepting kawanatanga or governance by the Crown in terms of Article I, their ancestors had not envisaged the loss or any reduction of their own authority over their customary domains.

Given these differing views, it is easy to understand why, in discussions about the Treaty, people can often talk past one another.

9 McHugh, P (1991) *The Māori Magna Carta: New Zealand Law and the Treaty of Waitangi*.

The Preamble to the Treaty

MĀORI VERSION	ENGLISH VERSION
<p>Victoria, the Queen of England, in her concern to protect the chiefs and the sub tribes of New Zealand and in her desire to preserve their chieftainshipⁱ and their lands to them and to maintain peaceⁱⁱ and good order considers it just to appoint an administratorⁱⁱⁱ one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness. So the Queen has appointed "me, William Hobson a Captain" in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the sub tribes of New Zealand and other chiefs these laws set out here.</p>	<p>Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands.</p> <p>Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize "me William Hobson a Captain" in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.</p>

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

ii "Peace": Māori "rongo", seemingly a missionary usage (rongo – to hear, i.e. hear the "word" – the "message" of peace and goodwill).

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

While the Preamble is perhaps the most overlooked element of the Treaty, it is in fact important in assisting to understand the context in which the arrangement was made.

The Preamble is generally seen as an expression of the Queen's desire to protect the rights and property of Māori from any detrimental effects of British settlement by appointing an administrator (Consul and Lieutenant Governor Hobson) to obtain the appropriate consent or authority from Māori to establish a settled form of government.

In the lead up to the signing of the Treaty at Waitangi, Hobson explained to the assembled chiefs and tribes that he had been sent as a governor for this purpose, but that, until the chiefs signed the Agreement, he lacked the necessary authority to control British subjects.

As some observers have noted from the emphasis on protection, Māori might reasonably have expected that they were being offered an arrangement akin to a protectorate. Others maintain, however, that the Crown's sovereign authority was intended to extend to all peoples within the territories covered by the Treaty.

Clearly, a number of significant issues arise as a consequence of these different interpretations of the Treaty's Preamble and its Articles.

Article I

MĀORI VERSION	ENGLISH VERSION
The Chiefs of the Confederation, and all those Chiefs who have not yet joined the Confederation, give up to the Queen of England forever, all the Governorship (Kawanatanga) of their lands.	The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to her Majesty the Queen of England, absolutely and without reservation, all the rights and powers of sovereignty which the said Confederation or individual Chiefs respectively exercise or possess over their respective Territories as the sole Sovereign thereof.

Māori interpretation of Article I

Article I of the Māori text refers to the “giving up to the Queen” “kawanatanga”, a concept that can be translated as governorship. Many Māori consider that, by ceding kawanatanga, their ancestors were ceding something less than sovereignty.

Commentators note that at the time of the signing of the Treaty, this was likely to be seen by Māori as an ability to make laws for their protection and to keep settlers in order. Upholding of the provisions and intent of the Treaty was also likely to have been seen as a key function of governorship¹⁰.

¹⁰ Orange, above p16.

The English version of Article I refers to the cessation of Māori sovereignty. In effect, this version says that Māori are said to have ceded to the Queen, “absolutely and without reservation, all the rights and powers of sovereignty”.

Crown interpretation of Article I

As a means of promoting the general public good, the Crown’s sovereign rights can be considered to include, among other things, the right to:

- » make laws;
- » establish judiciaries and courts; and
- » make war and negotiate peace.

MĀORI VERSION	ENGLISH VERSION
The Queen of England agrees and consents to give to the Chiefs, hapū, and all the people of New Zealand the full chieftainship (rangatiratanga) of their lands, their villages and all their treasured possessions but the Chiefs give to the Queen the purchasing of those pieces of land which the owner is willing to sell, subject to the arranging of payment which will be agreed to by them and the purchaser who will be appointed by the Queen for the purpose of buying for her.	Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof, the full exclusive and undisturbed possession of the Lands and Estates, Forests, Fisheries and other properties which they may collectively or individually possess, so long as it is their wish and desire to maintain the same in their possession: but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective proprietors and persons appointed by her Majesty to treat with them in that behalf.

Article II

RANGATIRATANGA

Many Māori assert that Article II guarantees to them full control and absolute authority over their cultural domains. This view not only relates to tangible physical properties, but also includes properties of an intangible nature “me o ratou taonga katoa” – all their treasured things or items of value to them.

Māori interpretation of Article II

This Article is sometimes reported to be seen by Māori as confirming the nature of the relationship they entered into with the Crown. That is, that the Crown would set laws and govern (Article I) from which actions Māori would benefit, further to both the context established in the Preamble to the Treaty, and provided by Article III.

However, the regulation of those aspects of Māori social, cultural and physical lives that identified them as tangata whenua and kaitiaki (traditional guardians/stewards) of their treasures would be left to them to determine. These rights included the right to sell these to the Crown if they so determined.

In assuming legitimacy for the right to govern, Māori may argue that the Crown assumed a responsibility to provide a framework for Māori to continue to exercise those traditional rights in whatever shape or form they chose.

Tino rangatiratanga is today subject to a range of different interpretations, from self determination and control of Māori domains, through to cultural autonomy or a partnered “biculturalism”.

TAONGA

Māori consider there to be a holistic inter-relationship between each of the things that comprise their universe and are necessary to sustain life. As such, these things, whether tangible or intangible, may be perceived to be taonga (or treasured possessions). Examples of what Māori may consider to be taonga include the way Māori choose to organise themselves (although the exercise of this cultural practice may also sometimes be seen as an expression of rangatiratanga), through to the relationship Māori have with particular plant and animal species.

In general, matters related to being Māori are often considered by Māori to be taonga, from traditional knowledge and customary practices, to the materials used for these purposes, and skills maintained and conveyed to succeeding generations in respect of them.

Some examples include:

- » weaving;
- » te reo Māori;
- » whakairo (carving) – both the skill and act of carving and the associated imagery inherent in the finished taonga;
- » karakia (prayer);
- » whakapapa (genealogy); and
- » traditional healing – including the healing properties of particular plant species; and the traditional and often “sacred” knowledge involved in developing these remedies.

Crown interpretation of Article II

The latter part of Article II is congruent in both versions of the Treaty – providing the Crown with rights to purchase such lands as Māori might be willing to sell to it, at a price to be determined between the parties.

The English language version of this Article refers to “full, exclusive and undisturbed possession of the lands, estates, forests, fisheries and other properties which they may collectively or individually possess, so long as it is their wish and desire to maintain the same in their possession”.

Although this version does not discuss these matters in the same terms as the Māori text, much of the Treaty settlement process to date reflects Crown recognition that Māori were considered to have been guaranteed certain rights in relation to many of their tangible and intangible assets (for example lands and language) under the Treaty.

Under the Treaty of Waitangi Act 1975, Māori can make a claim to the Waitangi Tribunal if they feel they have been unduly prejudiced by Crown action.

Where there is demonstrable evidence that these claims are legitimate, the Crown has engaged in a process of remedy by way of Treaty settlements.

Although intangible assets/resources are difficult to quantify, there has been much analysis in recent times as to what these might have been understood to mean to Māori at the signing of the Treaty. In recent years there have been a number of attempts to recognise the particular cultural relationship Māori have with certain (“intangible”) things.

Matters that have come under scrutiny to date include natural resources and minerals, water, indigenous flora and fauna, and cultural property generally.

In certain instances where Māori have claimed an interest in a particular resource, the Crown has seen its position in this respect as inextricably linked to its Article I responsibilities to govern in the interests of all New Zealanders. For example, this is the case for nationalised minerals and waterways¹¹. Accordingly, some of the contested resources or matters of claim have been considered to be more appropriately managed by the Crown or its functionaries for the benefit of all New Zealanders. In this respect, the Court of Appeal in the Lands¹² case has identified the principle that the Treaty does not authorise unreasonable restrictions on the right of the Government to govern. It was stated in this case by Somers J that neither the provisions of the Treaty of Waitangi nor its principles are, as a matter of law, a restraint on the legislative supremacy of Parliament.

MĀORI VERSION	ENGLISH VERSION
This is the arrangement for the consent to the governorship of the Queen. The Queen will protect all the Māori people of New Zealand and give them the same rights as those of the people of England.	In consideration thereof, Her Majesty the Queen of England extends to the natives of New Zealand Her Royal protection and imparts to them all the Rights and Privileges of British subjects.

Article III

The Māori and English texts of the Treaty are generally considered to be congruent in respect of Article III. However, some differences in perception do arise with respect to what “rights and privileges of citizenship” are considered to comprise.

For example, some Māori maintain that the Crown’s failure to seriously address the provisions of the Treaty over time has resulted in the erosion of significant economic interests. In addition, they perceive a link between loss of land and control of one’s assets and damage to social well-being.

Another Māori perspective on this Article is that Māori could expect to share in the benefits, rights and privileges of citizenship in a manner equal to that of non-Māori. In this respect, some Māori maintain that disparities in their relative experience of these benefits demonstrate that the Crown has not met its obligation to ensure that Māori enjoy these rights to an equivalent degree as do others.

Māori interpretation of Article III

¹¹ See Office of Treaty Settlements (2002), *Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiation with the Crown*.

¹² See *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (Lands).

