The Treaty of Waitangi is New Zealand's founding document. Over 500 Māori chiefs and representatives of the British Crown signed the Treaty in 1840. Like all treaties it is an exchange of promises; the promises that were exchanged in 1840 were the basis on which the British Crown acquired New Zealand. The Treaty of Waitangi agreed the terms on which New Zealand would become a British colony.

This is one of a series of booklets on the Treaty of Waitangi which are drawn from the Treaty of Waitangi Information Programme’s website www.treatyofwaitangi.govt.nz.

Many historians have contributed to the material in these booklets to ensure it is as accurate and balanced as possible. Their contribution is gratefully acknowledged.

Further copies of this booklet are available from:

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In 1839, Captain William Hobson was appointed Lieutenant-Governor and given responsibility for securing British sovereignty over New Zealand by the negotiation of a Treaty between Māori and the Crown. The Colonial Secretary, Lord Normanby, instructed Hobson that:

“All dealings with the Aborigines for their Lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all. They must not be permitted to enter into any Contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them and unintentional authors of injuries to themselves.

In carrying out his instructions, Hobson relied on the advice and support of a number of missionaries working in New Zealand, as well as his secretary, James Freeman, and James Busby, who had been in New Zealand since 1833 as the British Resident (a consular representative). Relying also on previous British treaties as examples, the Treaty was drafted in English, and an initial meeting was held at Waitangi on 5 February to discuss it with an estimated 500 Māori and about 200 Pākehā witnesses. The Treaty was first signed at Waitangi on 6 February by over 40 chiefs, before travelling to other parts of the country.

More than 500 chiefs have their signatures or marks on one or other of the nine signed copies of the Treaty that have survived. At Waitangi and at Waikato Heads there were two texts, an English and a Māori text. Two hundred copies of the Māori text were printed on 17 February for distribution to potential signatories. Almost all the chiefs signed on one of a number of handwritten copies of the Treaty in Māori. Only 39 chiefs signed the English text of the Treaty.

Henry Williams translated the Treaty into Māori on 4 February and, on 6 February or a few days later, he translated the Māori text back into English. This became the “official English text”. It was presumed that the Māori text and the translation back into English had the same meaning, but Henry Williams observed on the copy of the official text sent in Hobson’s despatch to Governor Gipps: “I certify that the above is as literal a translation of the Treaty of Waitangi as the idiom of the language will admit of.” (Public Record office, London, CO 209/7, 13-15), indicating that a literal or word-for-word translation was impracticable.

The texts are, in some places, significantly different in meaning. One significant difference is in the two texts of Article 1, which describe what was being given up by Māori: “all the rights and powers of sovereignty” in the English text or “te tino rangatiratanga katoa” in the Māori text. Some historians have suggested that “te tino rangatiratanga” or “mana” were better approximations of sovereignty than “kawanatanga”. Another difference is in the two texts of Article 2, which describe what the Crown’s guarantee to Māori was in respect to their property. It has been argued that “full, exclusive and undisturbed possession” is not an accurate translation of “te tino rangatiratanga” in the Māori text. (For one modern English translation of the Māori text, see the translation by Professor Sir Hugh Kawharu on page 9.)
Preamble

The preamble of the English version states the British intentions were to:
- protect Māori interests from the encroaching British settlement;
- provide for British settlement;
- establish a government to maintain peace and order.

The Māori text suggests that the Queen’s main promises to Māori were to:
- provide a government while securing tribal rangatiratanga and Māori land ownership for as long as they wished to retain it.

The Treaty Texts

Key Differences

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 – 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 authorise 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.

Māori Text

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 maori o Nu Tirani-kia wakaesi e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahi katoa o te wenua nei me nga motu-nera 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 maori ki te Pakeha e noho ture kore ana.

Na kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roßara Nawi he i Kawana mo nga wahi katoa o Nu Tirani e tukua aiane nei amua 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.
Article the first

English Text

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, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Key Differences

In the English text of the Treaty, Māori leaders gave the Queen “all the rights and powers of sovereignty” over their land.

In the Māori text of the Treaty, Māori leaders gave the Queen “te kawanatanga katoa” – the complete government over their land.

Ko te tuatahi

Māori Text

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

Matene Te Whiwhi of Ngāti Toa and Ngāti Raukawa. In 1839 he travelled to the Bay of Islands seeking a Christian missionary for his people. As a result Octavius Hadfield later settled at Waitakere. In 1840, Te Whiwhi (son of Rangi Topeora) signed the copy of the Treaty brought south by Henry Williams. ATL: PA2-2808.

