



PPTA TE WEHENGARUA ANNUAL CONFERENCE 2024

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# CONSTITUTIONAL AMENDMENT: TREATY OF WAITANGI AND TE TIRITI O WAITANGI

A PAPER FROM TE HUARAHI MĀORI MOTUHAKE



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## RECOMMENDATIONS

- 1 That the paper be received.
- 2 That all substantive references to the Treaty of Waitangi in the PPTA constitution be changed to te Tiriti o Waitangi including Clause 1.
- 3 That schedule 1 of the Constitution be amended and replace the English text of the Treaty to the Waitangi Tribunal English translation of the Te Reo version of Te Tiriti o Waitangi.

That Clause 1 of the PPTA Constitution be changed:

From:

### **THE TREATY OF WAITANGI**

The inclusion of a third object in Rule 4(c) in 1988 stems from a 1987 Conference instruction that Executive action the following resolution which was received by that Conference:

**THAT this National PPTA Conference makes explicit its commitment to the principles of the Treaty of Waitangi as central to the Constitution of the PPTA.**

The Māori and English versions of the Treaty are included in the Constitution as the First Schedule.

Discussion Booklet Number 1 from the Royal Commission on Social Policy 1986-88 suggested that *“the Treaty of Waitangi is about two peoples entering into an agreement as equal partners. The nature of the partnership, and the way it might be strengthened, has implications at several levels:*

- *partnership can occur at all levels of policy making by the sharing of power and decision making, satisfactory methods of consultation and the inclusion of cultural perspectives in policies*
- *partnership can refer to the process of drafting, implementing and monitoring legislation*
- *partnership is about the manner in which representation is ensured at all levels of administration*
- *partnership concerns the allocation of resources*
- *partnership extends to the provision of social services and the types of services available*
- *partnership challenges the diverse ethnic and cultural groups in New Zealand to consider their relationships with the tangata whenua*
- *partnership requires opportunity for the partners to regularly review their relationship and to plan jointly for the wellbeing of all New Zealanders.”*

The Treaty of Waitangi is an established foundation of New Zealand’s society and economy. The 1987 Conference clearly recognised this in its resolution and wished PPTA to begin the process of reviewing its structure and policies by amending the Constitution to affirm its commitment to the concept of genuine partnership embodied in the Te Tiriti (Treaty). Acceptance of this commitment suggests that the PPTA will affirm and advance:

- the duty to consult about education matters
- the duty to work for improvements in education that will make good present deficiencies
- the duty to protect actively, to the fullest possible extent, Māori values
- the duty to work to make PPTA structures and policies responsive to the needs of Māori as well as non-Māori
- the duty to ensure that Māori and non-Māori have equal status in education
- Māori values where those values or where Māori taonga are at risk. (Taonga means lands, villages and precious possessions which include language and customs).

The incorporation of the values of the Treaty is something that has always been implicit in the Constitution. The effect of the constitutional amendment is to make explicit that commitment and to provide a focal point for further discussion and action.

To:

### **TE TIRITI O WAITANGI**

The inclusion of a third object in Rule 4(c) in 1988 stems from a 1987 Conference instruction that Executive action the following resolution which was received by that Conference:

**THAT this National PPTA Conference makes explicit its commitment to the principles of the Treaty of Waitangi as central to the Constitution of the PPTA.**

The Māori and English translation of Te Tiriti o Waitangi are included in the Constitution as the First Schedule.

Discussion Booklet Number 1 from the Royal Commission on Social Policy 1986-88 suggested that *“the Treaty of Waitangi is about two peoples entering into an agreement as equal partners. The nature of the partnership, and the way it might be strengthened, has implications at several levels:*

- *partnership can occur at all levels of policy making by the sharing of power and decision making, satisfactory methods of consultation and the inclusion of cultural perspectives in policies*
- *partnership can refer to the process of drafting, implementing and monitoring legislation*
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- *partnership extends to the provision of social services and the types of services available*
- *partnership challenges the diverse ethnic and cultural groups in New Zealand to consider their relationships with the tangata whenua*
- *partnership requires opportunity for the partners to regularly review their relationship and to plan jointly for the wellbeing of all New Zealanders.”*

Te Tiriti o Waitangi is an established foundation of New Zealand’s society and economy. The 1987 Conference clearly recognised this in its resolution and wished PPTA to begin the process of reviewing its structure and policies by amending the Constitution to affirm its

commitment to the concept of genuine partnership embodied in Te Tiriti o Waitangi. Acceptance of this commitment suggests that the PPTA will affirm and advance:

- the duty to consult about education matters
- the duty to work for improvements in education that will make good present deficiencies
- the duty to protect actively, to the fullest possible extent, Māori values
- the duty to work to make PPTA structures and policies responsive to the needs of Māori as well as non-Māori
- the duty to ensure that Māori and non-Māori have equal status in education
- Māori values where those values or where Māori taonga are at risk. (Taonga means lands, villages and precious possessions which include language and customs).

