

As Maori are Not the Indigenous People of New Zealand, UNDRIP Does Not Apply to Them!

As Maori are Not the Indigenous People of New Zealand, UNDRIP Does Not Apply to Them!

The New Zealand Government does not have a definition of, “*The Indigenous people of New Zealand*”.

Maori are Not the Indigenous People of New Zealand.

There is absolutely no evidence that Maori are the indigenous people of New Zealand in either Maori oral history or forensic evidence. Maori arrived in New Zealand by canoe to find New Zealand already inhabited by the tangata whenua or the indigenous people of New Zealand, a fact stated by Dr Ranganui Walker in the **1986 New Zealand Yearbook**, page 18, when Head of Maori Studies at the Auckland University, “*The traditions are quite clear on one point, whenever crew disembarked there were already tangata whenua (prior inhabitants) living in New Zealand*”.

This was endorsed by Ngapuhi Leader David Rankin when he stated in the Northern Advocate on the 27 December 2012, “*If we believe our histories, then we as Maori are not the indigenous people of New Zealand. He pointed to numerous Maori oral histories which referred to people being here when the first Maori arrived, including fair-skinned people*”.

He said, “*Details of much of the country’s past was being concealed by academic historians. They are worried that their own research will be exposed so they have worked hard to ridicule and suppress any Maori history which disagrees with their views*”.

“*However, the tide is turning, and more people are now seeing that there is a whole history of our country that has been concealed and which will have major implications for Treaty settlements for example.*”

Tangata Maori Way of Life Long Gone.

When Captain Cook “discovered” New Zealand, there were people living in New Zealand who were later called the “*tangata Maori*”, but since then, they have continued to intermarry of their own free will with other races, mainly the British, until today, most can only claim a minute trace of tangata Maori ancestry. Today, Maori work, live and play, the same as all other New Zealanders, their tangata Maori ancestor’s way of life has long gone.

The Signing of UNDRIP by Prime Minister, Hon John Key.

In 2007 Prime Minister, Hon Helen Clark had asked the Crown Law Office for advice on whether the New Zealand Government should sign the United Nations Declaration on the Rights of Indigenous People and they advised her, “***Not to sign it***” because it contradicted the Treaty of Waitangi and our Constitution of one flag and one law, irrespective of race, colour, or creed, therefore, Prime

Minister, Hon Helen Clark, ***“Did not sign it”!***

On the 19 April 2010, Prime Minister, Hon John Key sent the Minister of Maori Affairs, Hon Pita Sharples to New York to sign the United Nations Declaration on the Rights of Indigenous People without asking the Crown Law Office for advice, a definition of who were the indigenous people of New Zealand, or had discussed it with Cabinet, but went ahead and did it on his own. See attached letters below obtained under the Official Information Act 1982 from Crown Law.

“What any man, whoever he may be, orders on his own, is not law”. Jean-Jacques Rousseau, Book 11, Chapter 1. Treatise of Social Contract, 1863.

Even when Hon Pita Sharples signed the Declaration he could not say, *“Maori are the indigenous people of New Zealand”*, he could only say, *“Maori hold a distinct and special status as the indigenous people, or tangata whenua, of New Zealand”*. See page 7.

But on the 21 October 2021, Kim Laurenson, Crown Counsel, Crown Law Office stated, *“There is no statutory definition of the indigenous people”*, therefore, Hon Pita Sharples misled the United Nations when he stated, *“Maori hold a distinct and special status as the indigenous people, or tangata whenua, of New Zealand”*. See letter below from Kim Laurenson, Crown Law Office dated 21 October 2021.

Tangata Maori Become British Subjects.

Queen Victoria’s Royal Charter Letter Patent dated the 30 July 1839 placed New Zealand under the jurisdiction of New South Wales and over 500 tangata Maori chiefs signed the Treaty of Waitangi on behalf of their people. They agreed to give up their individual governments and in return, would become British Subjects with the same rights as the people of England, under one flag and one law. Tangata Maori did not have a united government, they consisted of hundreds of small tribes continuously at war with each other, therefore, could not claim sovereignty over New Zealand. See page 15.