Crown interpretation of Article III

Based on this perception, some consider there to be valid Treaty-based grounds for requiring the Crown to take necessary steps to uplift Māori performance in respect of the key social indicators, and to do so in a manner that is going to achieve the desired results. In other words, for many Māori, Article III means not only that access should not be denied to social and economic benefits (in whatever form these are determined to take, by way of either inadequate provision or barriers to access), but that the Crown should be just as effective in delivering outcomes that are acceptable to Māori as it is in delivering outcomes that are acceptable to non-Māori.

As noted above, the English translation of this text is very similar to the Māori translation. A number of examples can be found to illustrate how the Crown can be considered to have responded to its obligations under this Article in the past. For example, providing opportunities to enhance both Māori and non-Māori health, education and employment status.

A further example arises where the general well-being of citizens is shown not to be enhanced (that is, there are significant disparities within the population). In these cases, the Crown has been concerned with taking steps to ensure that disparities in respect of Māori versus non-Māori performance in terms of key social indicators are reduced.

Finally, where the Treaty is silent in respect of particular matters (e.g. employment, health, housing), and where the Crown has not explicitly stated that a particular initiative is linked to a Treaty obligation, the emphasis the Crown places on improving Māori status, may be considered to derive from matters of “good government” rather than be attributed to any specific Treaty-based imperatives (although debate over the role of Article III should be considered).

Principles of the Treaty of Waitangi

New Zealand legislation that refers to the Treaty predominantly refers to the principles of the Treaty. A number of “Treaty principles” have been articulated. The principles assist in applying the meaning of the Treaty to contemporary circumstances. McKay J noted in the Broadcasting case (1992):

It is the principles of the Treaty which are to be applied, not the literal words. The English and Māori texts in the first schedule to the Treaty of Waitangi Act 1975 are not translations the one of the other, and the differences between the texts and shades of meaning are less important than the spirit¹³.

Increasingly, the Waitangi Tribunal and the courts are taking an approach that focuses on the Treaty and its intent as a whole (rather than individual articles), and on the conceptual basis underpinning it. The Privy Council held in 1994 that where legislation referred to the principles of the Treaty, it referred to the underlying mutual obligations and responsibilities which the Treaty places on both parties. They reflect the terms of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty.

¹³ Broadcasting (CA) [1992] per McKay J at 590, citing Cooke P in Lands (CA) [1987].

In this regard, Treaty principles are of high importance in the policy development process as indicators of Treaty obligations for the Treaty partners, and should be considered early in the process.

Among the first of these expressions, developed in 1989 by the then Labour Government, was what became known as “Principles for Crown Action on the Treaty of Waitangi”. These statements were intended to set out for the public and officials a set of clear principles that could be applied across government, and that could demonstrate the basis upon which the government of the time was acting in this area.

The Government saw the principles as building upon and indeed clarifying earlier statements of principle made in the Court of Appeal¹⁴. This process has continued to be elaborated upon within government, through the courts and the Waitangi Tribunal.

Various examples of these Treaty principles or statements are included in the attached resource materials. Analysts should bear in mind these and any more recent statements by the courts, the Waitangi Tribunal and the Government when considering the extent to which a given policy issue might have Treaty implications.

Under the New Zealand constitution, the performance of Treaty obligations is a matter for executive government. Unless given the force of law by an Act of Parliament, Treaty duties do not generally give rise to legal obligations on the Crown. When Parliament does impose legal duties on the Crown in relation to the Treaty of Waitangi, the nature and scope of such duties is to be ascertained from the particular Act that recognises the Treaty and the statutory reference.

Status of the Treaty within New Zealand

The Treaty can, however, have legal effect in the following circumstances:

- » It is expressly referred to in specific legislation.
- » Although not expressly referred to, the subject matter of the statute is such that the courts will find the Treaty relevant.
- » Administrative law principles apply to give effect to the Treaty. There are a number of grounds for judicial review under ordinary administrative law principles, e.g. failure to take into account relevant considerations on the part of the decision maker.

Regardless of statutory incorporation, the Treaty of itself gives rise to duties upon the Crown. Those duties will be relevant in the policy-making process when deciding to what extent Treaty interests should be reflected in legislation or in policy.

It is, however, for Parliament to decide whether and in what form the Treaty should have a bearing on executive action.

¹⁴ Refer to New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641.

TREATY OF WAITANGI JURISPRUDENCE

Interpretation of the Treaty by the Courts and the Waitangi Tribunal

This section includes key cases and significant Waitangi Tribunal findings for each article of the Treaty of Waitangi, and the Treaty as a whole.

The cases and Waitangi Tribunal findings are presented as brief summaries of the issue and key points. They do not discuss the Crown's response. The summaries should only be used as a background for the purposes of identifying Treaty issues. Once the issue has been identified, analysts should seek out the Crown's response to the case or Tribunal report before drawing conclusions about the nature or significance of an issue. Where legal issues arise, or there is any doubt as to the application of the cases, the matter should be referred to the MPI Legal Services Team.

Article I

TAIAROA V THE MINISTER OF JUSTICE [1995] 1 NZLR 411

This case in the High Court concerned the Māori option which required Māori, over a limited period in 1994, to choose between enrolment on the Māori electoral and general roll. This choice, and the results of the option, would carry repercussions for the number of Māori constituency seats in the first mixed member proportional Parliament in 1996.

Māori who brought the case to the High Court (and the subsequent appeal to the Court of Appeal) claimed that the policy was conducted unlawfully in that it was held without adequate notice and without adequate Crown resources devoted to informing voters. The case discusses a number of key principles and concepts, including good faith and the concept of tino rangatiratanga.

Article II – Exercise of rangatiratanga and governance

MANUKAU URBAN MĀORI AUTHORITY AND ORS V TREATY OF WAITANGI FISHERIES COMMISSION AND ORS [2001] UKPC 32

Consideration of the scheme of distribution under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, which provides for allocation only to iwi. The Privy Council held that the Treaty of Waitangi Fisheries Commission as a statutory body had no power to distribute assets except in accordance with the 1989 and 1992 Acts.

The legislation only provided for distribution in accordance with the resolutions of a hui-a-tau held in 1992. The iwi representatives at that gathering resolved that distribution should be to iwi, by which they meant traditional tribes.

TE RUNANGANUI O TE IKA WHENUA INC SOCIETY V ATTORNEY-GENERAL [1994] 2 NZLR 20

This case in the Court of Appeal was brought by certain Māori against the transfer of property rights in the Rangitaiki River and the Wheao River to the Bay of Plenty Electric Power Board and the Rotorua Electricity Authority pending the resolution of a claim to the rivers lodged by Māori with the Waitangi Tribunal.

While the appeal was unsuccessful, it considered the question of the limits to aboriginal title, particularly in relation to hydro-electricity and water.

REPORT OF THE WAITANGI TRIBUNAL ON THE TE IKA WHENUA RIVERS CLAIM [WAI 212, 1998]

This report concerned the middle reaches of the Rangitaiki, Wheao and Whirinaki rivers in the Bay of Plenty. The claimants were concerned about the transfer of the Aniwhenua Wheao hydro-electric power scheme to energy companies. The Tribunal held that Te Ika Whenua still held electric power generation rights, but in a modern-day context, with any loss of rights to be compensated. These were not exclusive rights. The Crown's Treaty duties of protection, reciprocity and partnership were involved. Negotiation was required for a regime of management, control of rivers and indigenous fisheries. The Tribunal considered that the Crown was required to protect the residual proprietary interest of Māori in rivers.

OSBORNE V ATTORNEY-GENERAL UNREPORTED, HIGH COURT, 4 OCTOBER 1999, M198/99

An application for judicial review of the Minister of Education's decision to close a bilingual school. The Court held that, although the Treaty is not directly enforceable in the absence of statutory incorporation (direct reference to the Treaty or its principles in a statute), the Crown accepted that Māori cultural values, and the value of Māori language, were relevant in the overall assessment required for the Minister's decision. In this case, the Minister's decision stood.

MAHUTA V ATTORNEY-GENERAL UNREPORTED, HIGH COURT, 31 MARCH 1999, CP67/99

An application for an interim injunction to prevent the break-up of ECNZ. The application was granted, on the basis that consultation with the Tainui people had been inadequate, and that Tainui had a reasonable chance of success in their causes of action.

Treaty resources
– Tangible and
intangible

REPORT OF THE WAITANGI TRIBUNAL ON THE TE IKA WHENUA RIVERS CLAIM [WAI 212, 1998]

See above under Article II, Exercise of Rangatiratanga and Governance.

MCRITCHIE V TARANAKI FISH AND GAME COUNCIL [1999] 2 NZLR 139

The appellant was found not guilty of fishing for trout without a licence on the basis that he was exercising a Māori fishing right in terms of section 26ZH of the Conservation Act 1987, which provides that "nothing in this Part shall affect any Māori fishing rights".

The Court of Appeal held that the legislative history demonstrated beyond doubt that the appellant and his hapū did not have a Māori fishing right to take trout.

Trout are, and always have been, part of a separate regime exclusively controlled by legislation and the only fishing rights are those available under those provisions. The terms of the statute precluded attaching Māori fishing rights to new species imported from abroad.