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Rangi Topeora, of Ngāti Toa and Ngāti Raukawa. She signed the Treaty in May 1840 when the missionary Henry Williams brought the Treaty to Kapiti Island. She was one of an estimated 13 women to sign the Treaty. ATL: PA2-2808.

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The Chiefs of the Confederation

and forty.

Lord one thousand eight hundred
of February in the year of Our
Done at Waitangi this Sixth day
respectively specified.

marks at the places and the dates
we have attached our signatures or
meaning thereof in witness of which
into the same in the full spirit and
foregoing Treaty, accept and enter
understand the Provisions of the
names, having been made fully to
are specified after our respective
the Tribes and Territories which
Zealand claiming authority over
Majesty the Queen 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.

[signed] W. Hobson Lieutenant
Governor

Now therefore We the Chiefs of
the Confederation of the United
Tribes of New Zealand being
assembled in Congress at Victoria
in Waitangi and We the Separate
and Independent Chiefs of New
Zealand claiming authority over
the Tribes and Territories which
are specified after our respective
names, having been made fully to
understand the Provisions of the
foregoing Treaty, accept and enter
understand the Provisions of the
Treaty, the Crown gave an assurance
that Māori would have the
Queen’s protection and all rights
— “tikanga” — accorded to British
subjects.

This is considered a fair translation
of the English.

Preamble

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
lands - 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 authorise 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.

In the Māori text of the Treaty,
the Crown gave an assurance
that Māori would have the
Queen’s protection and all rights
— “tikanga” — accorded to British
subjects.

This is considered a fair translation
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Key Differences

In the Māori text of the Treaty,
the Crown gave an assurance
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Queen’s protection and all rights
— “tikanga” — accorded to British
subjects.

This is considered a fair translation
of the English.

Māori Text

Hei wakarinenga mai hoki tenei
mo te wakaaetanga ki te Kawana-
tanga o te Kuini - Ka tiakina e te
Kuini o Ingarani nga tangata maori
datoa o Nu Tirani ka tukua ki a
ratou nga tikanga katoa rite tahi
ki ana mea ki nga tangata o
Ingarani.

[signed] W. 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 wakaaetia
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 Pepueri i te tau
tohi manu e, waru rau e wa te
kau o to tatou Ariki.

Ko nga Rangatira o te
Wakaminenga

In the Māori text of the Treaty,
the Crown gave an assurance
that Māori would have the
Queen’s protection and all rights
— “tikanga” — accorded to British
subjects.

This is considered a fair translation
of the English.

English Text

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
lands - 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
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Māori Text

Hei wakarinenga mai hoki tenei
mo te wakaaetanga ki te Kawana-
tanga o te Kuini - Ka tiakina e te
Kuini o Ingarani nga tangata maori
datoa o Nu Tirani ka tukua ki a
ratou nga tikanga katoa rite tahi
ki ana mea ki nga tangata o
Ingarani.

[signed] W. 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 wakaaetia
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 Pepueri i te tau
tohi manu e, waru rau e wa te
kau o to tatou Ariki.

Ko nga Rangatira o te
Wakaminenga

In the Māori text of the Treaty,
the Crown gave an assurance
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Queen’s protection and all rights
— “tikanga” — accorded to British
subjects.

This is considered a fair translation
of the English.

English translation of Māori text
by Professor Sir Hugh Kawharu
Victoria, the Queen of England, in
her concern to protect the chiefs
and the subtribes of New Zealand
and in her desire to preserve their
chieftainship (1) and their lands
and property. 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 (5) to the
chiefs of the Confederation chiefs
of the subtribes of New Zealand
and other chiefs these laws set
out here.

Footnotes

(1) “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”.

(2) “Rongo”: “Peace”, seemingly
a missionary usage (rongo – to
hear i.e. hear the “Word” – the
“message” of peace and goodwill,
etc).

(3) “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.

(4) “Islands” i.e. neighbouring, not
of the Pacific.

(5) “Making” i.e. “offering” or
“saying” — but not “inviting to
concur”.  

At the end of the book of the
Treaty Texts, Professor Kawharu
(1840) refers to the Chiefs and
the Māori people as “the
United Tribes of New Zealand”.

This is considered a fair translation
of the English.

English translation of Māori text
by Professor Sir Hugh Kawharu
ENGLISH TRANSLATION OF THE MĀORI TREATY TEXT

Article the first

English text
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, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Footnotes
(6) “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.

ENGLISH TRANSLATION OF THE MĀORI TREATY TEXT

Article the second

English text
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 their 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 retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption 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.