New Zealand Becomes a British Colony by Royal Charter.

By the end of 1840, tangata Maori had given up their governments to Queen Victoria and had become British Subjects, therefore, Britain could now separate New Zealand from New South Wales and make New Zealand into British Colony under one flag and one law, irrespective of race, colour, or creed. The Treaty of Waitangi was then filed away as it had achieved its purpose when New Zealand was under the jurisdiction of New South Wales.

Maori had become British Subjects with the same rights as the people of England.

Queen Victoria’s Royal Charter/Letters Patent. Our true Founding Document and first Constitution.

New Zealand became a British Colony by Royal Charter/Letter Patent dated the 16 November 1840 issued by *“Victoria by the Grace of God”* under, *“The Great Seal of the United Kingdom of Great Britain and Ireland”*. See page 17.

It consisted of a Constitution for Erecting the Colony of New Zealand, and for Creating and Establishing a Legislative Council and an Executive Council, and for Granting Certain Powers and Authority to the Governor of the Time being of the said Colony". See page, 18.

The First Sitting of the Legislative Council of New Zealand was held on the 24 May 1841. See page 22.

The Royal Charter did not give tangata Maori any special rights, advantage, or privilege over any other British Subject. Tangata Maori were given the same rights as the people of England. Article 3, Tiriti o Waitangi, *"The Queen of England will protect all the tangata Maori of New Zealand. All the rights will be given to them, the same as her doings to the people of England"*.

He Puapua contradicts the Treaty of Waitangi and our Constitution.

"He Puapua" is a report commissioned in 2019 by the New Zealand Government to inquire into and report on appropriate measures to achieve the goals set out by the United Nations Declaration on the Rights of Indigenous Peoples.

As can be seen from the above, the United Nations Declaration on the Rights of Indigenous People does not apply to Maori for the following reasons,

1. Government does not have a definition of the Indigenous People of New Zealand.
2. Government does not have forensic evidence of who are the Indigenous People of New Zealand.
3. Prime Minister, Hon Helen Clark had been advised by the Crown Law Office in 2007, **"Not to sign UNDRIP"**, as it contradicted the Treaty of Waitangi and our Constitution.
4. Prime Minister, Hon John Key did not have legal advice from the Crown Law Office before he allowed the Minister of Maori Affairs, Hon Pita Sharples to sign UNDRIP in 2010.
5. Hon Pita Sharples misled the United Nations stating, *"Maori held a special status as the tangata whenua or indigenous people of New Zealand"*. See letter from Kim Laurenson, Crown Law 21 October 2021, stating, *"There is no statutory definition of indigenous people"*.

Both UNDRIP and He Puapua must be Declared, "Null and Void".

From the above, both UNDRIP and He Puapua must be declared "Null and Void". The New Zealand Government does not have a definition of the Indigenous People of New Zealand. Prime Minister, Hon John Key over-ruled the advice from the Crown Law Office and allowed the Hon Pita Sharples to sign UNDRIP in 2010. Hon Pita Sharples then lied to United Nations, Maori were the tangata whenua, or indigenous people of New Zealand. **They are Not!**

Conclusion.

For Government to allow He Puapua to proceed, it had to dismantle the Constitution Room at Archives New Zealand in 2017 and hide our true Founding Document and first Constitution; **Queen Victoria's 1840 Royal Charter/Letters Patent**. The Government then spent \$7.2 million of taxpayer's money to refurbish Wellington's National Library with the **He Tohu Exhibition** to brainwash the people of New Zealand, stating, *"The Treaty of Waitangi was an iconic constitutional document that shaped Aotearoa New Zealand"*.

The Treaty of Waitangi was only signed between the tangata Maori and Queen Victoria when Zealand was under the jurisdiction of New South Wales, therefore, is not a New Zealand, *"Iconic constitutional document"*!

Government does not have a definition of the tangata whenua or indigenous people of New Zealand, therefore, UNDRIP cannot apply to Maori as they are not the tangata whenua or indigenous people of New Zealand.

