

Hon Kelvin Davis

Minister for Māori Crown Relations: Te Arawhiti

Proactive release – Treaty of Waitangi Guidance

Date of issue: 21 October 2019

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1.	Treaty of Waitangi guidance <i>Cabinet paper</i> The Office for Māori Crown Relations –Te Arawhiti	Released in full
2.	Treaty of Waitangi guidance <i>Attachment to Cabinet paper</i> The Office for Māori Crown Relations – Te Arawhiti	Released in full
3.	Draft webpages <i>Attachment to Cabinet paper</i> The Office for Māori Crown Relations – Te Arawhiti	Released in full
4.	Report of the Cabinet Māori Crown Relations – Te Arawhiti Committee: Period Ended 30 August 2019 <i>Cabinet minute</i> Cabinet Office	Released in full
5.	Treaty of Waitangi Guidance <i>Cabinet minute</i> Cabinet Office	Released in full

In Confidence

Office of the Minister for Māori Crown Relations: Te Arawhiti
Chair, Cabinet Māori Crown Relations: Te Arawhiti Committee

Treaty of Waitangi guidance

Proposal

1. This paper seeks Cabinet approval to guidance for public servants on the application of the Treaty of Waitangi.

Background

2. On 9 May the Cabinet Government Administration and Expenditure Review Committee (**GOV**) invited the Minister for State Services and me to 'provide further information on Public Service guidance in relation to Te Tiriti/Treaty of Waitangi matters' [GOV-19-MIN-0019].
3. On 11 June the Cabinet Māori Crown Relations: Te Arawhiti Committee (the Committee) discussed a draft A3 with questions to guide public servants. At that meeting MCR:
 - 3.1. agreed a Cabinet Office circular is likely the most appropriate way of providing this guidance to agencies; and
 - 3.2. invited me to submit a paper and draft Cabinet Office circular for consideration by the Committee [MCR-19-MIN-0013].

Treaty of Waitangi guidance

The Treaty of Waitangi/Te Tiriti o Waitangi

4. The influence of the Treaty of Waitangi (the Treaty) on New Zealand's constitution has fluctuated in the years since its signing.
5. Beginning with the Treaty of Waitangi Act 1975, over the last 44 years the Treaty or Treaty principles have been referenced in at least 36 pieces of legislation (excluding Treaty Settlement Acts or Acts with references to Waitangi Day) in diverse ways.
6. The Waitangi Tribunal and the courts have developed a significant body of Treaty jurisprudence, expressing views of what the principles of the Treaty are and how they should be applied over the same period. This jurisprudence is an important part of the context in which the government conducts its business.
7. As the historical Treaty settlement process comes towards an end and because our government has adopted the priority outcome of building closer partnerships with Māori, it is timely that we provide guidance to the public service on how the Treaty should be applied.

8. The Waitangi Tribunal has said, in its report into claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, presided over by the now Supreme Court Justice Joe Williams:

"As a nation we should shift our view of the Treaty from that of a breached contract, which can be repaired in the moment, to that of an exchange of solemn promises made about our ongoing relationships."

Where public sector capability is at on the Treaty

9. Knowledge of, and comfort with, the Treaty of Waitangi varies widely across the public service (and the New Zealand population generally). The first challenge any Treaty guidance must face, then, is to provide sufficient advice to the reader so that they understand the range of understandings of the meaning of the Treaty of Waitangi.
10. In March 2019 Cabinet noted my intention to strengthen public sector capability through a Māori Crown relations capability development programme focusing on raising the baseline capability of the public service, as well as supporting the growth of more specialist skills and knowledge [MCR-19-MIN-004].
11. At that time I also advised Cabinet that our public service needs to rapidly develop a broader set of skills, experience and expertise to support the Māori Crown relationship at all levels of the government's work. I said the public service needs to:
 - 11.1. understand the rights, interests and perspectives of Māori;
 - 11.2. meaningfully engage and build relationships and partnerships with Māori;
 - 11.3. embed Māori and Treaty perspectives into policy, programmes and services; and
 - 11.4. build a culture and environment that reflects te ao Māori, for the benefit of Māori and all New Zealanders.

The questions that should guide public servants

12. The draft Treaty of Waitangi Guidance is attached as **Appendix One** has been prepared to fulfil the requirement of me agreed by Cabinet in June 2019 to develop guidance to assist agencies in considering Treaty of Waitangi implications in policy work.
13. The draft guidance was developed with the assistance of a group of Treaty legal experts, senior current and ex public servants and a small group of public sector chief executives. The questions were workshopped with a selection of senior policy analysts to test that they were pitched at the right level to be of use to public servants at any level.
14. The draft guidance provides some information on the Treaty and poses some questions for policy makers to use when developing policy. The questions use the texts of the Treaty as their focus, rather than Treaty principles.

15. Using the draft guidance will allow the public service to start embedding Treaty perspectives into policy, programmes and services.

Form and delivery of guidance

16. Cabinet asked that I prepare a draft Cabinet Office circular. I suggest three options for the form, the guidance and method of delivery. They are that the guidance be set out in:
 - 16.1. a Cabinet Office circular published on the Department of Prime Minister and Cabinet (DPMC) website;
 - 16.2. guidance published on the DPMC policy methods toolbox and Te Arawhiti websites; or
 - 16.3. a Cabinet Office circular and additional guidance in the policy methods toolbox – both published on the DPMC website.

Cabinet Office circular

17. Cabinet Office circulars supplement and/or update guidance in the Cabinet Manual and are published on the DPMC website.
18. The Cabinet Manual states, at para 5.86.i, that the Secretary of the Cabinet is responsible for ensuring that the functions of the Cabinet Office are carried out effectively, including providing guidance on central government operations and processes, through means including the *CabGuide* and Cabinet Office circulars.
19. Cabinet circulars set out the expectations Cabinet has of those who develop policy for its consideration.

Department of Prime Minister and Cabinet policy method toolbox website

20. The Policy Project within DPMC was established in 2014 to improve the quality of policy advice across government. Policy Project's work programme focuses on building a high performing policy system that supports and enables good government decision making. It is co-developed with policy practitioners from across government and championed by the Tier Two Policy Leaders Network (deputy chief executives with policy responsibilities).
21. The policy methods toolbox is a repository of policy development methods that helps policy practitioners identify and select the right approach for their policy initiative.
22. DPMC has, with Te Arawhiti input, drafted web pages that could be added to the Policy Project site. It answers questions about who should use the guidance, what the guidance involves and what policy makers will get out of using the guidance. The draft web pages are attached as **Appendix Two**.
23. Some of the benefits and risks of each option on form are outlined in **Table One** below.

Table One: Benefits and risks of each form of guidance and method of delivery

Form and method of deliver	Benefits	Risks
Cabinet Office circular only	Authoritative source	Dependent on public servants accessing and utilising Cabinet Office circulars
Cabinet Office circular and additional guidance on the DPMC Policy Toolbox website	Of the three options this gives maximum exposure to the guidance	
Guidance on the DPMC Policy method Toolbox website only.	Would place Treaty of Waitangi guidance in the spectrum of approaches to, and perspectives on, policy initiatives.	Treaty of Waitangi guidance could be overlooked in the suite of other advice available through the policy methods toolbox

Assessment of guidance against New Zealand Productivity Commission framework

24. The content of the guidance complies with the New Zealand Productivity Commissions' 'Framework for assessing Treaty guidance material'¹ in the following ways:
- 24.1. it covers the things that need to be covered,
 - 24.2. it is accurate, relevant and accessible;
 - 24.3. it avoids excessive prescription;
 - 24.4. it promotes best practice; and
25. Regarding the framework's recommendations for process for Treaty guidance material, I will ensure the guidance:
- 25.1. is well promoted; and
 - 25.2. identifies further relevant sources of information and contacts to aid officials.