TE WEEHI V REGIONAL FISHERIES OFFICER [1986] 1 NZLR 680

Section 88(2) of the Fisheries Act 1983 provides that “nothing in this Act shall affect any Māori fishing rights”. The appellant was charged and convicted of taking undersized paua. He appealed on the basis that he had been exercising a customary Māori fishing right, and had obtained permission from a local elder to collect the paua. The Court held that the appellant was exercising a Māori customary fishing right in terms of section 88(2) of the Fisheries Act 1983 and so did not commit an offence under the regulations.

REPORT OF THE WAITANGI TRIBUNAL ON THE MURIWHENUA FISHING CLAIM [WAI 22, 1988]

This report considers a number of significant issues in relation to the Treaty, including the doctrine of aboriginal title, which holds that customary rights continue until expressly taken away by Parliament. The Tribunal found that this doctrine was recognised in New Zealand in 1847. The Tribunal also found that the Treaty supplements the doctrine, while the doctrine upholds a right where the Treaty has no application. The report also contains an analysis of the relationship between the Treaty and new technologies and the right to development.

TE RUNANGA O MURIWHENUA INC V ATTORNEY-GENERAL [1990] 2 NZLR 641

The plaintiffs sought review of the quota management regime introduced by the Fisheries Amendment Act 1986. The Minister had allocated quota before the Waitangi Tribunal had made findings on Muriwhenua claims. There was an appeal from procedural decisions of the High Court. The Court of Appeal held that the Treaty is a living instrument. The Court considered that it might be incorporated into the Māori Fisheries Act 1989, one of the purposes of which was to make better provision for the recognition of Māori fishing rights secured by the Treaty. However, the Court also found that the Act could not be a substitute for rights under the Treaty or the common law as to customary title, and the Treaty had to be applied in light of developing national circumstances, one of which might be the over-fishing of traditional Māori fishing grounds.

HUAKINA DEVELOPMENT TRUST V WAIKATO VALLEY AUTHORITY [1987] 2 NZLR 188

An appeal to the High Court from a decision of the Planning Tribunal under the Town and Country Act 1977. The High Court held that, because the statute did not set out the criteria to be applied to an application for a water right, and the grounds on which objection could be made to an application were unlimited, the Court had to resort to extrinsic aids.

These included the Treaty of Waitangi Act 1975, and the Waitangi Tribunal interpretations of the Treaty. Evidence about the existence of spiritual, cultural and traditional relationships with natural water held by a significant group of Māori people was therefore admissible.

**NEW ZEALAND MĀORI COUNCIL V ATTORNEY-GENERAL [1991] 2 NZLR 129
[RADIO FREQUENCIES CASE]**

The Crown proposed to dispose of radio frequencies under the Radio Communications Act 1989, without leaving time for the Waitangi Tribunal to inquire into and report on Māori claims for a better share of FM frequencies. The Court held that, having acknowledged the relevance of the Tribunal's general observations in its earlier report on the issue, the Minister would be failing to take into account relevant considerations if he accepted tenders without waiting for the further report of the Tribunal. Cooke P considered that the Crown could not act in conformity with the principles of the Treaty of Waitangi without taking into account relevant recommendations by the Waitangi Tribunal.

**NEW ZEALAND MĀORI COUNCIL V ATTORNEY-GENERAL [1992] 2 NZLR 576
(CA); [BROADCASTING CASE]**

The New Zealand Māori Council challenged the proposed sale of broadcasting assets on the grounds that it would be contrary to the Treaty of Waitangi, and accordingly Section 9 of the State-Owned Enterprises Act 1986, because it would not adequately protect the Māori language and would impair the ability of the Crown to provide protection for the Māori language.

In the High Court, McGechan J adjourned the case to enable the Crown to seek agreement with Māori if possible, and to submit to the Court a scheme of protective reservations, in relation to the transfer of assets in Television New Zealand, as to production and transmission facilities. After this was done, McGechan J considered the scheme and held that it would allow the transfer of assets in Television New Zealand to proceed consistently with the Crown's obligations under the Treaty. This decision was upheld in both the Court of Appeal and the Privy Council.

The Court of Appeal held that section 9 of the State-Owned Enterprises Act is a fetter on executive action, not on legislative power or on the policies expressed in legislation. It did not give the Court power to review the broadcasting restructuring legislation. Only the proposed transfer of assets could be challenged. The Court found that the assets were not themselves subject of Treaty claims, but were used by the Crown for broadcasting purposes, and were linked to the Crown's discharge of its Treaty obligation to protect the Māori language. The assets in this case were not considered by the Court to be essential for Māori broadcasts.

The Court held that Treaty rights could not be enforced except to the extent that they had been given recognition by statute.

The Privy Council considered that:

- » where the legislation referred to the principles of the Treaty, it referred to the underlying mutual obligations and responsibilities which the Treaty places on both parties;
- » the principles reflect the terms of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty;

- » with the passage of time, the principles which underlie the Treaty have become much more important than its precise terms;
- » the obligations of the Crown to protect taonga are constant; the Crown in carrying out its obligations is not required to go beyond taking such action as is reasonable in the prevailing circumstances.

NEW ZEALAND MĀORI COUNCIL V ATTORNEY-GENERAL [1994] 1 NZLR 513 [PC]; [BROADCASTING CASE]

New Zealand Māori Council v Attorney-General was an appeal to the Privy Council against the decision by the Court of Appeal and the High Court in New Zealand that the Crown could transfer broadcasting assets to Radio New Zealand and Television New Zealand under the State-Owned Enterprises Act 1986. In making the appeal, the New Zealand Māori Council argued that the proposed transfer was illegal with regard to section 9 of the State-Owned Enterprises Act, which requires that the Government not act in a manner inconsistent with the principles of the Treaty of Waitangi. The Council submitted that the transfer was inconsistent with the Treaty's principles because it indicated that the Crown was not taking necessary steps to protect the Māori language with respect to television and radio in New Zealand. While the appeal was unsuccessful, it prompted further development by the courts of the principle of active protection.

WATERCARE SERVICES LIMITED V MINHINNICK [1998] 1 NZLR 294

Watercare intended to route a sewer pipeline over an archaeological site. The route had been the subject of a designation for some time. There had been consultation with Māori about the proposal, and a Māori blessing of the works had taken place. The appellant challenged the works under the Resource Management Act 1991 on the grounds that the idea of transporting sewage over waahi tapu was objectionable and offensive. The Court held that the principles of the Treaty, through the operation of section 8 of the Resource Management Act (which provides that the principles of the Treaty are to be taken into account in the exercise of functions under the Act) do not give any individual the right to veto any proposal.

It was considered that such an argument served only to reduce the effectiveness of the principles of the Treaty rather than to enhance them.

REPORT OF THE WAITANGI TRIBUNAL ON THE AQUACULTURE CLAIM [WAI 953, 2002]

For several years, the Government has been progressing reform of the law related to aquaculture. In mid-2002 a number of urgent claims were made to the Waitangi Tribunal on the reform process. The primary issue in the claims related to whether the Crown had failed to take into account the interests of Māori in marine farming, including a failure to adequately consult with Māori on the reforms, particularly on the policy to establish aquaculture management areas.

The Tribunal found that Māori have a broad relationship with the coastal marine area and, as an incident of that relationship, have an interest in marine farming. The report was also critical of the Crown's consultation with Māori on the policy to establish aquaculture management areas.

NGĀI TAHU MĀORI TRUST BOARD V DIRECTOR-GENERAL OF CONSERVATION [1995] 3 NZLR 553

Ngāi Tahu held a permit for commercial whale watching and argued that, on the basis of the Treaty, it was entitled to a period of time free from competition. It was considered that the Treaty covers power in Parliament to enact comprehensive legislation for the protection and conservation of the environment and natural resources. The rights and interests of everyone in New Zealand are subject to that overriding authority. The Court found that Ngāi Tahu did not have a right to veto the issue of new permits. However, the Director-General should have taken into account, among other things, the protection of the interests of Ngāi Tahu in terms of the Treaty, in deciding whether or not to issue a new permit. The Court observed that a right of development of indigenous rights is coming to be recognised in international jurisprudence but any such right is not necessarily exclusive of other persons or other interests.

**Article III –
Crown protection**

SMITH V AUCKLAND CITY COUNCIL [1996] 1 NZLR 634

The appellant was convicted under the Resource Management Act 1991 of injuring a scheduled tree after he cut into the pine tree on One Tree Hill with a chainsaw. He appealed against his conviction on the basis, among other things, that adequate consideration had not been taken of the principles of the Treaty and other matters of importance to Māori as required by sections 6, 7 and 8 of the Resource Management Act. These sections require that, in exercising powers and functions under the Act, matters of national importance, particular considerations and the Treaty of Waitangi must be taken into account. The Court held that these matters are to be taken into account when the resource management merits of a proposal are under consideration. A prosecution under that Act was not such a situation. The conviction stood.

NEW ZEALAND MĀORI COUNCIL V ATTORNEY-GENERAL [1987] 1 NZLR 641 [LANDS CASE]

In 1987, a case was brought to the High Court by the New Zealand Māori Council and its Chairman, Sir Graham Latimer, who applied that, despite section 27 of the State-Owned Enterprises Act 1986 (which dealt with land subject to claim under the Treaty of Waitangi Act 1975), the Crown was able to transfer to state enterprises lands that were subject to claims to the Waitangi Tribunal lodged after 18 December 1986 (as well as claims that were not yet lodged) and that this was contrary to the principles of the Treaty of Waitangi according to section 9 of the State-Owned Enterprises Act (the application was transferred to the Court of Appeal). The duty fell upon the Court of Appeal to determine the principles of the Treaty with which the Crown's actions had been inconsistent.