Prime Minister, Hon John Key did not have legal advice from the Crown Law Office before he allowed Hon Pita Sharples to sign UNDRIP on the 19 April 2010. In fact, he went against the advice given by the Crown Law Office to Prime Minister, Hon Helen Clark in 2007.

Hon Pita Sharples misled the United Nations when he stated, *"Maori held a special status as the tangata whenua or indigenous people of New Zealand"*. **They do not!**

An Inquiry Must be Held.

Until Government holds a "Full Public Inquiry" into who are the tangata whenua or indigenous people of New Zealand, He Puapua and Three Waters must not proceed.

They both completely contradict the Treaty of Waitangi and our Constitution that New Zealand has operated under for the last 181 years of one flag and one law, irrespective of race, colour or creed! He iwi tahi tatou - We are now one people - New Zealanders.

Prepared by the One New Zealand Foundation from letters and information obtained under the Official Information Act 1982 and documents held in New Zealand, Australian and American Archives as well as the British Parliamentary Papers.

Prepared by: Ross Baker, Researcher, One New Zealand Foundation Inc.. Est: 1988.

Website: www.onenzfoundation.co.nz. Email: ONZF@bigpond.com.au (7/11/21). Copyright.

NOTE

See documented evidence below obtained under the Official Information Act 1982, New Zealand, Australian and American Archives as well as the British Parliamentary Papers.

For further information, please do not hesitate to contact Ross Baker, Researcher, One New Zealand Foundation Inc. on ONZF@bigpond.com.au.

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EXECUTIVE COUNCIL CHAMBERS

12 October 2021

Ross Baker
onzf@bigpond.com

Ref: OIA-2021/22-0307

Dear Ross Baker

Official Information Act request: Part-Māori tangata whenua and Aotearoa

Thank you for your Official Information Act request received on 19 September 2021. You requested:

- "1. Can the government produce forensic evidence and a definition, that part-Māori are the "tangata whenua or indigenous people of New Zealand"?*
- 2. Can the Government produce documented evidence that "Aotearoa" was the name used by the "tangata Maori" for New Zealand before, during or after the 1835 Declaration of Independence or the 1840 Treaty of Waitangi were signed?"*

The Department of the Prime Minister and Cabinet does not hold any specific official information relevant to your request. I am therefore refusing your request under section 18(e) of the Act, as the information requested cannot be found.

In response to the second part of your request, information on the use of Aotearoa in the nineteenth century is available on Te Ara – The Encyclopedia of New Zealand's website: <https://teara.govt.nz/en/nation-and-government/page-9>

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

We do not intend to publish this response on the Department of the Prime Minister and Cabinet's website.

Yours sincerely

Michael Webster
Clerk of the Executive Council

4442505

CABINET OFFICE, PARLIAMENT BUILDINGS, WELLINGTON 6011, NEW ZEALAND

Telephone: (04) 830 5010 Facsimile: (04) 472 6332

www.dpmc.govt.nz



OFFICE OF THE MINISTER OF MAORI AFFAIRS,
PARLIAMENT HOUSE,
WELLINGTON, NEW ZEALAND

12 May 1995

Mr Ross Baker

Tēnā koe

Thank you for your letter dated 29 March 1995 concerning the indigenous people of New Zealand.

There is no *'Government definition of the indigenous people of New Zealand'*. However, as stated in previous correspondence, Māori are defined in a number of statutes. For instance, in *Te Ture Whenua Māori Act 1993* Māori is taken to *"mean(s) a person of the Māori race of New Zealand; and includes a descendant of any such person"*.

The issue of whether the indigenous people of New Zealand were Moriori or Māori is not one which sets a precedent for present government policy. As a general practice the Government does not seek to impose limits upon its ability to treat with groups who claim a particular cultural identity. Thus for the purposes of the Māori fisheries settlement, the term Māori was *'deemed to include the Moriori people of New Zealand'*. A similar position underlies the Government's willingness to consider Moriori claims to the Waitangi Tribunal.