Review of guidance

26. I propose that Cabinet note that the Cabinet Office circular/guidance will be reviewed periodically by officials, experts and stakeholders to ensure it remains current.
27. Good practice examples will be added to the circular/guidance in the process of future reviews. Good practice examples are suggested in the New Zealand Productivity Commissions' 'Framework for assessing Treaty guidance material'.

How the Treaty of Waitangi guidance fits with other tools

28. The draft Treaty of Waitangi guidance does not seek to replace existing agency specific Treaty guidelines. It contains links to many other tools and sources of information, including:

¹ New Zealand Productivity Commission, Regulatory institutions and practices, pages 173-174

- 28.1. The Department of Prime Minister and Cabinet's policy method toolbox;
 - 28.2. Engagement Framework for Crown engagement with Māori and associated Guidelines;
 - This framework assists agencies to determine who they need to engage with and how to engage so that they can provide robust advice to Ministers and most importantly help deliver improved outcomes.
 - 28.3. Legislation and Design Advisory Committee Guidelines (2018);
 - These guidelines guide thinking by those involved in making legislation and to support transparency about the exercise of law-making power. It is the role of officials to follow good processes and provide clear advice to inform decisions made by Ministers and Parliament to ensure that they are made with knowledge of the principles, the significance of any proposed departure, and the competing interests to be balanced.
 - 28.4. Te Haeata – the Settlement Portal;
 - Te Haeata is an online record of Treaty settlement commitments, to help agencies and settled groups to search for and manage settlement commitments; and
 - 28.5. Ta Kahui Mangai
 - This website gives information on iwi identified in the Māori Fisheries Act 2004, iwi/hapū negotiating historical Treaty of Waitangi claims settlement, [Iwi authorities](#) and Groups that represent hapū for the purposes of the Resource Management Act 1991, National and Urban Māori organisations that have statutory associations with representative iwi organisations and Urban and Institutional Marae.
29. Importantly the guidelines also highlight the advisory roles Crown Law, Te Arawhiti and Te Puni Kōkiri can play to assist agencies who are working on policy and seeking to appropriately apply the Treaty in that work.

Next steps

- 30. I propose that Cabinet:
 - 30.1. agree the attached Treaty of Waitangi guidance be made available for immediate use by policy makers;
 - 30.2. note that the Treaty of Waitangi guidance will be reviewed periodically by officials, experts and stakeholders to keep it current; and
 - 30.3. note that the Treaty of Waitangi guidance will be included in the suite of tools and guidance developed by Te Arawhiti.

Consultation

31. Refer paragraph 13.

Financial Implications

32. There are no financial implications arising from this paper.

Publicity

33. No publicity is required in relation to this Cabinet paper.

Proactive Release

34. I propose to release this paper in whole proactively immediately following Cabinet's consideration of it.
35. The Cabinet circular, if approved, will be placed on the websites of the Department for the Prime Minister and Cabinet and Te Arawhiti.

Recommendations

36. The Minister for Māori Crown Relations: Te Arawhiti recommends that the Committee:
1. **note** that the Minister for Māori Crown Relations: Te Arawhiti was invited to submit a paper draft Cabinet Office circular on guidance to assist agencies in considering Treaty of Waitangi implications in policy work for consideration by the Committee [MCR-19-MIN-0013];
 2. **agree** one of the three following options for the form of the guidance and the method of delivery:
 - 2.1. a Cabinet Office circular published on the Department of Prime Minister and Cabinet (DPMC) website;
 - 2.2. guidance published on the DPMC policy methods toolbox and Te Arawhiti websites; or
 - 2.3. a Cabinet Office circular and additional guidance in the policy methods toolbox – both published on the DPMC website.
 3. **agree** the attached Treaty of Waitangi guidance be made available for use by policy makers immediately following Cabinet approval;
 4. **note** the attached Treaty of Waitangi guidance was prepared in line with the New Zealand Productivity Commissions' 'Framework for assessing Treaty guidance material';
 5. **note** that the Treaty of Waitangi guidance be reviewed periodically by officials, experts and stakeholders to keep it current; and

6. **note** that the Treaty of Waitangi guidance will be included in the suite of tools and guidance developed by Te Arawhiti.

Authorised for lodgement

Hon Kelvin Davis

Minister for Māori Crown Relations: Te Arawhiti

Appendix One: Draft Treaty of Waitangi guidance

DRAFT Treaty of Waitangi guidance

[Date]

Intended for: All Ministers
All Chief Executives
All Senior Private Secretaries
All Private Secretaries
All officials

Treaty of Waitangi guidance

Introduction

1. This circular sets out guidelines agreed by Cabinet for policy makers to consider the Treaty of Waitangi in policy development and implementation.

Background

2. The Treaty of Waitangi (hereafter the Treaty) is one of the major sources of New Zealand's constitution¹.
3. Much has been thought, written and said about the Treaty, the circumstances of its creation, the differences between the English and Māori texts and the consequent difficulties of understanding its meaning and implications in the modern day. The texts of the Treaty (from the Treaty of Waitangi Act 1975 and a translation by Sir Hugh Kawharu) are attached to this document as **Attachment 1**.

Te Tiriti o Waitangi/The Treaty of Waitangi

4. The Treaty consists of a preamble and three articles. The influence of the Treaty on New Zealand's constitution has fluctuated in the years since its signing. Since 1975, however, reference to the Treaty has been included in many laws passed by Parliament, and the courts and Waitangi Tribunal have developed a considerable body of Treaty jurisprudence.
5. The Cabinet Manual (p. 2) states the Treaty of Waitangi is regarded as a founding document of government in New Zealand and that it:

“may indicate limits in our polity on majority decision-making. The law may sometimes accord a special recognition to Māori rights and interests such as those covered by Article 2 of the Treaty. And in many other cases the law and its processes should be determined by the general recognition in Article 3 of the Treaty that Māori belong, as citizens, to the whole community. In some situations, autonomous Māori institutions have a role within the wider constitutional and political system. In other circumstances, the model provided by the Treaty of Waitangi of two parties negotiating and agreeing with one another is appropriate. Policy and procedure in this area continues to evolve.”

¹ Other major sources are The Constitution Act 1986, the prerogative powers of the Queen, the State Sector Act 1988, the Electoral Act 1993, the Senior Courts Act 2016, the New Zealand Bill of Rights Act 1990 and other relevant New Zealand statutes, relevant English and United Kingdom statutes, relevant decisions of the courts and the conventions of the constitution (Cabinet Manual, p. 2).

6. For further discussion see the Te Puni Kōkiri pamphlet ‘Key concepts in the Treaty exchange’².

Context is important

7. The Treaty creates a basis for civil government extending over all New Zealanders, on the basis of protections and acknowledgements of Maori rights and interests within that shared citizenry.
8. Any specific meaning of the Treaty, and its implications for particular issues, is not easy to specify in advance as it depends on circumstances and views that surround any issue at the time it arises.

The Treaty must be considered ‘on the whole’

9. No article of the Treaty stands apart from the others. Consideration of how the Treaty applies in any situation will require consideration of the applicability of all articles and the relationship each has to the others.