Footnotes
(7) “Unqualified exercise” of the chieftainship – would emphasise to a chief the Queen’s intention to give them complete control according to their customs. “Tino” has the connotation of “quintessential”.

(8) “Treasures”: “taonga”. As submissions to the Waitangi Tribunal concerning the Māori language have made clear, “taonga” refers to all dimensions of a tribal group’s estate, material and non-material heirlooms and wāhi tapu (sacred places), ancestral lore and whakapapa (genealogies), etc.

(9) “Sale and purchase”: “hokonga”. Hoko means to buy or sell.

Article the third

English text

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.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

The third

English translation of Māori text

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 (10) of citizenship as the people of England (11).

[signed] W. Hobson Consul & Lieutenant Governor

So we, the Chiefs of the Confederation and of the subtribes 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.

Footnotes

(10) "Rights and duties": "tikanga" while "tika" means right, correct, (e.g. "e tika hoki" means that is right), "tikanga" most commonly refers to custom(s), for example of the marae; and custom(s) clearly includes the notion of duty and obligation.

(11) There is, however, a more profound problem about "tikanga". There is a real sense here of the Queen "protecting" (i.e. allowing the preservation of) the Māori people's tikanga (i.e. customs) since no Māori could have had any understanding whatever of British tikanga (i.e. rights and duties of British subjects.) This, then, reinforces the guarantees in Article 2.
The Principles of the Treaty of Waitangi

The Treaty of Waitangi is considered to be an important source of the New Zealand constitution, however the formal legal position is that the Treaty has legally enforceable effect only when referred to in legislation. At the present time the Treaty of Waitangi is referred to in 62 separate Acts of Parliament. Most statutes have no reference to the Treaty, and most of the ones that do relate either to natural resources and environmental legislation, or to such Māori-specific parts of the law as Māori land law.

Most of these legislative references are not to the Treaty text but rather to the “principles” of the Treaty. This is because the two texts of the Treaty have led to different understandings, and because of the need to apply the Treaty to present-day circumstances and issues. Treaty principles interpret the Treaty as a whole, its intention and its spirit. In the 1994 Broadcasting Assets case (p. 513), Lord Woolf described the principles as “the underlying mutual obligations and responsibilities the Treaty places on the parties. They reflect the intention of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty.”

Examples of references to Treaty principles in legislation include section 6 of the Treaty of Waitangi Act 1975, which gives the Waitangi Tribunal jurisdiction to inquire into claims that actions or omissions of the Crown are “inconsistent” with “the principles of the Treaty of Waitangi”. Section 9 of the State Owned Enterprises Act 1986 states that “nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi”. To take yet another example, section 4 of the Crown Minerals Act 1991 states that the Act “shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.”

There are many other examples. There is considerable variety in wording: in some statutes an obligation to comply with the Treaty is phrased positively, in others negatively.

Given the tendency to refer to the “principles” of the Treaty rather than to the Treaty text, it has become necessary for the Courts and the Waitangi Tribunal to work out what those principles are. The most important discussion of this issue by the Courts is found in the judgment of the Court of Appeal in New Zealand Māori Council v Attorney-General, [1987] 1 NZLR 641. In this case, Court of Appeal President Cooke said that the task of interpretation “should not be approached with the austerity of tabulated legalism” and that a “broad, unquibbling and practical interpretation” was necessary (p. 661). In the same case, Justice Richardson noted that “regrettably, but reflecting the limited dialogue there has been on the Treaty, it cannot yet be said that there is broad agreement as to what those principles are” (p. 673).

The Court of Appeal emphasised that there were two core principles. These were “partnership” and “active protection”. President Cooke said that “the Treaty signified a partnership between races, and it is in this concept that the answer to the present case has to be found” (p. 664).

Both the Courts and the Waitangi Tribunal have determined that the principle of partnership includes the obligation on both parties to act reasonably, honourably and in good faith. The Courts have found that Treaty partnership does not necessarily describe a relationship where the partners share national resources equally. The Courts have also found that an aspect of the obligation to act in good faith is a duty to make informed decisions through consultation (although the duty to consult is not absolute). The Waitangi Tribunal has emphasised the value and utility of consultation in upholding and strengthening the Treaty partnership.

Also mentioned in the case was a principle of “redress of grievances”, which, however, “is not justiciable in the Courts” (Justice Somers, at p. 693). The principle of redress was seen to arise from the partnership principle, and reflects the Crown’s duty to take active and positive steps to redress Treaty breaches. It entails a fair and reasonable recognition and recompense for wrongdoing.