Aeoi ānō

Flan John Luxton
Minister of Māori Affairs

As can be seen from the date on this letter, 12 May 1995, Government has been allowing Maori special rights, privileges and advantages without a definition of who are these people.

With the continuing intermarriage between Maori and other race of their own free will, mainly the British, most Maori today can only claim a minute trace of Maori ancestry, therefore, should not be given special rights, privileges or advantages over their fellow New Zealand Citizens. Today, Maori work, live and play, the same as all other New Zealanders, their tangata Maori ancestor's way of life has long gone.



Office of Hon Dr Pita R Sharples

MP for Tamaki Makaurau
Minister of Māori Affairs
Associate Minister of Corrections
Associate Minister of Education

02 APR 2012

Ross Baker
ONZF@bigpond.com

Tēnā koe Mr Baker

Thank you for your email of 18 March 2012 requesting information under the Official Information Act 1982, about the United Nations Declaration on the Rights of Indigenous Peoples and the New Zealand Government's definition of the indigenous peoples of New Zealand.

I understand that you have previously asked the Attorney General, Hon Christopher Finlayson, for such a definition and were advised that no document exists containing this information. I do not hold a document that defines the New Zealand Government's definition of the indigenous peoples of New Zealand, therefore your request is declined under section 18(g)(i) of the Official Information Act 1982.

However, I would like to reiterate the Government's position of support for the Declaration on the Rights of Indigenous Peoples. This was outlined in my statement to the United Nations on 19 April 2010, whereby I noted that Māori hold a distinct and special status as the indigenous people, or tangata whenua, of New Zealand.

If you are not satisfied with this response you have the right under section 28(3) of the Official Information Act 1982 to make a complaint to an Ombudsman. Kāti mō tēnei wā.

Heoi anō

nā Hon Dr Pita R Sharples
Minister of Māori Affairs

12 July 2021

Ross Baker

By email only: onzf@bigpond.com

Dear Mr Baker

Official Information Act request
Our Ref: OIA353/1

1. I refer to your email of 8 July 2021 in which you ask the following:

Under the Official Information Act, Was the Declaration on the Right of the Indigenous People illegally signed by the Hon Pita Sharples in New York on the 19 April 2010 under the New Zealand Constitution/law?

2. On 19 (New York time)/20 April 2010 (New Zealand time), the Minister of Māori Affairs Hon Dr Pita Sharples appeared before the United Nations Permanent Forum on Indigenous Issues and announced New Zealand's support for the Declaration on the Rights of Indigenous Peoples.

3. Your request is not one that is cognisable under the Official Information Act 1982. Its substance — was the Declaration illegally signed under the New Zealand Constitution/law — is for legal advice. Crown Law provides legal advice and representation to the government, not members of the public. It is therefore not appropriate for us to answer your question. You may instead wish to seek advice from a lawyer (<https://www.lawsociety.org.nz/>), Community Law Centre (<https://communitylaw.org.nz/>) or Citizens Advice Bureau (<https://www.cab.org.nz/>)

4. You have the right to seek a review of this decision by the Ombudsman.

Yours faithfully
Crown Law



Daniel Perkins
Crown Counsel
Constitutional & Human Rights Team

9 August 2021

Ross Baker
One New Zealand Foundation Inc.

By email: onzf@bigpond.com

Dear Ross

Official Information Act request


Our Ref: OIA353/1

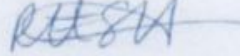
1. On 19 July 2021, by email, you asked Crown Law for the following official information:
 - 1.1 Did Prime Minister Hon John Key seek advice from the Crown Law Office before he sent the Minister of Maori Affairs, Hon Pita Sharples to the United Nations to sign the Declaration on the Rights of Indigenous Peoples ("UNDRIP") on the 19 April 2010 and if so, why did the Crown Law Office change its advice to Hon John Key in 2010, compared with the advice given to Hon Helen Clark in 2007?
 - 1.2 What were the four provisions in particular that were, fundamentally incompatible with New Zealand's constitutional and legal arrangements?
2. Under section 18(e) of the Official Information Act 1982, we refuse the first part of question 1 of your request. Crown Law Office has not been able to find any request for legal advice from Prime Minister Hon John Key in 2009-2010 (the relevant time period) in respect of UNDRIP.
3. However, throughout the relevant time period, Crown Law gave legal advice to government on UNDRIP. That advice is subject to legal professional privilege, a good reason for withholding information under section 9(2)(h) of the Act that is not outweighed by other considerations which render it desirable in the public interest to make that information available in these circumstances. We refuse this part of your request under section 18(a) of the Act.
4. To the extent that your second question asks for the content of legal advice provided by Crown Law, that advice is privileged and, as above, that privilege is not outweighed by other considerations which render it desirable in the public interest to