Existing government guidance on the Treaty of Waitangi

10. There are sources of information about the appropriate policy tools to use in developing policy and the Treaty and its place in the New Zealand constitution that policy makers should be aware of. They include:
 - a. The Department of Prime Minister and Cabinet’s policy method toolbox³;
 - b. The Cabinet Manual (the authoritative guide to central government decision making for Ministers, their offices, and those working within government)⁴; and
 - c. Legislation Design and Advisory Committee’s Legislation Guidelines (2018 Edition).
11. Since the government last provided broad Treaty guidance to the public service in 1989 over 70 Treaty settlements have been negotiated between Māori and the Crown. The courts have recognised tikanga Māori as part of New Zealand common law and as a value that informs development of the common law. While their precise impact on the common law and statute will vary, rights at tikanga may have a relevance in legal disputes independent of statutory incorporation of the Treaty.
12. Treaty settlements settle claims relating to, and provide redress for, historical acts and omissions of the Crown. The Māori Crown relationship continues post-settlement, and past conduct (even if settled) may inform what a reasonable and honourable Treaty partner will do in the future.
13. A number of government agencies have guidance about applying the Treaty (and more commonly, its principles) in the course of their work. The New Zealand Productivity Commission reviewed 10 examples in 2014. More information on the Commission’s report ‘Regulatory institutions and practices’ can be found at

² <https://www.tpk.govt.nz/documents/download/179/tpk-treatykeyconcepts-2001-en.pdf>

³ <https://dpmc.govt.nz/our-programmes/policy-project/policy-methods-toolbox-0>

⁴ <https://dpmc.govt.nz/sites/default/files/2017-06/cabinet-manual-2017.pdf>

<https://www.productivity.govt.nz/sites/default/files/regulatory-institutions-and-practices-final-report.pdf>.

Guidance provided by the Courts and Waitangi Tribunal

14. The body of Treaty jurisprudence developed by the courts and the Waitangi Tribunal focusses on principles derived from the Treaty. For more information on this see the Te Puni Kōkiri pamphlet ‘The principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal’⁵.
15. New Zealand courts have held that Māori rights might be recognised by the common law, without statutory expression, and a decision maker may be required to weigh the Treaty rights/interest even where there is no Treaty reference in statute. The courts will generally presume that Parliament intends to legislate in accordance with Treaty principles⁶.
16. The Waitangi Tribunal plays an important role in providing advice to government on the application of Treaty principles in relation to acts or omissions of the Crown which Māori allege breach the principles of the Treaty.

This [circular/guidance]

17. While the courts and previous guidance have developed and focussed on principles of the Treaty, this [circular/guidance] takes the texts of the Treaty as its focus.
18. This [circular/guidance] does not:
 - a. rewrite the Treaty. It provides guidance on how the terms and concepts in the texts of the Treaty should be applied by government officials in undertaking their work.
 - b. create new legal obligations on Crown agencies. It should instead guide and support Crown agencies processes and decision-making. Agencies will consider the specific context of the relevant issue, policy or initiative.
 - c. replace all previous government guidance on the Treaty. It sets out questions for policy makers to consider in developing policy proposals so that the resulting policy appropriately recognises the influence the Treaty should have in the circumstances.
19. Answering the questions in this [circular/guidance] will allow policy makers to demonstrate an appreciation of kawanātanga, rangatiratanga and other key Treaty concepts and their applicability to their work.
20. The courts will continue to have a role in interpreting laws where the Treaty is relevant to a matter.⁷

Article One

21. Put simply, by Article One the government gained the right to govern.

⁵ <https://www.tpk.govt.nz/documents/download/179/tpk-treatyprinciples-2001-en.pdf>

⁶ The Treasury, ‘Consistency with the government’s Treaty of Waitangi obligations’

⁷ Specifically, in relation to the Supreme Court, see ss3(1)(a)(iii) and 13(3) of the Supreme Court Act 2003

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu ⁸
<p>Article the First 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.</p>	<p>Ko te Tuatahi 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 ratou wenua.</p>	<p>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 government⁹ over their land.</p>

Questions to guide policy makers:

1. How does the proposal/policy affect all New Zealanders? What is the effect on Māori (if different, how and why?)
 - a. Will the proposal affect different Māori groups differently?
 - b. What could the unintended impacts on Māori be and how does the proposal mitigate them?
2. How does the proposal demonstrate good government within the context of the Treaty?
 - a. Have policy makers followed existing general policy guidance?
 - b. Are there any legal and/or Treaty settlement obligations for the Crown?
3. What are the Treaty/Māori interests in this issue?
 - a. How have policy makers ascertained them?
4. How does the proposal demonstrate that policy makers are meeting the good faith obligations of the Crown?
5. To what extent have policy makers anticipated Treaty arguments that might be made?
 - a. And how does the proposal respond to these arguments?

How does the proposal/policy affect all New Zealanders? What is the effect on Māori (if different, how and why)?

22. The Treaty may justify different treatment of Māori interests or involvement of Māori in an issue, but it does not confer greater rights on Māori than the government owes to all New Zealanders.

⁸ Sir Hugh Kawharu's translation sets out to show how Māori would have understood the meaning of the text they signed. It was published in the book *Waitangi Revisited: Perspectives on the Treaty of Waitangi*, edited by Michael Belgrave, Merata Kawharu and David Williams (Oxford University Press, 1989)

⁹ 'Government': 'kawanatanga'. Sir Hugh's view was that "there could be no possibility of the Māori signatories having any understanding of government in the sense of 'sovereignty': ie, any understanding on the basis of experience or cultural precedent." This view is not universally held. For more discussion of the views and understandings of participants at 1840 see He Whakaputanga me te Tiriti / The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry, particularly chapter 10 (Waitangi Tribunal 2014).

23. This question asks that policy makers consider whether, having properly assessed the Māori/Treaty interest in an issue, the proposal demands an approach/approaches for Māori that differs to the approach/approaches for other New Zealanders. If it does then policy makers should be able to articulate how and why.
24. There are two secondary questions to ask in relation to this question:
- Will the proposal affect different Māori groups differently?
 - What could the unintended impacts on Māori be and how does the proposal mitigate them?

How does the proposal demonstrate good government within the context of the Treaty?

25. In a Treaty context 'good government' means government properly conducted with due regard to the range of obligations a government has to the people it governs, and particularly in regard to Treaty obligations.
26. In essence, this question asks whether work towards the policy under development appropriately acknowledges the right of government to make laws with the right of Māori to retain authority over certain things.
27. There are two supplementary questions to ask in relation to this question:
- Have policy makers followed existing general policy guidance?
 - Are there any legal and/or Treaty settlement obligations for the Crown?

Throughout all phases of a policy project, policy makers should assemble and review what they know about the economic, social, technical, cultural and other important forces causing or perpetuating the policy problem. Question 27(a) asks whether the existing guidance mentioned in paragraph 10 have guided policy development. If they have then policy makers can have some confidence that the outcome has accounted for a Treaty interest to an extent.

28. There are other tools available to policy makers who may be unaware of whether there are existing legal obligations for the Crown to Māori in relation to many issues, among them:

The Settlement Portal – Te Haecata

Te Haecata is an online record of Treaty settlement commitments, to help agencies and settled groups search for and manage settlement commitments.¹⁰

www.tehaecata.govt.nz

List of Treaty references in primary legislation (2014)

See pages 160-163 of The New Zealand Productivity Commission's report 'Regulatory institutions and practices'

¹⁰ <http://www.tearawhiti.govt.nz/te-kahui-whakamana-settlement-commitments/>

<https://www.productivity.govt.nz/sites/default/files/regulatory-institutions-and-practices-final-report.pdf>

29. Even where “Treaty clauses” are not present in legislation or regulations, the particular context may require the Crown to have regard to the Treaty.
30. Statutes with references to the Treaty or Treaty principles often contain regulatory provisions and create obligations on a range of parties that are not the Crown (e.g. local government, Crown entities, Officers of Parliament and Body Corporate).