**Government
processes/Treaty-
related issues**

The Court asserted the following principles:

- » The acquisition of sovereignty in exchange for the protection of rangatiratanga.
- » The Treaty established a partnership, and imposes on the partners the duty to act reasonably and in good faith.
- » The freedom of the Crown to govern.
- » The Crown's duty to active protection.
- » Crown duty to remedy past breaches.
- » Māori to retain rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship.
- » Duty to consult.

TAINUI MĀORI TRUST BOARD V ATTORNEY-GENERAL [1989] 2 NZLR 513

The issue was whether the granting of coal mining rights by the Crown to Coalcorp represented a transfer of Tainui interests in the land subject to the protection of the Treaty of Waitangi (State Enterprises) Act 1988. Furthermore, whether the proposed transfers of land direct to third parties would be inconsistent with the principles of the Treaty of Waitangi and the Crown's obligation to evolve a system for safeguarding Māori claims before the Tribunal. Some comments in the case relate to the application of the partnership principle.

NEW ZEALAND MĀORI COUNCIL V ATTORNEY-GENERAL [1989] 2 NZLR 142 [FORESTS CASE]

Following the Court of Appeal's decision regarding the transfer of state assets to state-owned enterprises in 1987, the Crown proposed to sell forestry rights but not the ownership of land on which exotic forests are planted. The New Zealand Māori Council subsequently applied to the Court of Appeal that the Government's proposal to dispose of forestry assets was inconsistent with the judgement delivered by the Court of Appeal in 1987. In ruling on the matter and in considering the significance of the Treaty principles, the Court of Appeal in 1989 held that for Government to present Māori with a forestry proposal was a "fait accompli" and "would not represent the spirit of partnership which is at the heart of the principles of the Treaty of Waitangi".

PART TWO: TREATY OF WAITANGI ISSUES ANALYSIS FRAMEWORK

The Treaty of Waitangi Issues Analysis Framework (the Framework) assists in the development of high-quality, valued policy advice by providing an effective method of identifying and considering relevant Treaty issues in an informative and timely manner.

The Framework in this context refers to a step-by-step process to help MPI staff identify Treaty of Waitangi issues in policy development. This is the working part of the Guide and is most relevant to the accompanying document, the Treaty of Waitangi Workbook (the Workbook).

The Framework provides:

- » a series of prompt questions to help identify whether the Treaty of Waitangi has implications for a particular policy issue;
- » a guide to resources that can assist the analyst to determine the nature and significance of the Treaty issue and how it might be addressed.

The Framework can be applied:

- » at any stage of the policy development process – from project planning and management, through to policy development and quality assurance;
- » to identify potential Treaty issues in operational policies and incursion responses;
- » by any analyst, regardless of the level or nature of their involvement in the development of the policy issue, for example, leading a project, completing work initiated by someone else, or contributing to a project being led by another department;
- » any number of times throughout the policy development process.

Remember: The Guide is designed to complement, not replace, the skills of the policy analyst. The analyst must assess the relevance, nature and significance of a Treaty issue once it has been identified, and determine how it should be addressed. Where uncertainty exists, the analyst should seek further guidance and advice.

It is important to note that this Guide is also beneficial to MPI staff involved in decision making, strategy development and risk management.

All analytical tools have their limitations. **It is emphasised that the *Treaty of Waitangi Issues Analysis Guide* is not a definitive statement of Māori or Crown understanding of Treaty of Waitangi obligations or interests.**

Finally, Treaty issues and Treaty interpretations are dynamic – they change over time as both the Crown and Māori seek to clarify the meaning of the Treaty in both its contemporary and historical context. In this regard, the Guide cannot replace legal advice or advice from Māori communities of interest in respect of specific issues. Given these considerations, the areas addressed in this Guide are not exhaustive, nor are the Māori views listed necessarily representative of the views of all Māori.

HOW CAN THE TREATY OF WAITANGI ISSUES ANALYSIS FRAMEWORK ASSIST YOU?

The Treaty of Waitangi Issues Analysis Framework can assist with:

- » project planning and management, by helping to identify resource requirements, key tasks, project risks and consultation needs related to any Treaty implications of the policy issue;
- » understanding the strategic context of the policy issue as it relates to the Government's broader Treaty-based outcomes, goals and objectives;
- » defining the policy issue, by identifying whether there are any associated Treaty implications;
- » describing the policy issue, and, in particular, any associated Treaty implications;
- » identifying and assessing policy options to ensure that they are appropriate for addressing the policy question and the related Treaty implications;
- » identifying legal implications arising from Treaty implications associated with the policy issue;
- » preparing policy advice for delivery, by informing the analyst of previous experiences with similar Treaty issues and indicating key stakeholder interest in the issues;
- » quality assurance, by contributing to the smooth running of the policy development process and ensuring that the relevant Treaty issues have been identified and considered;
- » assessing the quality of advice from others, by identifying Treaty implications that should be considered and addressed.

USING THE FRAMEWORK

1. Read Part One: Background Information on the Treaty of Waitangi section.

This section provides background information leading up to the signing of the Treaty of Waitangi and compares the Māori and English versions of the Treaty and the differing understandings that have emerged from these versions. Refer to this section as necessary when applying the Guide. Also consider relevant government strategic policy objectives for Treaty issues.

2. Ask yourself the general prompt questions for your policy issue.

These questions provide a high-level, first glance at the Treaty implications of a policy issue. They are suitable for situations where Treaty implications can be readily identified at first contact with a policy issue, or at the very early stages of policy development when little is known about the details of a policy issue.

3. Ask yourself the article specific questions for your policy issue.

These questions will help you to identify more specific Treaty implications that are not easily recognised at first glance. Your ability to answer these questions will depend on what you currently know about your policy issue and options. As such, these questions should be revisited as the policy development process evolves. Refer to the Overview section for guidance if necessary.

4. Ask yourself the questions arising from the Treaty as a whole for your policy issue.

These questions highlight issues arising from the Treaty as a whole document, rather than focusing on specific Articles. Once again, your ability to answer these questions will be influenced by your level of knowledge of the policy issue and options, and they should be revisited as the policy process develops.

5. Refer to the relevant Useful Resources.

If an issue arises from one of the questions in any of the stages above, refer to the Useful Resources section of the Guide to examine the issue and clarify its relevance. These resources will help you to determine the nature and significance of the Treaty issue and its likely implications for your policy issue. They may also provide guidance on how the Treaty issue can be addressed. Use your judgement as to which resources you consider relevant and whether you need to explore additional resources.

6. Reapply the Guide.

It is important to reapply the principles of the *Treaty of Waitangi Issues Analysis Guide* throughout the policy development process as your level of knowledge about the policy issue and options grows. New Treaty issues can arise as information is collected and details emerge. Treaty issues can also arise from the options developed for addressing policy questions.

7. Help keep the Guide up-to-date.

If, as a result of applying the Guide to a policy issue, you have any material or advice that you consider would assist other analysts to address similar issues, please contact MPI's TTP Committee¹⁵ to ensure that this can be added to the resource base.

¹⁵ In the first instance, refer any comments to the Director of Human Resources.

The following questions will assist analysts to identify the Treaty implications for a particular policy or operational issue.

General prompt questions: These questions provide a high-level, first glance at the Treaty implications of a policy issue. They are suitable for situations where Treaty implications can be readily identified at first contact with a policy issue, or at the very early stages of policy development when little is known about the details of a policy issue.

Article specific questions: These questions will help you to identify more specific Treaty implications that are not easily recognised at first glance. Your ability to answer these questions will depend on what you currently know about the policy issue and options. As such, these questions should be revisited as the policy process develops.

These questions highlight issues arising from the Treaty as a whole document, rather than focusing on any of the specific Articles. Once again, your ability to answer these questions will be influenced by your level of knowledge of the policy issue and options, and the questions should be revisited as the policy development process evolves.

GENERAL PROMPT QUESTIONS

Please note that the list of questions is not exhaustive; the questions are intended as a guide, and should not serve as a replacement for seeking advice from expert advisers such as the TTP Committee or the MPI Legal Services Team.

- a. Does the policy issue focus specifically on Māori, Māori issues, or the Treaty of Waitangi? For example, issues such as the redress of Treaty claims.
- b. Is this an issue where interests distinct to Māori arise? How do those interests arise? For example, in relation to the land and its natural resources, the maintenance of a living Māori culture and so on.
- c. Have Treaty considerations arisen previously in relation to the policy issue? For example, environmental management, ownership and allocation of natural resources.
- d. Does the policy issue involve or concern legislation that references the Treaty or contains a Treaty clause?
- e. Does the policy issue involve an international agreement and/or convention that makes reference to the interests of indigenous peoples?

ARTICLE SPECIFIC QUESTIONS

- a. Does the policy issue have implications for New Zealand's constitutional arrangements? For example, the major institutions of government such as the parliamentary system, democracy and/or international obligations.
- b. Does the policy issue involve changes to the nature or the exercise of sovereignty by the Crown? For example, the Queen as Head of State.
- c. Is the Crown transferring any duties, rights, responsibilities, roles or functions? For example, devolving powers to an agent of state or local government.
- d. Does the policy issue have consequences for systems of Māori parliamentary representation?
- e. Is it an area where Māori might have an expectation of having more control over things Māori?