As to “active protection”, President Cooke observed that “the duty of the Crown is not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable”. This principle is located in the fundamental exchange recorded in the Treaty – the cession of sovereignty for the promise to respect Māori authority over their own affairs and protect their resource rights; or, in the Māori text, the giving up of kawanatanga for the guarantee of tino rangatiratanga. This is sometimes described as the principle of reciprocity.

Since 1987, the Courts and the Waitangi Tribunal have developed a number of more detailed principles but the concepts of “partnership” and “active protection” have remained dominant. For a detailed list of the principles that have been developed see “He Tirohanga o Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi”, Te Puni Kökiri, Wellington, 2001 (http://www.tpk.govt.nz/publications).
Frequently Asked Questions

Frequently asked questions about the Treaty of Waitangi, the Declaration of Independence, and the signing of the Treaty.

What is the Treaty of Waitangi?
The Treaty of Waitangi is the founding document of New Zealand. It is an agreement drawn up between representatives of the British Crown and representatives of 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. The Treaty is in two languages, Māori and English, but this is not exceptional, as most international treaties are in a number of languages, often more than two. But the precise nature of the exchange within the Treaty of Waitangi is a matter of debate, as the terms used in the surviving Māori and English texts do not mean quite the same thing. (To find out more, see pages 5-8.) The Treaty was intended by Great Britain to be an exchange of sovereignty in return for a guarantee of the authority of the chiefs and the protection of Māori land and resource rights. The Treaty also extended to Māori the same rights and privileges of British citizens.

The copy of the Treaty signed at Waitangi on 6 February 1840, although it has been damaged over the years, is on display at Archives New Zealand in Wellington, along with eight other Treaty sheets that have survived.

What was the Declaration of Independence?
The Declaration asserted that all sovereign power and authority in the land resided with the chiefs. It requested that the King of England, “in return for the ‘friendship and protection’ Māori gave to British subjects in New Zealand”, “continue to be the parent (matua) of their infant State and its Protector from all attempts upon its independence”.

There is evidence that Busby drew up the Declaration without the authority of his superiors, using a perceived threat of French annexation to encourage the chiefs to sign. Some historians also suggest that the Colonial Office in London was by no means convinced that there was a viable political authority in New Zealand with which it could form diplomatic relations. Other historians, however, view the Declaration as an embryonic expression of Māori nationhood, irrespective of its original impetus. The Declaration was, however, formally acknowledged by the British Government in 1836, and a primary purpose of the Treaty of Waitangi was to revoke the Declaration, so as to permit the transmission of sovereignty to Queen Victoria.

Why was the Treaty entered into?
The British Government was aware that its appointment of James Busby as British Resident was not adequate to control the lawlessness of its own citizens, Māori warfare, or the organised and orderly settlement of New Zealand. The British Government was also very concerned about land purchases from Māori by British subjects and other Europeans. To some extent, it was also concerned about the interest being taken by other foreign powers in New Zealand. It therefore appointed Captain William Hobson as Consul, and provided him with instructions to negotiate for the sovereignty of New Zealand and for the setting up of a British colony.

Missionary assurances that the Treaty would be of benefit to Māori may have been important in obtaining the agreement of the chiefs. However it also seems Māori had clear expectations of how the Treaty would bring benefits. A sharing of authority in the land would enhance the mana of the chiefs, and the country would be protected from acquisition by other foreign powers. A kawana (governor) would control Europeans, especially land buyers, who were causing problems in some areas. The Treaty would bring settlement and more markets for Māori produce and more goods to buy, and it would increase demand for Māori to provide services essential to settlement. Some chiefs also noted that circumstances had changed as a result of contact with Europeans, and that the clock could not be turned back.

The Treaty was not drafted as a constitution or a statute. Rather, 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.
Who signed the Treaty of Waitangi, where and when?

The Treaty was first presented to a meeting of around 500 Māori at Waitangi on 5 February 1840, and it was signed by over 40 chiefs on 6 February. It was then taken to Waimate North and to a major Hokiana meeting, where further signatures and marks were added. On 17 February, 200 copies of the Treaty were printed. A meeting by the Waitemata Harbour resulted in more signatures. Several manuscript copies of the Treaty were made in longhand and were widely circulated. There were about 50 meetings around the country over a seven-month period in 1840, starting in February and ending in September.

Over 500 chiefs gave their agreement on one of the nine Treaty copies that have survived. Most chiefs signed a Māori-language copy of the Treaty, except for 39 chiefs who signed an English-language version. (See page 5-8 for more on the differences between the two texts.)