make that information available. We therefore refuse this part of your request under section 18(a) of the Act. However, we draw your attention to the following public statements:

- 4.1 Rosemary Banks, New Zealand diplomat, at the United Nations General Assembly in 2007 <https://www.un.org/press/en/2007/ga10612.doc.htm>; and
 - 4.2 Pita Sharples, Minister of Maaori Affairs, at the United Nations Permanent Forum on Indigenous Issues in 2010 https://www.parliament.nz/en/pb/hansard-debates/rhr/document/49HansD_20100420_00000071/ministerial-statements-un-declaration-on-the-rights-of
5. You have a right under section 19(b) of the Act, by way of complaint to the Ombudsman under section 28(3), to seek an investigation and review of the refusal.

Yours faithfully
Crown Law


Kim Laurenson
Crown Counsel


Bex McMenamin
Assistant Crown Counsel

3 September 2021

Ross Baker
One New Zealand Foundation Inc

By email only: onzf@bigpond.com

Dear Ross

Official Information Act Request
Our Ref: OIA353/1

1. We have received your reply dated 9 August 2021 asking for an explanation of the good reason for refusing your request dated 19 July 2021 under s 18(a) of the Official Information Act and attaching an Official Information Act reply to you from Hon Dr Pita Sharples on 2 April 2012.
2. To clarify, we were unable to find any advice from Crown Law specifically to the Rt Hon Mr Key. However, as we indicated in our letter to you dated 9 August 2021, Crown Law did advise the government more generally on the UN Declaration on the Rights of Indigenous Peoples.
3. That advice is withheld under s 9(2)(h) of the Official Information Act as it is legally privileged. The maintenance of legal privilege is a good reason to withhold official information and while we acknowledge there is some public interest in the New Zealand's international treaty making process, we do not consider that withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.
4. We again remind you of your right under s 19(b) of the Official Information Act, by way of complaint to the Ombudsman under s 28(3), to seek an investigation and review of the refusal.

Yours faithfully
Crown Law



Kim Laurenson
Crown Counsel

Likewise, Crown Law has not been asked (and has not given) legal advice on the specific question you ask and refuse this part of your request under section 18(e) of the Act. In accordance with our duty under section 18B of the Act, we have considered whether consulting with you would assist you to make the request in a form that would remove the reason for the refusal. We do not think consultation would assist as the general premise of your question is expansive. However, you may find the following resources useful:

- The Cabinet Manual for example says in relation to sources of the constitution “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
- The Constitutional Advisory Panel’s Report on a Conversation (2013).²
- You may also with interest follow Te Aka Matua o te Ture (the Law Commission’s) 2021/2022 work programme, which includes a review of the role of tikanga and te ao Māori concepts in law.³
- Section 19(2) of the New Zealand Bill of Rights Act 1990, which provides that measures taken in good faith for the purpose of assisting or advancing persons or groups disadvantaged because of unlawful discrimination do not constitute discrimination.

2.4 *What law states, “Maori have a distinct and special status as the tangata whenua or Indigenous people of New Zealand”?*

As you have been previously advised (by Hon Dr Pita Sharples in 2012 and by Hon Christopher Finlayson prior to that), there is no statutory definition of indigenous peoples. This part of your request is refused under section 18(e) of the Act as the document alleged to contain the information requested does not exist.