Article I

TREATY RESOURCES – TANGIBLE AND INTANGIBLE

- a. Does the policy issue concern or affect resources specifically described under the Treaty (that is Māori lands, estates and forests)?
- b. Does the policy issue concern or affect resources that Māori maintain are protected under the Treaty as taonga (or other properties), but that are not specifically described (including taonga that may not be recognised explicitly in Article II)?

Article II

Possible examples of resources that Māori may maintain are taonga include:

Tangible: water, minerals, geothermal resources, flora and fauna, oceans, foreshore, the seabed, artefacts, riverbeds, lakebeds, waahi tapu sites or natural resources associated with land over which Māori hold or maintain ownership.

Intangible: Māori language, the knowledge associated with kaitiakitanga (guardianship), Māori intellectual property, traditional and customary Māori knowledge, aspects of Māori culture or tradition, areas of cultural or spiritual significance.

If the answer to a or b above is no:

- c. Is the resource, or any part of it, a subset or variant on the possible examples given above? For example, although the debate around genetically modified organisms (GMOs) is relatively new, it impacts upon the knowledge associated with kaitiakitanga for the environment and its ecology, which is identified as a taonga.
- d. Has the Crown previously recognised that the resource in question is protected under the Treaty? For example, Māori language and culture.
- e. Have Māori previously demonstrated an interest in the resource or any part of it? For example, interest may be traditional, spiritual, ownership, use, or management related. It may have been demonstrated historically, through public statement, protest or litigation.
- f. Is the resource, or any part of it, subject to claim under the Treaty?

- g. Does the policy issue concern or affect resources that, while not taonga in themselves, are so closely linked to taonga that Treaty principles should be identified as being relevant? For example, GMOs are not easily identified as taonga, but it impacts upon the knowledge associated with kaitiakitanga. The principle of active protection, therefore, arises.

Article III

EXERCISE OF RANGATIRATANGA AND GOVERNANCE

- a. Does the policy issue affect the ability of Māori to exercise traditional authority over their tribal area?
- b. Does the policy issue affect Māori control over the determination and practice of their culture and traditions?
- c. Does the policy issue affect the exercise of kaitiakitanga? For example, over the environment, natural resources or food sources.
- d. Does the policy issue affect the ability of Māori to decide their structures for representation or management? For example, tribal structures, marae and Māori committees.
- e. Could the policy issue result in changes to tribal and non-tribal Māori structures for representation or governance? For example, iwi and urban Māori authorities.
- f. Does the policy issue involve the identification and/or recognition of Māori structures for representation or management?
- g. Does the policy issue involve amendment to legislative or regulatory regimes governing the operation of Māori structures for representation or management?

Prompt questions arising from the Treaty as a whole

CROWN PROTECTION

- a. Does the policy issue concern mechanisms through which the Crown currently recognises or protects Māori rights? For example, changes to the consultation requirements under the Resource Management Act 1991.
- b. Do the costs or benefits of the policy issue fall disproportionately on Māori so as to disadvantage or advantage Māori inequitably?
- c. Do Māori experience a relative disparity in relation to supply, access or suitability of services in relation to non-Māori?
- a. Does the policy issue involve products or services provided by the Government to Māori?
- b. Do Māori face problems distinct from non-Māori with respect to the policy issue under consideration?
- c. Could the proposal, or its subject, be considered as providing a suitable mechanism towards settlement of a Treaty claim? For example, the options may involve divesting Crown-owned interests in property, or creation or transfer of property rights.

- d. Does the policy involve an asset against which processes have been established to facilitate redress of Treaty claims? For example, state-owned enterprise land and Crown-owned forests.
- e. Does the process required to effect the proposal provide an appropriate way for government to meet a commitment to Māori?

WHAT HAPPENS NEXT?

As mentioned, by using the General Prompt Questions and Useful Resources, Treaty policy issues can be identified and an indication of their importance in respect of the policy issue can be gained.

Once this has been achieved, a policy analyst may need to confirm the nature and significance of the issues they have identified, through seeking advice from the MPI Legal Services Team, the Crown Law Office, Office of Treaty Settlements, Te Puni Kōkiri or another source of specialist advice.

It is important that analysts remain cognisant of both the Treaty and Treaty issues throughout the policy development process. For example, Treaty implications should be considered during the development of policy options and in review of policy. To this end, the following questions may assist in focusing attention on Treaty issues at these stages:

- » Are there policy options (including service delivery options, for example) that are more likely to be effective for Māori or non-Māori, and vice versa?
- » Where relevant, have different Māori objectives and values been taken into account in the assessment of options?
- » Is it appropriate that policy effectiveness be reviewed against outcomes for Māori and non-Māori?

Consideration should be given to whether consultation may be required whenever a Treaty issue is identified. It is recommended that the need for consultation be clarified with the MPI Legal Services Team. Discussion with Te Puni Kōkiri (TPK) may also be appropriate.

Where consultation is required, an appropriate consultation process will need to be designed. TPK holds expertise in respect of consultation process design and meeting facilitation, and should be contacted for assistance.

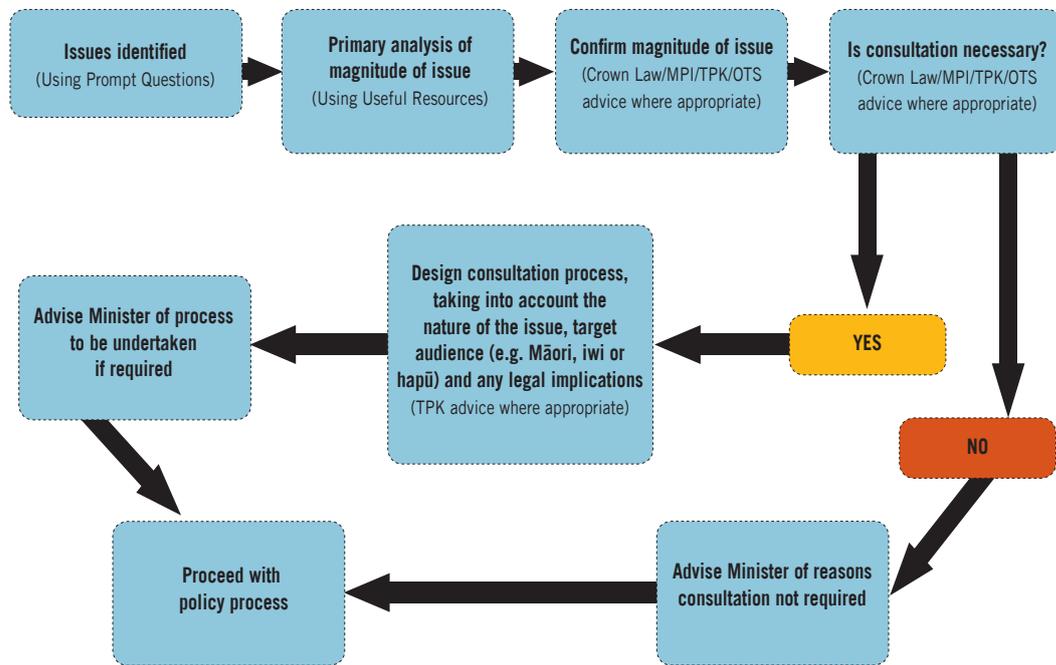
The following simple flowchart describes the process in respect of clarifying whether to consult.

Confirming the issues

Applying the Treaty of Waitangi Issues Analysis Framework throughout the policy development process

Consultation

Figure 1: Identifying the need for consultation



PART THREE: USEFUL RESOURCES

This section outlines useful sources of information that may assist analysts to further investigate the implications and magnitude of Treaty issues identified through the use of the prompt questions.

Attached as appendices are the following:

- » Appendix 1 – The Māori version of the Treaty of Waitangi and an English translation of it.
- » Appendix 2 – A list of legislation that makes reference to the Treaty of Waitangi.
- » Appendix 3 – International conventions/regional agreements.
- » Appendix 4 – A list of useful publications.

The www.govt.nz website has a specific section on services for Māori people and communities. The site contains references to finding a wide range of further information on Māori. The www.beehive.govt.nz site can be searched using the reference “Treaty of Waitangi” to identify recent statements by ministers relating to the Treaty.

The Cabinet Manual provides useful information on the Treaty of Waitangi and the New Zealand constitution. In addition, general guidance is provided in respect of Crown legal business and Treaty claims, and departments to be consulted in respect of Māori policy issues that arise in development of papers for Cabinet.

Both documents can be accessed electronically through the Cabinet Office section of the Department of the Prime Minister and Cabinet website: www.dPMC.govt.nz.

The Parliamentary Commissioner for the Environment has produced a number of reports available on the office website that consider the Treaty of Waitangi and issues of particular interest to Māori related to environmental management.

As at 2002, there were 55 Private, Local and Public Acts that made reference to the Treaty of Waitangi (see Appendix 2). Where such reference occurs, advice of MPI's Legal Services Team should be sought in order to establish whether the reference places any legal requirements on the Ministry.

Many international agreements or conventions have implications for indigenous peoples (see Appendix 3). In this regard, Māori interests may be affected through recognition of indigenous interests under such agreements/conventions, or more generally through being affected by the intent of the agreement/convention.