What happened after the Treaty was signed?

In May 1840, Lieutenant-Governor Hobson proclaimed British sovereignty over the whole of New Zealand. His proclamations were ratified by the British Government in October of that year. Under British law, the effect was that New Zealand technically became a part of the colony of New South Wales. In late 1840 and early 1841, there were further constitutional changes, making New Zealand a separate Crown colony in its own right. In 1852, with the New Zealand Constitution Act 1852, Britain conferred responsible government on New Zealand. This set up a quasi-federal constitution, with a general government based in Auckland (later moved to Wellington) and a number of separate provincial governments. The provincial governments were abolished in 1875 by an Act of the New Zealand parliament. At this point, the New Zealand constitutional and governmental system reached the same basic form as it is today. There have, however, been some further changes, such as the abolition of the British Government’s power to legislate for New Zealand, and the abolition of the Legislative Council (the upper house of the New Zealand parliament). Items of constitutional significance are set out in the Constitution Act 1986. The Treaty of Waitangi has never been made a formal part of the New Zealand constitutional system. Many statutes, however, refer to it and, in 1975, parliament enacted the Treaty of Waitangi Act. This established the Waitangi Tribunal as a means of inquiring into Māori claims relating to breaches of the Treaty.

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 it 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 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.

Why are there Treaty of Waitangi claims?

Essentially, over the course of New Zealand’s history since 1840, there have been actions taken by early governments that have resulted in the alienation of Māori land, waters, and other resources from their owners. Recent governments have recognised that the way this has occurred has often not been just, leaving a strong sense of grievance with the original owners and their descendants. Ever since the grievances occurred, there have been many attempts by Māori to have their grievances addressed, and some early governments made attempts to settle their claims. However, only some of those claims were addressed, and these attempts are now considered to have been inadequate.

In 1975, the Waitangi Tribunal was established as a permanent commission of inquiry to consider claims by Māori against the Crown regarding breaches of principles of the Treaty, and to make recommendations to government to remove the prejudice and provide recompense. Initially, it had the power to only hear claims relating to Crown actions after 1975.

The jurisdiction of the Waitangi Tribunal was extended in 1985 to cover Crown acts and omissions dating back to 1840. This has provided Māori with an important means to have their grievances against the actions of past governments investigated.

How does a historical claim get settled?

The Tribunal considers claims by individuals, usually on behalf of groups (whānau, hapū or iwi), and issues a report about the claim and the evidence provided in the inquiry. It may make recommendations, but it has no further involvement in the settlement process. The government may decide to settle a claim. If so, the Office of Treaty Settlements negotiates on behalf of the Crown with the claimants. Once claimants and the Crown agree on the terms of a settlement, they sign a Deed, and the Crown passes legislation in Parliament to give effect to it and remove the Tribunal’s ability to inquire further into those claims. Settlement redress is then transferred to the claimants.

The Minister or Department responsible for the policy usually addresses the resolution of contemporary claims (those that relate to current or recent Government policies or practices).

Although Treaty breaches need to be proven, this does not have to be through a Waitangi Tribunal hearing. Some claimants may choose to negotiate directly with the Office of Treaty Settlements, without having a Tribunal hearing first.
FREQUENTLY ASKED QUESTIONS ABOUT THE TREATY

How many claims are there?

At the time of writing (September 2005) there are 1294 claims lodged at the Waitangi Tribunal. These may be historical or contemporary, and they may relate to either specific pieces of land or a generic government policy. Any Māori can make a claim at the Tribunal, so many of the claims relate to the same group of people or events.

Rather than hearing individual claims one by one, the Tribunal groups them into District Inquiries. Claims within an Inquiry district are researched together, and once the research is ready, hearings are held at which claimants and the Crown give evidence. The Tribunal then writes a report on the claims in the district. The Waitangi Tribunal has set itself the goal of reporting on all historical claims by 2010 and all generic claims by 2012.

Although claims at the Tribunal can be about group or individual grievances, the Crown negotiates Treaty Settlements at the "large natural group" level.

All historical hapū and whānau claims within a larger group are addressed in one set of negotiations. Usually, when a settlement is negotiated, all the existing and potential historical claims made by that claimant group are settled. Once settlement legislation is passed, the Tribunal has no further power to hear historical claims made by that group.

The Office of Treaty Settlements has estimated that, depending on the number of "large natural groups" that form to negotiate Treaty settlements, the vast majority of claims could be resolved within 10 to 15 years.