11 October 2021 request

3. On 11 October, you listed ten reasons why you say the UN Declaration on the Rights of Indigenous Peoples should not have been signed. You then asked Crown Law:

¹ <https://cldm.govt.nz/sites/default/files/2017-06/cabinet-manual-2017.pdf>.

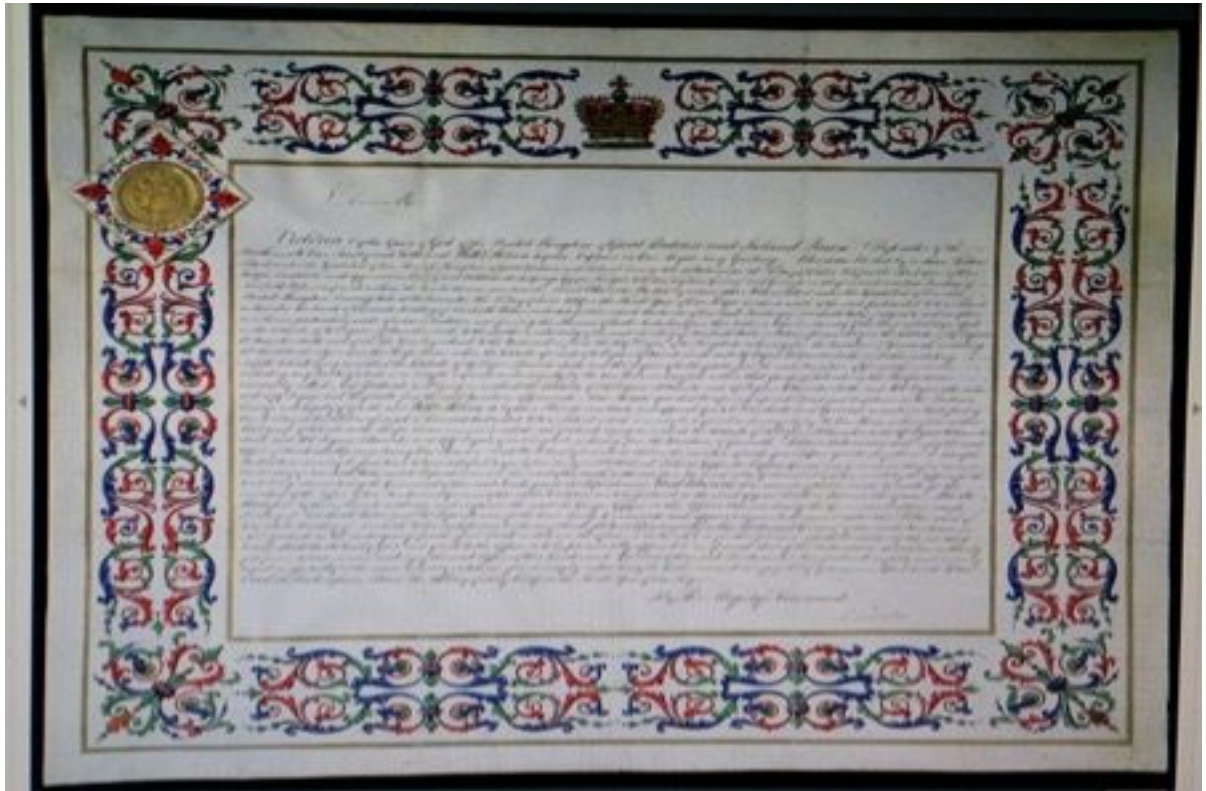
² <http://www.justice.govt.nz/assets/Documents/Publications/Constitutional-Advisory-Panel-Full-Report-2013.pdf>.

³ <https://www.lawcom.govt.nz/news/te-aka-matua-o-te-ture-law-commission-202122-work-programme>.