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

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

- » negotiate on behalf of the Crown the settlement of historical grievances under the Treaty of Waitangi;
- » implement settlements that have been reached;

What this section provides

General resources

**International conventions/
regional agreements**

Office of Treaty Settlements

- » 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;
- » 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.

Analysts should familiarise themselves with the principles guiding the settlement of historical Treaty claims established by the Minister in Charge of Treaty of Waitangi Negotiations, and should refer to the OTS publication entitled *Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown* (OTS, December 2002). This publication provides a guide to the direct negotiation and settlement of historical grievances under the Treaty.

Crown Law Office

The Crown Law Office provides legal advice and representation to the New Zealand Government, its departments, ministries and agencies in matters affecting the Crown.

The Treaty Issues and International Law Team of the Crown Law Office works on the legal and historical issues relating to the Treaty of Waitangi. This includes work on claims made to the Waitangi Tribunal, general advice for 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.

Te Puni Kōkiri

The Ministry of Māori Development – Te Puni Kōkiri (TPK) – is the Government's principal adviser on Māori issues and its relationship with iwi, hapū and Māori. Its role is to provide high-quality advice on the Crown's relationship with Māori, including strategic leadership, sectoral issues, the risk management of issues between the Crown and Māori and how to accelerate Māori development.

TPK is able to advise on consultation with Māori. Regional offices also have specific expertise in management of the Crown–Māori relationship at the local level.

A large number of publications are available through the TPK website, including:

- » *He Tirohanga o 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* (2001);
- » *Evaluation for Māori: Guidelines for government agencies*, (May 1999);
- » statistical information on Māori parity gaps;
- » economic development initiatives; and

» related information.

The Ministry of Justice provides advice to ministers from a constitutional perspective on the Treaty relationship with Māori, with emphasis on fostering ongoing positive relationships. Within that overriding goal, the Ministry provides advice to ministers on co-ordination of the Crown's contribution to contemporary relationships with Māori. A search of its website using the reference "Treaty of Waitangi" provides access to various reports on the Treaty, including *Living Relationships: The Treaty of Waitangi in the New Millennium* (1999).

Ministry of Justice

Under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Ministry for Primary Industries has responsibilities for customary non-commercial fishing. The MPI website has information on the Customary Fishing Regulations and their relationship to the Act and the Treaty.

Ministry for Primary Industries

The Ministry of Business, Innovation, and Employment (MBIE) is responsible for the management of the Crown Mineral Estate and the Minerals Programme for Petroleum, the Minerals Programme for Coal, and the Minerals Programme for Minerals Other than Coal and Petroleum. Chapter 3 of each programme outlines how MBIE and MPI will have regard to the principles of the Treaty of Waitangi in the management of the Crown Mineral Estate.

Ministry of Business, Innovation, and Employment

The Waitangi Tribunal (the Tribunal) was established under the Treaty of Waitangi Act 1975. The main functions of the Tribunal are to inquire into and make findings and recommendations to the Crown on Māori claims related to the Treaty of Waitangi.

Waitangi Tribunal

The Tribunal has exclusive authority, for the purposes of the Act, to determine the meaning and effect of the Treaty of Waitangi as embodied in the English and Māori texts, and to decide upon issues raised by the differences between them.

The Tribunal may inquire only into claims by Māori concerning legislation, acts, omissions, policies and practices of the Crown that are alleged to have caused the claimants prejudice and are claimed to be inconsistent with the principles of the Treaty of Waitangi. Claims fall into the following three broad categories: historical claims (e.g. past government actions); contemporary claims (e.g. current government policies or practices) and conceptual claims (e.g. the ownership of natural resources).

In general, the Tribunal's recommendations are not binding on the Crown, although the Government always considers its recommendations very carefully. An exception to this is the Tribunal's ability to make binding recommendations on the resumption of state-owned enterprise land (and other memorialised land) and Crown forest land. This means that the Tribunal can order the Crown to take back this land for use in settling a Treaty claim.

The Tribunal is a permanent commission of inquiry and its administrative arm, the Waitangi Tribunal Business Unit, is a part of the Ministry of Justice. Electronic copies of Tribunal reports are accessible through the Waitangi Tribunal: www.waitangi-tribunal.govt.nz.

Māori Land Court

The Māori Land Court and Māori Appellate Court 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, the promotion of the management of Māori land by its owners by maintaining the records of title and ownership information of Māori land, servicing the district Māori Land Courts and providing land information from the Māori Land Court and Crown agencies.

Māori Land Court judges are appointed by the Governor-General. The Māori Land Court has a chief judge and a deputy chief judge as well as resident judges in most Māori Land Court districts.

The judges of the Māori Land Court are also judges of the Māori Appellate Court. Three or more judges have power to act as the Māori Appellate Court.

The Māori Land Court and the Māori Appellate Court may state a case for the opinion of the High Court on any point of law arising in proceedings before it. The decision of the High Court is subject to an appeal to the Court of Appeal.

The decision of the High Court or the Court of Appeal, as the case may be, is binding on the Māori Land Court and the Māori Appellate Court.

The principal matters over which the Māori Land Court has jurisdiction under Te Ture Whenua Māori Act 1993 are:

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

In addition, the Māori Land Court may have special powers conferred on it by statute or by Order in Council.

APPENDIX 1: TEXT OF THE TREATY OF WAITANGI

Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata Māori o Nu Tireni. Kia wakaetia e nga Rangatira Māori, te Kawanatanga o te Kuini ki nga wahi katoa o te Wenua nei me nga motu na te mea hoki he tokomaha ke nga tangata o tona Iwi kua noho ki tenei wenua, a e haere mai nei.

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

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

Māori text of the Treaty

KO TE TUATAHI

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

KO TE TUARUA

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

KO TE TUATORU

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini—Ka tiakina e te Kuini o Ingarani nga tangata Māori, katoa o Nu Tireni ka tukua ki aratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

[signed] William Hobson Consul & Lieutenant Governor

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

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

**Translation of the
Māori text of the
Treaty by Professor
Sir Hugh Kawharu**

Victoria, the Queen of England, in her concern to protect the chiefs and the sub tribes of New Zealand and in her desire to preserve their chieftainship¹⁶ and their lands to them and to maintain peace¹⁷ and good order considers it just to appoint an administrator¹⁸ one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands¹⁹ and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness. So the Queen has appointed "me, William Hobson a Captain" in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents²⁰ to the chiefs of the Confederation chiefs of the sub tribes of New Zealand and other chiefs these laws set out here.

THE FIRST

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government²¹ over their land.

THE SECOND

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

THE THIRD

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

[signed] William Hobson Consul & Lieutenant Governor

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

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

¹⁶ "Chieftainship": this concept has to be understood in the context of Māori social and political organization as at 1840. The accepted approximation today is "trusteeship".

¹⁷ "Peace": Māori "rongo", seemingly a missionary usage (rongo – to hear, i.e. hear the "word" – the "message" of peace and goodwill).

¹⁸ Literally "chief" ("rangatira") here is, of course, ambiguous. Clearly a European could not be a Māori, but the word could well have implied a trustee-like role rather than that of a mere "functionary". Māori speeches at Waitangi in 1840 refer to Hobson being or becoming a "father" for the Māori people. Certainly this attitude has been held towards the person of the Crown to the present day – hence the continued expectations and commitments entailed in the Treaty.

¹⁹ "Islands", i.e. coastal, not of the Pacific.

²⁰ Literally "making" - i.e. "offering" or "saying" – but not "inviting to concur".

²¹ "Government": "kawanatanga". There could be no possibility of the Māori signatories having any understanding of government in the sense of "sovereignty", i.e. any understanding on the basis of experience or cultural precedent.

APPENDIX 2:**LEGISLATION WITH REFERENCES TO THE
TREATY OF WAITANGI**

- » Archives, Culture, and Heritage Reform Act 2000
- » Conservation Act 1987
- » Crown Forests Assets Act 1989
- » Crown Pastoral Land Act 1998
- » Crown Minerals Act 1991
- » Crown Research Institutes Act 1992
- » Department of Justice (Restructuring) Act 1995
- » Education Act 1989
- » Education Lands Act 1949
- » Employment Relations Act 2000
- » Energy Efficiency and Conservation Act 2000
- » Environment Act 1986
- » Evidence Act 1908
- » Finance Act 1995
- » Fisheries Act 1983
- » Fisheries Act 1996
- » Fishing Industry Board Act 1963
- » Foreshore and Seabed Act 2004
- » Harbour Boards Dry Land Endowment Revesting Act 1991
- » Hauraki Gulf Marine Park Act 2000
- » Hazardous Substances and New Organisms Act 1996
- » Historic Places Act 1993
- » Human Rights Act 1993
- » Income Tax Act 2004
- » Land Transport Management Act 2003
- » Legal Services Act 1991
- » Local Government Act 2002
- » Local Legislation Act 1989
- » Māori Commercial Aquaculture Claims Settlement Act 2004
- » Māori Fisheries Act 2004
- » Māori Language Act 1987
- » Māori Reserved Land Act 1955
- » Māori Reserved Land Act 1955/Māori Reserved Land Amendment Act 1997
- » Māori Reserved Land Act 1955/Māori Reserved Land Amendment Act 1998
- » Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003