What are the Treaty/Māori interests in this issue?

31. Identifying the Treaty/Māori interest in a given issue is critical to being able to answer the question of the extent to which Māori retain the right to control and/or implement the policy being developed.¹¹
32. The extent of the Māori interest in an issue will vary from issue to issue.
33. There is a secondary question to ask in relation to this question:
 - a. How have policy makers ascertained them?
34. Following the engagement framework and guidelines¹² will give policy makers confidence that they have appropriately ascertained the Treaty/Māori interest in an issue.

How does the proposal demonstrate that policy makers are meeting the good faith obligations of the Crown?

35. The courts and Waitangi Tribunal have described the Treaty generally as an exchange of solemn promises about the ongoing relationships between the Crown and Māori with qualifications. By signing the Treaty Māori expected the Crown to act honourably towards them; they expect the Crown to protect their interest in everything it promised to, and they expect the Crown to respect their right to make decisions over matters of significance to them.
36. Put more simply, this question asks policy makers to consider whether the policy being developed keeps the promise the Crown made to Māori to protect their interests and allow for Māori retention of decision-making in relation to them.
37. Because the Māori Crown relationship is a continuing one, the Crown and Māori should act reasonably and in good faith towards each other, consulting with each other and compromising where appropriate.

To what extent have policy makers anticipated Treaty arguments that might be made?

38. There is a supplementary question to ask in relation to this question:

¹¹ Legislation Design and Advisory Committee, *Legislation Guidelines (2018 Edition)*, Chapter 5.1, page 28,

<http://www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/>

¹² <http://www.tearawhiti.govt.nz/te-kahui-hikina-maori-crown-relations/engagement/>

- a. And how does the proposal respond to these arguments?
39. Māori have long had recourse to the courts to challenge Crown decisions and actions. The courts have made significant decisions in relation to the application of the Treaty in New Zealand, particularly over the last 35 years. The Waitangi Tribunal is also an important forum where Treaty arguments may be made by Māori and the Crown.
40. In recent years the Courts have indicated they may take particular care where Māori rights and interests are raised in cases, including when interpreting laws passed by Parliament. This reinforces the constitutional importance the Treaty has grown to have in New Zealand. It is important that policy makers conduct their work in such a manner as to make Treaty consistent decisions. This in turn will assist in any response to litigation..
41. This question requires policy makers to consider what arguments could be made that their work is inconsistent with the Treaty. When considered early in policy development the answer to this question may lead policy makers to modify their intended course of action.
42. This question does not imply a Māori right to veto government decisions; it is a means of testing whether the proposed actions/decisions are cognisant of the obligations the Treaty conferred on the Crown. Care must be taken to weigh and balance the relevant considerations in a particular issue.
43. This question points to the importance of a Minister and/or department being able to have confidence that they have appropriately considered the range of relevant factors in relation to a certain issue, and specifically the Treaty/Māori interest in the case of challenge by Māori.

Article Two

44. Put simply, by Article Two the Crown promises that Māori will have the right to make decisions over resources and taonga which they wish to retain..

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu
<p>Article the Second 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.</p>	<p>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 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.</p>	<p>The second The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise¹³ of their chieftainship over their lands, villages and all their treasures.¹⁴ But on the other hand the Chiefs of the Confederation and all the Chiefs will sell¹⁵ 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.</p>
<p>Questions to guide policy makers:</p> <ol style="list-style-type: none"> 1. Does the proposal allow for the Māori exercise of rangatiratanga while recognizing the right of the Crown to govern? <ol style="list-style-type: none"> a. Can/should the proposal, or parts of it, be led by Māori? b. What options/mechanisms are available to enable rangatiratanga? 2. Have Māori had a role in design/implementation? <ol style="list-style-type: none"> a. If so, who? b. If not, should they? 3. Does the proposal: <ol style="list-style-type: none"> a. enhance Māori wellbeing? b. build Māori capability or capacity? 4. Is there any aspect of this issue that Maori consider to be a taonga? <ol style="list-style-type: none"> a. How have policy makers come to their view of whether the issue is a taonga, and is there consensus? b. What effect does that have on the proposal? 		

¹³ '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'.

¹⁴ The Waitangi Tribunal has stated that "the Māori interest is not absolute. The degree of protection must be decided on a case-by-case basis, and may be overridden in appropriate circumstances following a proper balancing of kaitiaki and competing interests. There may be some circumstances in which access and benefit sharing arrangements cannot be justified even where matauranga Maori is used." (Ko Aotearoa Tenei: Report on the Wai 262 Claim).

¹⁵ Māori 'hokonga', literally 'sale and purchase'. 'Hoko' means to buy or sell.

Does the proposal allow for the Māori exercise of rangatiratanga while recognising the right of the Crown to govern?

45. Māori were guaranteed rangatiratanga by the Treaty; this promise holds true today. It is the duty of the Crown to respect the right of Māori to control decisions in relation to their lands and the things of value to them. These rights are exercised within the context of the Crown's right to govern.
46. The Crown has, at times in New Zealand history, ignored or denied the right of Māori to control their affairs. Not all such efforts have been based on ignorance of the Treaty – in many cases the government relied on its right to make decisions affecting Māori that it considered would be in their best interests, but without respecting the right of Māori to be involved in those decisions.
47. There are two secondary questions to ask in relation to this question:
 - a. Can/should the proposal, or parts of it, be led by Māori?
 - b. What options/mechanisms are available to enable rangatiratanga?
48. The question set out in paragraph 47(a) requires policy makers to consider the role Māori should have in relation to proposed policy.
49. Whānau Ora is a public sector initiative that devolves funding decisions for services to community-based commissioning agencies. It is not limited to Māori but it does put whānau and families in control of the services they need to build on their strengths and achieve their aspirations. It recognises the collective strength and capability of whānau to achieve better outcomes in areas such as health, education, housing, employment and income levels.¹⁶
50. Similarly, the Māori pathways programme aims to provide a wrap-around service for those leaving prison and greater engagement with whānau and iwi from pre-sentence through to release. The values underpinning the programme are universal and non-Māori are also able to be a part of the programme.
51. The question set out in paragraph 47(b) requires policy makers to consider existing options/mechanisms to enable rangatiratanga. This can relate to Māori entities that can, together or alone depending on the issue, formulate policy; it can also relate to Māori entities implementing a properly developed policy.
52. If policy makers consider the development of policy can and should be led by Māori (in accordance with paragraph 47(a) then it will help to answer the question set out in paragraph 47(b) – what options/mechanisms are available to enable rangatiratanga?

Have Māori had a role in design/implementation?

53. The Treaty guarantees and promises apply to all Māori – as individuals, whānau, hapū and iwi. Depending on the issue, it may be appropriate for policy makers to engage with Māori individuals, whānau, hapū or iwi, or a combination thereof.

¹⁶ <https://www.tpk.govt.nz/cn/whakamahia/vhanau-ora>

54. Because the Treaty guaranteed to Māori the control and enjoyment of those resources and taonga policy makers must consider what responsibilities Māori already have in relation to the matter. Importantly, Treaty interests are not confined to resources and taonga that Māori have retained possession of. For example, even where land has been alienated Māori interests may still be engaged.
55. There are two supplementary questions to ask in relation to this question:
- a. If so, who?
 - b. If not, should they?
56. The engagement framework and guidelines¹⁷ will help policy makers answer a question that flows from the question in paragraph 55(b) – if Māori have not had a role in design and implementation but it is considered that they should then policy makers will need to consider which Māori could participate in this.