The incorporation of the values of Te Tiriti o Waitangi is something that has always been implicit in the Constitution. The effect of the constitutional amendment is to make explicit that commitment and to provide a focal point for further discussion and action.

That Schedule 1 of the PPTA Constitution be changed:

From:

#### English Version

##### **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 possess over their respective Territories as the sole Sovereigns thereof.

##### **Article the Second**

Her Majesty the Queen of England confirms and guarantees to the Chief 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.

##### **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.

William Hobson, Consul and Lieutenant-Governor.

To:

### English Translation

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

#### **The first**

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

#### **The second**

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.

#### **The third**

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

[signed] William Hobson Consul & Lieut Governor

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 1840.

## 1. EXPLANATION

- 1.1 This PPTA Te Wehengarua Constitution currently lists The Treaty of Waitangi on the Contents page, part 4. However, to align more comprehensively with the principles and values of Te Tiriti o Waitangi (the Māori version of the Treaty of Waitangi), it is necessary to replace the Treaty of Waitangi with Te Tiriti o Waitangi in all instances and throughout the Constitution. The recommendations outline the specific changes required to achieve this.
- 1.2 The replacement of The Treaty of Waitangi with Te Tiriti o Waitangi acknowledges the original agreement that took place 6 February 1840.
- 1.3 Clause 1: This amendment acknowledges the resolution passed at the 1987 National PPTA Conference and reflects the monocultural language used at that time. Today (2024) Te Reo Māori is very much in use today and Te Tiriti o Waitangi accurately reflects the commitment that was made in 1987.
- 1.4 The current Treaty of Waitangi English version reproduced in the PPTA Constitution is not a true reflection of Te Tiriti o Waitangi. The recommended translation sets out how Māori would have understood the meaning of the text they signed. Professor Sir Hugh Kawharu, a former Waitangi Tribunal member, provided the translation in 1989.<sup>1</sup>

## 2. DISCUSSION AND JUSTIFICATION

- 2.1 The replacement of the Treaty of Waitangi with Te Tiriti o Waitangi in the PPTA Te Wehengarua constitution is crucial for several reasons:
  - 2.1.1 **Historical and Cultural Significance:** Te Tiriti o Waitangi represents the partnership between Māori and the Crown, emphasizing principles of mutual respect, partnership, and protection of Māori rights.
  - 2.1.2 **Commitment to Partnership:** The 1987 Conference resolution affirmed the organization's commitment to these principles, urging a review of structures and policies to reflect genuine partnership as envisioned in Te Tiriti o Waitangi.
  - 2.1.3 **Explicit Recognition:** While the constitution has recognized Māori values, the duty to actively protect these Māori values has not been fully realised.

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<sup>1</sup> WAITANGI REVISITED: PERSPECTIVES ON THE TREATY OF WAITANGI, edited by Michael Belgrave, Merata Kawharu and David Williams (Oxford University Press, 1989).

### 3. RATIONALE FOR CHANGE

- 3.1 By proposing specific amendments to the constitution that explicitly reference Te Tiriti o Waitangi, this action ensures that the constitution accurately reflects the historical and cultural significance of Te Tiriti o Waitangi, reinforcing the organization's commitment to upholding its principles.
- 3.2 The replacement of Te Tiriti o Waitangi to supercede The Treaty of Waitangi, further demonstrates PPTA Te Wehengarua commitment to affirm and advance Te Tiriti o Waitangi.
- 3.3 The contra proferentem rule is a legal doctrine in contract law that dictates how ambiguous clauses in a contract should be interpreted. The rule stipulates that if a clause in a contract is ambiguous or can be interpreted in multiple ways, it should be read in a way that disfavours the party who originally drafted, introduced, or demanded the inclusion of that specific clause. In the case of te Tiriti o Waitangi it means the indigenous language (te reo) takes precedence over the English version.

### 4. CONCLUSION

- 4.1 Updating the constitution to explicitly reference Te Tiriti o Waitangi not only aligns with historical accuracy but also reaffirms the organization's dedication to equity, partnership, and cultural sensitivity. These amendments will serve as a focal point for ongoing discussion and action, ensuring that PPTA Te Wehengarua continues to honour its obligations and responsibilities under Te Tiriti o Waitangi.