- » Ministry of Agriculture and Fisheries (Restructuring) Act 1995
- » Ministry of Māori Development Act 1991
- » New Zealand Public Health and Disability Act 2000
- » New Zealand Railways Corporation Restructuring Act 1990
- » Ngāi Tahu Claims Settlement Act 1998
- » Ngāi Tahu (Pounamu Vesting) Act 1997
- » Ngāi Tahu (Tutaepatu Lagoon Vesting) Act 1998
- » Ngāti Awa Claims Settlement Act 2005
- » Ngāti Rarua-Atiawa Trust Empowering Act 1993
- » Ngāti Ruanui Claims Settlement Act 2003
- » Ngāti Tama Claims Settlement Act 2003
- » Ngāti Turangitukia Claims Settlement Act 1999
- » Ngāti Turangitukia Claims Settlement Act 1999/Ngāti Turangitukia Claims Settlement Amendment Act 2003
- » Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005
- » Orakei Act 1991
- » Pouakani Claims Settlement Act 2000
- » Public Records Act 2005
- » Public Works Act 1981
- » Queen Elizabeth the Second Postgraduate Fellowship of New Zealand Act 1963
- » Resource Management Act 1991
- » State-Owned Enterprises Act 1986
- » Supreme Court Act 2003
- » Survey Act 1986
- » Te Runanga o Ngāi Tahu Act 1996
- » Te Runanga o Ngāti Porou Act 1987
- » Te Runanga o Ngāti Whatua Act 1988
- » Te Ture Whenua Māori (Māori Land) Act 1993
- » Te Uri o Hau Claims Settlement Act 2002
- » Treaty of Waitangi Act 1975
- » Treaty of Waitangi (Fisheries Claims) Settlement Act 1992
- » Treaty of Waitangi (State Enterprises) Act 1988
- » Waikato Raupatu Claims Settlement Act 1995
- » Waitangi Day Act 1976
- » Waitutu Block Settlement Act 1997

APPENDIX 3: INTERNATIONAL CONVENTIONS/REGIONAL AGREEMENTS

Agreements and conventions that have previously been recognised to have implications for Māori include the following²².

Already ratified (meaning it has been adopted within New Zealand law):

- » World Trade Organization agreements (including General Agreement on Tariffs and Trade (GATT)), General Agreement on Trade in Services, and Trade-related aspects of Intellectual Property Rights (TRIPS);
- » Convention on Biological Diversity.

Not ratified²³:

- » United Nations Declaration on the Rights of Indigenous People.

²² This is not an exhaustive list but gives an indication of some of the agreements and conventions that have implications for Māori.

²³ At the time of publication this information was current, however, it is probable that it may have since been amended and/or ratified. The Guide will be updated as information comes to hand.

APPENDIX 4: BIBLIOGRAPHY

- » *Addressing Māori Responsiveness: A Manual for Staff*. Ministry of Consumer Affairs, Wellington, 1999.
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- » *Evaluation for Māori: Guidelines for Government Agencies*. Ministry of Māori Development (Te Puni Kōkiri), Wellington, 1999.
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PART FOUR: TREATY OF WAITANGI

WORKBOOK

INTRODUCTION

The Workbook comprises the following sections:

- » applying the Treaty of Waitangi Issues Analysis Framework;
- » hypothetical MPI Business Examples;
- » frequently asked questions;
- » sample answers to MPI Business Examples.

APPLYING THE TREATY OF WAITANGI ISSUES ANALYSIS FRAMEWORK

These instructions outline how to apply the Framework to MPI business.

This Workbook will assist staff to develop an understanding of how to apply the Framework by providing opportunities to work through hypothetical examples related to MPI business.

Take the time to become familiar with and practise each of these steps because they will form the basis of future work when identifying possible Treaty issues in policy development.

The steps are outlined below.

1. Refer to the MPI Business Examples section of the Workbook.

This section provides hypothetical work-related examples from different MPI business units and offers examples of how the Treaty and its associated issues can be applied in MPI's work. Choose the example most relevant to your business unit.

2. Ask yourself the General Prompt Questions for your policy issue.

These questions provide a high-level, first glance at the Treaty implications of a policy issue. They are suitable for situations where Treaty implications can be readily identified at first contact with a policy issue, or at the very early stages of policy development when little is known about the details of a policy issue.

3. Ask yourself the Article Specific Questions for your policy issue.

These questions will help you to identify more specific Treaty implications that are not easily recognised at first glance. Your ability to answer these questions will depend on your knowledge of the policy issue. These questions should be revisited as the policy process develops.

4. Ask yourself the General Prompt Questions Arising from the Treaty as a Whole of the Guide.

These questions highlight issues arising from the Treaty as a whole, rather than focusing on any of the specific Articles. Your ability to answer these questions will be influenced by your level of knowledge of the policy issue, and the questions should be revisited as the policy process develops.

5. Refer to the Useful Resources section of the Guide.

If an issue arises from one of the questions in any of the stages above, refer to the Useful Resources section of the Guide to examine the issue and clarify its relevance. These resources will help you to determine the nature and significance of the Treaty issue and its likely implications for your policy. They may also provide guidance on to how the Treaty issue can be addressed.

6. Refer to the Sample Answers to MPI Business Examples of the Workbook.

This section provides sample answers and prompt questions that apply to the working examples in section three of the Workbook. These will assist staff to identify Treaty policy issues.

7. Note of any issues that arise.

The TTP Committee is continually looking to develop these Treaty resources. If any issues arise during the policy development process that are not addressed by the Guide and/or Workbook please contact the TTP Committee.

The following examples can be used by an individual or as part of a team training or workshop exercise.

Although based on real MPI business, the examples are hypothetical and should not be taken as policy. They provide working examples of how the Framework can be applied. It should also be noted that as the Treaty dialogue develops new issues may arise.

In order to work through the MPI examples, please take note of the following instructions:

- » you will need a pen and paper;
- » set yourself approximately 30–35 minutes to complete the work;
- » select the MPI example most relevant to your business unit;
- » refer, either individually or as a group, to steps 1–7 that explain how to apply the Framework (pages 1–2 of the Workbook);
- » have the Guide available for quick reference; and
- » once identified, list the Treaty issues under the relevant prompt questions.

The MPI business examples are outlined on the following pages.

CASE STUDY 1: CARCASS DISPOSAL

In response to international concern and the potential impact of avian influenza on New Zealand, MPI (along with other government agencies) is developing a preparedness strategy in the event that avian influenza reaches the shores of New Zealand.

If the highly pathogenic strain arrives in New Zealand it could have a devastating impact on the egg and poultry industry, wild flock and indigenous birds. The full impact is not known, but may also have a detrimental impact on human health and the economy.

As part of the preparedness strategy, identification of appropriate sites for carcass disposal is necessary. MPI has listed a number of criteria for identifying appropriate sites, including:

- » proximity to key water supplies;
- » proximity to highly populated communities;
- » size of area;
- » ease of access;
- » waahi tapu; and
- » soil type.

Remember to identify the Treaty issue and list under the relevant prompt question.

CASE STUDY 2: IMPORTATION OF PRODUCT MADE FROM ENDANGERED SPECIES, AND BIOSECURITY RISKS

A renowned kapa haka group (Māori cultural group) travelled overseas to New Mexico to represent New Zealand at a cultural festival. The performance costumes were elaborate and detailed, many made up of feathers, plant fibre, bone, shell, wood and pounamu (New Zealand greenstone). Many of the performers chose to take family heirlooms to perform with. The leader of the group had always performed with a taiaha made of whale bone and chose to take this with him overseas.

While overseas, members were showered with various gifts, including eagle feathers and sage.

Upon their return to New Zealand, the whale bone taiaha, eagle feathers and sage were confiscated by MPI (on behalf of the Department of Conservation) pursuant to the CITES. The group leader was unable to prove at that point in time that the whale bone taiaha was made prior to the CITES. The sage and eagle feathers were deemed biosecurity risks and were therefore directed by MPI for treatment or reshipment pursuant to the Biosecurity Act 1993.

The other plant fibre, shell and wood products were inspected by MPI and deemed not to be biosecurity risks.

Remember to identify the Treaty issue and list under the relevant prompt question.

CASE STUDY 3: WALKING ACCESS

Amidst growing public concern that access to the outdoors was becoming increasingly restricted, the Government developed policy requiring access through private property to water bodies of a certain size.

The objective of the policy was to ensure that all New Zealanders and overseas visitors had the ability to enjoy New Zealand's natural resources, without restriction. It required landowners to allow the public thoroughfare through their property. It was also proposed that in instances where access was likely to be frequent, walkways would be built. The policy did not, however, involve compulsory acquisition of land, so the responsibility to manage the land still resided with landowners.

The issue in question was whether Māori land (as determined by Te Ture Whenua Māori Act 1993) should be included in the policy or made exempt. It was decided that the policy was to apply to all classes of land, including Māori land.

Remember to identify the Treaty issue and list under the relevant prompt question.

FREQUENTLY ASKED QUESTIONS

1. WHAT IS THE TREATY OF WAITANGI?

The Treaty of Waitangi is the founding document of New Zealand. It is an agreement entered into by representatives of the Crown and Māori iwi and hapū. It is named after the place in the Bay of Islands where the Treaty was first signed on 6 February 1840, although, in fact, it was signed all over the country. The Treaty, like all treaties, is an exchange of promises between the parties to it.