Does the proposal: a. enhance Māori wellbeing; and b. build Māori capability or capacity?

57. It has been common, in New Zealand history, for government to not recognise or protect the right of Māori to be involved in aspects of government of the country. Increasingly, government is looking to work with non-government parties on issues of common purpose.
58. In thinking about how a proposal can enhance Māori wellbeing and build Māori capability or capacity the response of the government should reflect the nature and extent of the interests involved.

Is there any aspect of this issue that Maori consider to be a taonga?

59. The scope of things that may be considered taonga, from a Māori perspective, are broad. At its most broad taonga can be said to be anything considered to be of value - including socially or culturally valuable objects, resources, phenomenon, ideas and techniques.
60. For more discussion of the views of the courts and Waitangi Tribunal on taonga see pages 60-64 of 'Key concepts in the Treaty exchange'¹⁸. The Waitangi Tribunal report 'Ko Aotearoa Tenei' contains important discussion of how laws have sidelined Māori and Māori cultural values from decisions of vital importance to their culture which have left Māori unable to fulfil their obligations as kaitiaki (cultural guardians) towards their taonga – obligations which are central to the survival of Māori culture¹⁹.
61. There are two supplementary questions to ask in relation to this question:
- a. How have policy makers come to their view of whether the issue is a taonga, and is there consensus?
 - b. What effect does that have on the proposal

17 <http://www.tearawhiti.govt.nz/te-kaui-hikina-maori-crown-relations/engagement/>

18 <https://www.tpk.govt.nz/documents/download/179/tpk-treatykeyconcepts-2001-en.pdf>

19 <https://www.waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>

62. There is not always consensus between the Crown and Māori on whether an issue or thing is a taonga. It is important for policy makers to be able to demonstrate that they have considered the question openly and considered Māori perspectives in their thinking.
63. Absence of consensus on whether an issue or thing is a taonga need not prevent the Crown and Māori agreeing on how to develop a policy in relation to it.

DRAFT

Article Three

64. Put simply, by Article Three the Crown promises that its obligations to New Zealand citizens are owed equally to Māori.

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu
<p>Article the Third 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.</p>	<p>Ko te Tuatoru Hei wakaritenga mai hoki tenei mo te wakaatanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani</p>	<p>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 duties²⁰ of citizenship as the people of England.²¹</p>
<p>Questions to guide policy makers:</p> <ol style="list-style-type: none"> 1. Does the proposal aim to achieve equitable outcomes? 2. How does the proposal differ from previous efforts to address the issue? 3. How does the proposal demonstrate that policy makers have looked at the proposal from the perspective of legal values such as natural justice, due process, fairness and equity? 4. How does the proposal demonstrate that policy makers have looked at the issue from the perspective of tikanga values? 		

20 'Rights and duties': Māori 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.

21 Sir Hugh's view was that "there is, however, a more profound problem about 'tikanga'. There is a real sense here of the Queen 'protecting' (ie, allowing the preservation of) the Māori people's tikanga (ie, customs) since no Māori could have had any understanding whatever of British tikanga (ie, rights and duties of British subjects). This, then, reinforces the guarantees in article 2." More recent scholarship suggests that Sir Hugh underestimated the knowledge of British tikanga that some Māori had.

Does the proposal aim to achieve equitable outcomes?

65. Article Three has an important significance in the implicit assurance that rights would be enjoyed equally by Māori with all New Zealanders of whatever origin. Special measures to attain that equal enjoyment of benefits are allowed by international law.
66. Consideration should be given to how Māori and the Crown define and measure equitable outcomes, and policy makers must be live to the likelihood engagement with Māori may be required to align views on this.

How does the proposal differ from previous efforts to address the issue?

67. Few challenges faced by government are entirely new or have not been tackled by government before. This question prompts the Minister and/or department to examine how a current proposal to address an issue is different to previous attempts.
68. It is possible (and potentially likely) that previous government attempts to address an issue did not give due regard to Treaty obligations and/or appropriately acknowledge the rights and duties of Māori in the matter.
69. In essence this question asks why would the outcome of the current effort be any different to previous outcomes?

How does the proposal demonstrate that policy makers have looked at the proposal from the perspective of legal values such as natural justice, due process, fairness and equity?

70. Article Three contains a promise by the Crown to extend to Māori all the rights and privileges/duty of British subjects, which can be read today as New Zealand citizens.
71. Considering proposals through the lens of the legal values listed as examples in this question is a means of demonstrating that the Crown is upholding the promises in Article Three of the Treaty.²²

How does the proposal demonstrate that policy makers have looked at the issue from the perspective of tikanga values?

72. This question recognises that courts have, in recent years, considered tikanga values to be important to the consideration of matters relating to Māori and should be given appropriate weighting in decision-making.
73. Tikanga values that could offer perspective on an issue include:
 - a. Mana: enduring power and authority that can be derived from ancestry, from possession of lands and acquired by individuals according to their ability to develop skills and gain knowledge.

²² Legislation Design and Advisory Committee, *legislation Guidelines (2018 Edition)*, Chapter 5.3, page 29, <http://www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/>

- b. Whakapapa: the genealogical descent of all living things.
 - c. Whānaungatanga: relationship, kinship, sense of family connection - a relationship through shared experiences and working together which provides people with a sense of belonging.
 - d. Manaakitanga: hospitality, kindness, generosity, support - the process of showing respect, generosity and care for others.²³
74. The courts have recognised tikanga Māori as part of New Zealand common law and as a value that informs development of the common law. The precise impact of tikanga Māori on the common law and statute will vary, however, tikanga may have a relevance in legal disputes independent of statutory incorporation of the Treaty.

[Name]

[Title]

Enquiries:

Office for Māori Crown Relations – Te Arawhiti – Te Kāhui Hīkina

[email.address@tearawhiti.govt.nz]

Ph: 04 XXX XXXX

²³ Further discussion of a wide range of tikanga values can be found at Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (particularly chapter 3), Huia Publishers, 2016 edition and Cleve Barlow, *Tikanga Whakaaro: Key concepts in Māori culture*, Oxford University Press.

The Treaty of Waitangi

	English version	Māori version	Back translation of Māori text by Sir Huroh Kawharu ²⁴
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 authorized 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 Majesty 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.	Ko Wikitoria, te Kūini o Ingarani, i tana mahara atawhai ki nga Rangatira me nga hapu o Nu Tirani i tana hiahia hoki ka tohungia ki a ratou o ratou rangatanga, me to ratou wenua, a kia mau tonu hoki te fono ki a ratou me te Awanohu hoki kua wakararo ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaaetia nga Rangatira maori te Kawanatanga o te Kūini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki teneti wenua, a e haere mai nei.	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 chiefdoms ²⁵ and their lands to them and to maintain peace ²⁶ and good order considers it just to appoint an administrator ²⁷ 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 ²⁸ 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 ²⁹ to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.
Article One	Article the First 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.	Ko te Tuatahi Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kūini o Ingarani ake tonu atu-te Kawanatanga katoa o ratou wenua.	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 government ³⁰ over their land.
Article Two	Article the Second 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.	Ko te Tuarua Ko te Kūini 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. Otia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kūini 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 Kūini hei kai hoko mona.	The second The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise ³¹ of their chiefdom over their lands, villages and all their treasures. ³² But on the other hand the Chiefs of the Confederation and all the Chiefs will sell ³³ 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.
Article Three	Article the Third 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.	Ko te Tuatoru Hei wakaritea mai hoki teneti me te wakaaetanga ki te Kawanatanga o te Kūini-Ka tiakina e te Kūini o Ingarani nga tangata maori katoa o Nu Tirani	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 ³⁴ of citizenship as the people of England. ³⁵
Post script	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	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 kte nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.	So we, the Chiefs of the Confederation 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

24 Sir Hugh Kawharu's translation sets out to show how Māori would have understood the meaning of the text they signed. It was published in the book *Waitangi Revisited: Perspectives on the Treaty of Waitangi*, edited by Michael Belgrave, Merata Kawharu and David Williams (Oxford University Press, 1989)

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

26 'Peace': Māori 'Rongo', seemingly a missionary usage (rongo — to hear; ie, hear the 'Word' — the 'message' of peace and goodwill, etc).

27 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 enshrined in the Treaty.

28 'Islands': ie, coastal, not of the Pacific.

29 Literally 'making': ie, 'offering' or 'saying' — but not 'inviting to concur'.

30 Government: 'kawanaatanga'. Sir Hugh's view was that "there could be no possibility of the Māori signatories having any understanding of government in the sense of 'sovereignty': ie, any understanding on the basis of experience or cultural precedent." This view is not universally held. For more discussion of the views and understandings of participants at 1840 see He Whakaputanga me te Titihiri / The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry, particularly chapter 10 (Waitangi Tribunal 2014).

31 'Unqualified exercise' of the chiefdomship — would emphasise to a chief the Queen's intention to give them complete control according to their customs. 'Tino' has the connotation of 'quintessential'.

32 '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 wahi tapu (sacred places), ancestral lore and whaikapapa (genealogies), etc.

33 Māori 'hokonga', literally 'sale and purchase'. 'Hoko' means to buy or sell.

34 'Rights and duties': Māori 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 enshrined in the Treaty.

35 Sir Hugh's view was that "there is, however, a more profound problem about 'citizens'. There is a real sense here of the Queen 'protecting' (ie, allowing the preservation of) the Māori people's tikanga (ie, customs) since no Māori could have had any understanding whatever of British tikanga (ie, rights and duties of British subjects). This, then, reinforces the guarantees in article 2." More recent scholarship suggests that Sir Hugh underestimated the knowledge of British tikanga that some Māori had.

	<p>Ka meatia tenei ki Waitangi i te ono o nga ra o Pepuero i te tau kotahi mano, e waru rau e wa te kau o to takou Ariki. Ko nga Rangatira o te wakaminenga.</p>	<p>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.</p>
--	--	---

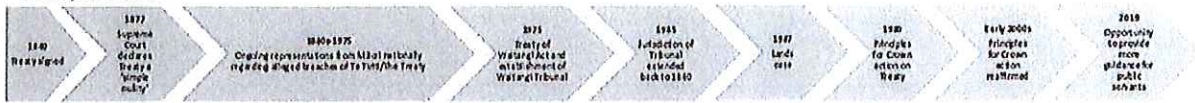
DRAFT

Treaty questions to guide policy development

Attachment 2: Treaty of Waitangi guidance at a glance

CONFIDENTIAL

Treaty timeline



The Treaty

	Article 1	Article 2	Article 3
Māori text	Kōngia Rangitira o te Wakaminenga me nga Rangitira katoa hoki ki hāri uru ki taua wakaminenga ka tuku rawa atu ki te Kūini o Ingarani āke tonu atu te Kawanatanga katoa o ratou wenua.	Ko te Kūini o Ingarani ka wakate ka wakate ki nga Rangitira kīngia hapu ki nga tangata katoa o Hu Tīrangi te tino rangatiratanga o ratou wenua o ratou iāinga me o ratou taonga katoa. Oira ko nga Rangitira o te Wakaminenga me nga Rangitira katoa atu ka tuku ki te Kūini te hōhonga o era wahi wenua e pā ai te tangata no te Wenua ki te rāteanga o te uhu e wakateka e ratou ko te kai hoko e meau nei te Kūini hei kai hoko mona.	Hei wakaitenga mai hōi teni mo te wakaetanga ki te Kawanatanga o te Kūini-Ka Uāina e te Kūini o Ingarani nga tangata Māori katoa o Hu Tīrangi ka tukua ki a ratou nga iāinga katoa i te tahi ki ana mea ki nga tangata o Ingarani.
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 Sovereign thereof.	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 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.	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.
Kawhau translation	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 government over their land.	The Queen of England agrees to protect the chiefs, the subtribes 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.	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.
Simple modern encapsulation	The government has the right to govern	Māori have the right to make decisions over resources and taonga which they wish to retain	The obligations that the Crown has to all New Zealand citizens are also owed equally to Māori.

The Preamble

The preamble to the English version states that 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:

- secure tribal rangatiratanga
- secure Māori land ownership.

Treaty Guidance

Article One

- How does the proposal/policy affect all New Zealanders? What is the effect on Māori (if different, how and why)?
 - Will the proposal affect different Māori groups differently?
 - What could the unintended impact on Māori be and how does the proposal mitigate them?
- How does the proposal demonstrate good government within the context of the Treaty?
 - Have policy makers followed existing general policy guidance?
 - Are there any legal and/or Treaty settlement obligations for the Crown?
- What are the Treaty/Māori interests in this issue?
 - How have policy makers ascertained them?
- How does the proposal demonstrate that policy makers are meeting the good faith obligations of the Crown?
- To what extent have policy makers anticipated Treaty arguments that might be made?
 - And how does the proposal respond to these arguments?

Article Two

- Does the proposal allow for the Māori exercise of rangatiratanga while recognizing the right of the Crown to govern?
 - Can/should the proposal, or parts of it, be led by Māori?
 - What options/mechanisms are available to enable rangatiratanga?
- Have Māori had a role in design/implementation?
 - If so, who?
 - If not, should they?
- Does the proposal:
 - enhance Māori wellbeing?
 - build Māori capability or capacity?
- Is there any aspect of this issue that Māori consider to be a taonga?
 - How have policy makers come to their view of whether the issue is a taonga, and is there consensus?
 - What effect does that have on the proposal?

Article Three

- Does the proposal aim to achieve equitable outcomes?
- How does the proposal differ from previous efforts to address the issue?
- How does the proposal demonstrate that policy makers have looked at the proposal from the perspective of legal values such as natural justice, due process, fairness and equity?
- How does the proposal demonstrate that policy makers have looked at the issue from the perspective of kaitiaki values?

Consult Te Arawhiti early for guidance on engaging with Māori | Definition of key Treaty terms can be found in the Glossary of Cob Circular X | Examples of agency specific guidelines can be found in paragraph X of Cob Circular X | Consult Crown Law early to assist identification of interests

This guidance does not create new legal obligations on Crown agencies or create existing statutory obligations or duties. It should instead guide and support Crown agency processes and decision making. Agencies will consider the specific context of the relevant issue, policy or initiative.

DRAFT – NOT GOVERNMENT POLICY

Glossary of terms

The Māori dictionary contains the following definitions.