2. WHAT WAS THE DECLARATION OF INDEPENDENCE?

The Declaration of the Independence of New Zealand was signed in 1835 by several Māori chiefs, acting as the Confederation of United Tribes, and James Busby, the British Resident (a kind of consular representative). By 1839, it had gathered 52 signatures.

The Declaration asserted that all sovereign power and authority in the land resided with the chiefs. It requested the King of England, in return for the “friendship and protection” Māori gave to British subjects in New Zealand, to “continue to be the parent [matua] of their infant State and ... its Protector from all attempts upon its independence”. Historians view the Declaration of Independence as an embryonic expression of Māori nationhood, irrespective of its original impetus.

3. WHY WAS THE TREATY ENTERED INTO?

It was a broad statement of principles upon which the British officials and Māori chiefs made a political compact or covenant to found a nation-state and build a functioning government in New Zealand to deal with pressing new circumstances.

4. IS THE TREATY STILL VALID TODAY?

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

5. WHY IS THE GUIDE USEFUL?

The Guide provides the historical and contextual information useful in building a general understanding of the Treaty and its issues. It includes information on historical events, Treaty jurisprudence and copies of the Treaty texts themselves.

It also contains an explanation of the framework and prompt questions, to assist with the identification of possible Treaty policy issues.

6. WHY IS THE FRAMEWORK USEFUL?

The Framework will assist MPI staff to develop high-quality policy advice by providing an effective tool to identify and consider relevant Treaty issues. It also provides MPI staff with a vehicle to better understand the Treaty and to identify Treaty issues within their day-to-day work (especially policy).

7. WHY IS THE WORKBOOK USEFUL?

The Workbook provides instructions, information and examples on how to apply the Framework into MPI business.

8. CAN I HAVE INPUT INTO DEVELOPING THE GUIDE AND/OR WORKBOOK?

Yes. The TTP Committee is always looking to ensure that these resources are relevant and kept up to date.

9. WHAT OTHER RESOURCES ARE AVAILABLE?

Please refer to Part 3 of the Treaty of Waitangi Issues Analysis Guide on page 59 for a list of useful (although not exhaustive) resources.

10. HOW DO I GET MORE COPIES?

For more copies please contact the TTP Committee. Updated contact details can be found on Kotahi.

SAMPLE ANSWERS TO MPI BUSINESS EXAMPLES



CASE STUDY ONE: CARCASS DISPOSAL

GENERAL PROMPT QUESTIONS

- (a) Reasons include:
- » Impact on indigenous birds and Māori kaitiaki and whakapapa relationships with those species.
 - » Significance of waahi tapu to Māori.
- (b) Reasons include:
- » The policy issue may include confiscation of land, which is the essence of most Treaty issues.
 - » The WAI 262 is about indigenous flora and fauna – this policy directly impacts on indigenous birds.
- (c) Reasons include:
- » The Public Works Act 1981 includes reference to the Treaty of Waitangi. This Act may be invoked for the acquisition of land for carcass disposal.

ARTICLE SPECIFIC QUESTIONS

ARTICLE I

- (a) Reasons include:
- » Some responsibility for carcass disposal may be delegated to local government, for example, in the event of long-term management.
- (b) Reasons include:
- » Māori may consider that they should have more control over waahi tapu and destruction of indigenous birds.

ARTICLE II

- (a) Reasons include:
- » Land is specifically mentioned in Article II of both versions of the Treaty.
- (b) and (c) Reasons include:
- » “Me o ratou taonga katoa” meaning all of their prized possessions are specifically mentioned in Te Tiriti o Waitangi. Māori consider this to include indigenous flora and fauna, including indigenous birds.
- (c) Reasons include:
- » Māori have demonstrated a cultural, traditional, spiritual, use, management and ownership interest in land and indigenous birds through a number of media.
- (d) Reasons include:
- » Yes, land is at the heart of all historical claims before the Waitangi Tribunal.

Indigenous fauna (or management and access thereof) is often raised in both historical and contemporary claims.

EXERCISE OF RANGATIRATANGA AND GOVERNANCE

(a) Reasons include:

- » Acquisition of land for carcass disposal will affect the ability of Māori to exercise authority of their tribal area.

(b) Reasons include:

- » Acquisition of land may have an impact on Māori ability to practise their culture and traditions.
- » Policies outlining how carcass disposal must be carried out may not allow for Māori cultural values to be enacted – for example, karakia (prayer).

(c) Reasons include:

- » This policy will impact on Māori kaitiakitanga over indigenous birds and lands.

ARTICLE III

(a) Reasons include:

- » Māori land is more often than not under-utilised, therefore confiscation of Māori land may be more likely.

(b) Reasons include:

- » Although remote, Māori have issues with kaitiakitanga distinct from other groups within New Zealand society.

PROMPT QUESTIONS ARISING FROM THE TREATY AS A WHOLE

Not applicable.

CASE STUDY TWO: IMPORTATION OF PRODUCT MADE FROM ENDANGERED SPECIES AND BIOSECURITY RISK



GENERAL PROMPT QUESTIONS

- (a) Reasons include:
- » The ability to use traditional Māori artefacts for cultural purposes overseas is restricted, because bringing items back into the country may be deemed a biosecurity risk or contrary to the CITES. It impacts on Māori ability to express their culture.

ARTICLE SPECIFIC QUESTIONS

ARTICLE I

- (a) Reasons include:
- » Māori may consider that they should have more control over their ability to express their culture and use their cultural artefacts.

ARTICLE II

- (b) Reasons include:
- » “Me o ratou taonga katoa” meaning all of their prized possessions are specifically mentioned in Te Tiriti o Waitangi. Traditional artefacts such as whale bone taiaha are included in this definition. Also the practise of giving and receiving gifts (known as tau-utu-utu) is an integral part of Māori culture. Therefore, according to Māori cultural beliefs, it is difficult to turn down a gift of sage or eagle feather, regardless of the legal ramifications.
- (c) Reasons include:
- » The Crown has recognised the importance of Māori culture.
- (d) Reasons include:
- » Māori have demonstrated a cultural, traditional, spiritual, use, management and ownership interest in their culture and cultural artefacts through a number of media.
- (e) Reasons include:
- » Yes, ability to fully exercise their culture and maintain rights over their cultural property is often raised in both historical and contemporary claims. It is an issue specifically addressed in the WAI 262 claim.

EXERCISE OF RANGATIRATANGA AND GOVERNANCE

- (a) Reasons include:
- » The policy impacts on Māori ability to freely exercise their cultural practices, particularly in an international dimension.
- (b) Reasons include:
- » Individuals or whānau are often given kaitiaki responsibility for the care of traditional artefacts, therefore the policy may impact on individual or whānau kaitiaki obligations.

CROWN PROTECTION

Not applicable.

ARTICLE III

(a) Reasons include:

- » Māori are more likely to travel with cultural artefacts. Māori also have strong relationships with other indigenous groups where the process of gifting is common.

(b) Reasons include:

- » Same reason as above.

PROMPT QUESTIONS ARISING FROM THE TREATY AS A WHOLE

Not applicable.

CASE STUDY THREE: WALKING ACCESS

3

GENERAL PROMPT QUESTIONS

(a) Reasons include:

- » Impacts specifically on Māori land.
- » Te Ture Whenua Māori Act 1993 places restrictions on Māori land over and above land in general title. The policy, therefore impacts more on Māori.

(b) Reasons include:

- » The policy issue limits ability to freely use land. It is a rangatiratanga (sovereignty) issue, which is at the core of many claims lodged with the Waitangi Tribunal.

(c) Reasons include:

- » Although international conventions are not specifically mentioned in this policy, the Declaration on the Rights of Indigenous Peoples makes specific reference to the relationship between indigenous peoples and their ancestral lands.

ARTICLE SPECIFIC QUESTIONS**ARTICLE I**

(a) Reasons include:

- » Māori may consider that they should have more control over how they choose to use their land, without intervention from government.

ARTICLE II

(a) Reasons include:

- » Land is specifically mentioned in Article II of both versions of the Treaty.

(b) Reasons include:

- » Many settlements have included acknowledgment of Māori rangatiratanga over areas of land.

(c) Reasons include:

- » Māori have demonstrated a cultural, traditional, spiritual, use, management and ownership interest in land through a number of media.

(d) Reasons include:

- » Yes, land is at the heart of all historical claims before the Waitangi Tribunal.

EXERCISE OF RANGATIRATANGA AND GOVERNANCE

(a) Reasons include:

- » The policy will require Māori to allow access through their land, which may be contrary to how they wish to exercise their traditional tribal authority.

(b) Reasons include:

- » The policy issue may impact on Māori ability to exercise kaitiakitanga, especially where foot traffic is high, possibly resulting in a negative impact on the environment.

CROWN PROTECTION

(a) Reasons include:

- » Although the policy does not involve compulsory acquisition of land, the land is effectively reserved for certain uses, regardless of the wishes of the land owner, without compensation. This raises issues about compensation.

ARTICLE III

(a) Reasons include:

- » Māori are disproportionately affected by this policy because Māori land already has restrictions pursuant to Te Ture Whenua Māori Act 1993 that general land does not.

(b) Reasons include:

- » Ability for Māori to exercise control over their land equal to general land is an issue.

PROMPT QUESTIONS ARISING FROM THE TREATY AS A WHOLE

Not applicable.

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