Hapū

(noun) kinship group, clan, tribe, subtribe - section of a large kinship group and the primary political unit in traditional Māori society. It consisted of a number of whānau sharing descent from a common ancestor, usually being named after the ancestor, but sometimes from an important event in the group's history. A number of related hapū usually shared adjacent territories forming a looser tribal federation (iwi).³⁶

Iwi

(noun) extended kinship group, tribe, nation, people, nationality, race - often refers to a large group of people descended from a common ancestor and associated with a distinct territory.³⁷

Mana:

1. **(verb)** to be legal, effectual, binding, authoritative, valid.
2. **(noun)** prestige, authority, control, power, influence, status, spiritual power, charisma - mana is a supernatural force in a person, place or object. Mana goes hand in hand with tapu, one affecting the other. The more prestigious the event, person or object, the more it is surrounded by tapu and mana. Mana is the enduring, indestructible power of the atua and is inherited at birth, the more senior the descent, the greater the mana. The authority of mana and tapu is inherited and delegated through the senior line from the atua as their human agent to act on revealed will. Since authority is a spiritual gift delegated by the atua, man remains the agent, never the source of mana. This divine choice is confirmed by the elders, initiated by the tohunga under traditional consecratory rites (tohi). Mana gives a person the authority to lead, organise and regulate communal expeditions and activities, to make decisions regarding social and political matters. A person or tribe's mana can increase from successful ventures or decrease through the lack of success. The tribe give mana to their chief and empower him/her and in turn the mana of an ariki or rangatira spreads to his/her people and their land, water and resources. Almost every activity has a link with the maintenance and enhancement of mana and tapu. Animate and inanimate objects can also have mana as they also derive from the atua and because of their own association with people imbued with mana or because they are used in significant events. There is also an element of stewardship, or kaitiakitanga, associated with the term when it is used in relation to resources, including land and water.
3. **(noun)** jurisdiction, mandate, freedom.³⁸

Manaakitanga:

(noun) hospitality, kindness, generosity, support - the process of showing respect, generosity and care for others.³⁹

36 <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=hapu>

37 <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=iwi>

38 <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=mana>

39 <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=manaakitanga>

Ōritetanga

(noun) equality, equal opportunity.⁴⁰

Rangatiratanga:

1. **(noun)** chieftainship, right to exercise authority, chiefly autonomy, chiefly authority, ownership, leadership of a social group, domain of the rangatira, noble birth, attributes of a chief.

2. **(noun)** kingdom, realm, sovereignty, principality, self-determination, self-management - connotations extending the original meaning of the word resulting from Bible and Treaty of Waitangi translations.⁴¹

Taonga:

(noun) treasure, anything prized - applied to anything considered to be of value including socially or culturally valuable objects, resources, phenomenon, ideas and techniques. Examples of the word's use in early texts show that this broad range of meanings is not recent, while a similar range of meanings from some other Eastern Polynesian languages support this (e.g. Tuamotuan).⁴²

Tikanga:

(noun) correct procedure, custom, habit, lore, method, manner, rule, way, code, meaning, plan, practice, convention, protocol - the customary system of values and practices that have developed over time and are deeply embedded in the social context.⁴³

Whakapapa:

(noun) genealogy, genealogical table, lineage, descent - reciting whakapapa was, and is, an important skill and reflected the importance of genealogies in Māori society in terms of leadership, land and fishing rights, kinship and status. It is central to all Māori institutions. There are different terms for the types of whakapapa and the different ways of reciting them including: tāhū (recite a direct line of ancestry through only the senior line); whakamoe (recite a genealogy including males and their spouses); taotahi (recite genealogy in a single line of descent); hikohiko (recite genealogy in a selective way by not following a single line of descent); ure tārewa (male line of descent through the first-born male in each generation).⁴⁴

Whānau

(noun) extended family, family group, a familiar term of address to a number of people - the primary economic unit of traditional Māori society. In the modern context the term is sometimes used to include friends who may not have any kinship ties to other members.⁴⁵

40 <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=oritetanga>

41 <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=rangatiratanga>

42 <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=taonga>

43 <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=tikanga>

44 <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=whakapapa>

45 <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=wh%C4%81nau>

Whanaungatanga:

(noun) relationship, kinship, sense of family connection - a relationship through shared experiences and working together which provides people with a sense of belonging. It develops as a result of kinship rights and obligations, which also serve to strengthen each member of the kin group. It also extends to others to whom one develops a close familial, friendship or reciprocal relationship.⁴⁶

⁴⁶ <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&key words=whanaungatanga>

Appendix Two: Draft web pages

Where to set out the Treaty of Waitangi Guidance

Why have the Treaty of Waitangi guidance here?

- The Policy Project site provides a central hub of tools, advice and information on how to develop quality policy advice for agencies and individuals.
- The web pages average around 1300 views per week.
- The Policy Project actively promotes its site and tools through:
 - key public sector events (e.g. All-of-Government Showcase)
 - graduate induction programs
 - IPANZ networks
 - engagement with agencies
 - the Policy Profession Board (CEs and Deputy CEs from policy agencies)
 - the Tier 2 Policy Leaders Network
 - policy managers forum
 - communities of practice
 - social media.

The screenshot shows the 'The Policy Project' website. At the top, there is a navigation bar with links for Home, Contact us, Media, Events, Publications, Our programmes, Our business units, and The Policy Project. A search bar is located in the top right corner. The main content area is titled 'The Policy Project' and includes an 'About' section with a description of the project's purpose. Below this are sections for 'Policy quality', 'Policy improvement frameworks', 'Policy methods toolbox', and 'The policy community'. A sidebar on the right, titled 'In this section', lists various content types such as News and events, Policy improvement frameworks, Policy methods toolbox, The policy community, About the Policy Project, and Publications. At the bottom of the sidebar, there is a 'Contact the Policy Project' section with contact details and social media links. The footer of the page contains the text 'DRAFT - NOT GOVERNMENT POLICY'.

The Policy Methods Toolbox

Where would the Treaty of Waitangi guidance sit?

- The Treaty of Waitangi guidance could be added to the Policy Methods Toolbox on the Policy Project site.
- The Toolbox contains information on different policy development methods. It provides a snapshot of each of the methods, and then links to relevant tools and guidance for a more in-depth assessment. To make it easy for people to navigate the Toolbox, common headings are used across each of the methods.
- The Treaty of Waitangi Analysis could be added as a new heading in the Toolbox, based on the guidance that has been developed by Te Arawhiti. The full guidance could be included in the Toolbox as a link.
- Other te ao Māori guidance could be added to the Toolbox over time, such as the Guidelines for Engagement with Māori.

Treaty of Waitangi Analysis

Te Tiriti o Waitangi (Treaty of Waitangi) analysis is based on guidance developed by the Office for Māori Crown Relations - Te Arawhiti. It is a type of analysis that applies the terms and concepts in the texts of the Treaty to policy development and implementation.

Treaty of Waitangi Analysis



Policy methods toolbox

Welcome to the Policy methods toolbox

The Policy methods toolbox is a repository of policy development methods that helps policy practitioners identify and select the 'right' approach for their policy initiative.

This first release of the Toolbox is focused on newer methods. Over time, we will expand the Toolbox to include a range of new and traditional policy development techniques. Our own approaches, such as Start Right, are also included in the Toolbox.

The Policy Project is keen to hear from policy practitioners with feedback on the Toolbox. To get in touch with us to provide feedback, or to suggest methods you'd like to see included in the Toolbox, email us at policy.methods@dc.govt.nz.

Themes

There are four main themes in release one of the policy methods toolbox.

Start Right

Start Right is a light touch approach to making the best start in policy projects. It is backed up by a growing list of tools to make your job easier in those early stages.

Behavioural insights

This involves the study of human behaviour, often drawing upon the empirical research in fields including economics, psychology and sociology.

Design thinking

Also known as human-centred design, co-design and participatory design.

Public participation

Engaging individuals and groups in the process of policy design and development, including the provision of information, consultation, collaboration and participatory decision-making.

Check out our new Development Pathways Tool

In this section

- News and events
- Policy improvement frameworks
- Policy methods toolbox**
- Start Right
- Behavioural insights
- Design thinking
- Public participation
- The policy community
- About the Policy Project
- Publications

Mock Up of Treaty of Waitangi Analysis Pages

The following text was developed by the Policy Project with Te Arawhiti, and could form the basis of the Treaty of Waitangi Analysis pages in the Policy Methods Toolbox

Te Tiriti o Waitangi (Treaty of Waitangi) analysis is based on guidance developed by the Office for Māori Crown Relations - Te Arawhiti. It is a type of analysis that applies the terms and concepts in the texts of the Treaty to policy development and implementation. It helps agencies determine the influence the Treaty should have in a particular context or circumstance to develop an approach, engagement and solutions that uphold the Treaty of Waitangi, which may include Māori leading policy development or implementation.

Why you should use it

Treaty of Waitangi analysis can:

- improve policy quality. Policy and services are increasingly being designed and delivered to incorporate Treaty and te ao Māori analysis. This helps to better understand the impact on Māori and increases the likelihood that the policy will work for Māori.
- support the building of closer partnerships with Māori by appropriately recognising the interests and role Māori may have in policy development.
- improve the public service's responsiveness to Māori. This will help the public service to meet the expectations to be introduced in the new Public Service Act, which reflect the contemporary needs and opportunities in the Māori Crown relationship.

What it involves

- Applying the concepts and texts of the Treaty at each stage of policy development. This includes at the very beginning of a policy process – when you are identifying a policy problem or opportunity, and scoping the nature and size of the issue – through to implementation and evaluation.
- Working through a series of questions (set out in the guidance) when developing your advice. The questions are based on the three articles of the Treaty, which can be summarised as:
 - Article One – the government has the right to govern (kawanatanga)
 - Article Two – Māori will retain the right to make decisions in relation to their own affairs (rangatiratanga)
 - Article Three – the government's obligations to New Zealand citizens are owed equally to Māori.
- There may not always be consensus between the Crown and Māori in relation to the Treaty and its application. This does not prevent the Crown and Māori working together.

Mock Up of Treaty of Waitangi Analysis Pages continued ...

What you will get out of it

- Policy outcomes that reflect the Treaty as a founding document of government in New Zealand.
- Policy outcomes that are aligned with current expectations of how to apply the terms and concepts in the texts of the Treaty of Waitangi.
- An appreciation of kawanatanga and rangatiratanga and their application to your policy.
- Higher quality policy options, informed by an appropriate understanding of Treaty/Māori interests in the issue.
- Know how to conduct policy development and implementation that minimises risks of those actions and decisions not being compliant with the Treaty.
- Improved experience in the Treaty of Waitangi analysis to help build your capability to better support the Crown to uphold its Treaty of Waitangi obligations.

Ideal circumstances for use

- Your policy issue does not have clear Treaty/Māori interests, or Treaty settlement or legal obligations for the Crown. This means that using the Treaty of Waitangi analysis becomes even more important.

- You want to build closer partnerships between Māori and the Crown on policy solutions.
- You want to transparently show that the Treaty terms and concepts were thoroughly considered as part of the policy development process.

Limitations

- Treaty of Waitangi analysis uses the text of the Treaty as its focus. You still need to consider:
 - existing statutory obligations, as well as Treaty jurisprudence and guidance focussed on the principles of the Treaty
 - relevant Treaty claims, settlement negotiations and commitments, and any litigation risks.
- Treaty of Waitangi analysis takes time and needs to be built into your policy process during the commissioning stage.
- Treaty of Waitangi analysis poses the questions you need to ask to arrive at the answers which are context dependent – but it won't give you the answers.

Mock Up of Treaty of Waitangi Analysis Pages continued ...

References, guides and key readings

- Treaty of Waitangi guidance [add link]
- Guidelines for engagement with Māori [add link]
- The Settlement Portal – Te Haeata [add link]
- Treaty in legislation [add link]
- Cabinet Manual [add link]

Case studies

A case study could be developed for inclusion to demonstrate how policy practitioners can apply the Treaty of Waitangi analysis to improve the quality of advice.

Centres of expertise

Te Arawhiti (xxx@xxxx), Te Puni Kōkiri (xxx@xxxx) and the Crown Law Office (xxx@xxxx) are good sources of expertise on this matter.



Cabinet Māori Crown Relations: Te Arawhiti Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Treaty of Waitangi Guidance

Portfolio **Māori Crown Relations: Te Arawhiti**

On 27 August 2019, the Cabinet Māori Crown Relations: Te Arawhiti Committee (MCR):

- 1 **noted** that in June 2019, MCR invited the Minister for Māori Crown Relations: Te Arawhiti to submit a paper and draft Cabinet Office circular on guidance to assist agencies in considering Te Tiriti o Waitangi / Treaty of Waitangi implications in policy work (the guidance) [MCR-19-MIN-0013];
- 2 **approved** the guidance, attached to the paper under MCR-19-SUB-0024;
- 3 **agreed** that the guidance approved in paragraph 2 above be disseminated by way of a Cabinet Office circular with additional guidance on the Department of the Prime Minister and Cabinet (DPMC) policy methods toolbox – both published on the DPMC website;
- 4 **authorised** the Minister for Māori Crown Relations: Te Arawhiti to approve any minor or editorial changes to the guidance before publication;
- 5 **noted** that the guidance was prepared in line with the New Zealand Productivity Commissions' 'Framework for assessing Treaty guidance material', and will be reviewed periodically by officials, experts and stakeholders to keep it current;
- 6 **noted** that the guidance will be included in the suite of tools and guidance developed by Te Arawhiti.

Rachel Clarke
Committee Secretary

Present:

Hon Kelvin Davis (Chair)
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Willie Jackson

Officials present from:

Office of the Prime Minister
Officials Committee for MCR

Hard-copy distribution:

Minister for Māori Crown Relations: Te Arawhiti



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Māori Crown Relations - Te Arawhiti Committee: Period Ended 30 August 2019

On 2 September 2019, Cabinet made the following decisions on the work of the Cabinet Māori Crown Relations - Te Arawhiti Committee for the period ended 30 August 2019:

MCR-19-MIN-0030	Decision of the Chair: Te Aute Glasgow Leases: Extension of Report Back Portfolio: Māori Development	CONFIRMED
MCR-19-MIN-0020	Oral Item: FreshWater Update and Key Messages Portfolio: Environment	CONFIRMED
MCR-19-MIN-0023	Oral Item: Reporting on Contemporary Treaty Issues Portfolio: Māori Crown Relations: Te Arawhiti	CONFIRMED
MCR-19-MIN-0024	Treaty of Waitangi Guidance Portfolio: Māori Crown Relations: Te Arawhiti	CONFIRMED
MCR-19-MIN-0021	Whanganui Land Settlement Historical On Account Transfer and Values Drafting Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
MCR-19-MIN-0027	Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua: Next steps in Remedies Proceedings Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
MCR-19-MIN-0029	Te Ao Pāpāho – Māori Media Sector Shift: High Level Options Portfolio: Māori Development	Separate minute: CAB-19-MIN-0448.01
MCR-19-MIN-0025	Oral Item: Update on Pressures on the 2019/20 Treaty Settlement Work Programme Portfolio: Treaty of Waitangi Negotiations	CONFIRMED

IN CONFIDENCE

CAB-19-MIN-0448

MCR-19-MIN-0022 **Oral Item: Ngāpuhi: Proposed Next Steps**
Portfolio: Treaty of Waitangi Negotiations

CONFIRMED

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:
Cabinet Māori Crown Relations - Te Arawhiti Committee