Queen Victoria's 1839 Royal Charters/Letters Patent

Below is the 'Charter/Letters Patent' appointing William Hobson as Lieutenant Governor of New Zealand and extending the boundaries of New South Wales to include all the islands of New Zealand in 1839. **Sir George Gipps, Governor of New South Wales was in fact the first Governor of New Zealand with Captain William Hobson as his Lieutenant.**

1839 Charter/Letters Patent for New Zealand and New South Wales.



The Royal Charter/Letters Patent reads,

Victoria R

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith - To Our Trusty and Well beloved, William Hobson Esquire, Captain of the Royal Navy Greeting. Whereas We did by certain Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland bearing date at Westminster the 5th day of October 1837 in the First year of Our Reign constitute and appoint Our Trusty and Well beloved, Sir George Gipps, Knight, to be Our Captain General and Governor in Chief in and over Our Territory of New South Wales, comprised within the limits therein mentioned. And Whereas We did by certain other Letters Patent under the Great Seal of Our said United Kingdom, bearing date at Westminster the 15th day of June 1839 in the Third Year of Our Reign revoke so much of the said first recited Letters Patent as describes the limits of Our said Territory of New South Wales, and did further extend the limits of Our said Territory of New South Wales (subject to such exception as is therein particularly made of certain Territories now forming the Province of South Australia) from the Northern Cape or extremity of the Coast called Cape York in the latitude of 10 Degrees 37 Minutes South to the Southern extremity of the said Territory of New South Wales or Wilson's promontory in the latitude of 39 Degrees 12 Minutes South and of all of the Country inland to the Westward as far as the 129th

Degree of East longitude reckoning for the Meridian of Greenwich including all the Islands adjacent in the Pacific Ocean within the latitude aforesaid of 10 Degrees 37 Minutes South and 39 Degrees 12 Minutes South, and also including Norfolk Island lying in or about the latitude of 29 Degrees 3 Minutes South and 168 Degrees of East Longitude from the said Meridian of Greenwich, and also including any Territory which is or maybe acquired in Sovereignty by Us Our Heirs or Successors within that group of Islands in the Pacific Ocean commonly called New Zealand, and lying in or about the latitude of 34 Degrees 30 Minutes North and 47 Degrees 10 Minutes South, and 166 Degrees 5 Minutes and 179 Degrees East longitude from the said Meridian of Greenwich. Now Know you that We reposing especial Trust and Confidence in the Prudence Courage and Loyalty of you the said William Hobson do by these Present constitute and appoint you to be Our Lieutenant Governor in and over that part of Our Territory so described as foresaid in Our said last recited Letters Patent which is or maybe acquired in Sovereignty by Us Our Heirs or Successors within that group of Islands in the Pacific Ocean commonly called New Zealand, lying in or about the latitude of 34 Degrees 30 Minutes North and 47 Degrees 10 Minutes South, and 166 Degrees 5 Minutes and 179 Degrees East longitude reckoning from the Meridian of Greenwich. To have hold exercise and enjoy the said Office of Lieutenant Governor during Our Pleasure: And We do hereby command that in the execution of such your Office you do obey all such lawful Instructions as may be from time to time addressed to you by Our Trusty and Well beloved Sir George Gipps, Our Captain General and Governor in Chief in and over Our Territory of New South Wales and its Dependencies or in the event of his death or absence from the limits of his Government and command by the Officer for the time being administering the Government of Our said Territory and its Dependencies. And Whereas it is necessary that provision be made for the execution of the Office of Our Lieutenant Governor of Our said Territories in New Zealand in the event of your Death or absence therefrom, We do therefore by these Presents authorise and empower the said Sir George Gipps or the Officer Administering the Government of Our said Territory of New South Wales and its Dependencies for the time being to nominate and appoint by an Instrument under the Public Seal of Our said Territory of New South Wales, such person as he may think fit to act provisionally as Our Lieutenant Governor of Our said Territories in New Zealand in the contingency of such your Death or absence therefrom, or until other or further provision shall be made by Us in that behalf. And We do hereby give and grant to the Officer so to be provisionally appointed as aforesaid, during the continuance of such his authority full power to hold exercise and enjoy the said Office of Our Lieutenant Governor of Our said Territories in New Zealand as fully and in every respect as effectually as the same as is hereby vested in you, or may be by virtue hereof be held, exercised or enjoyed by you - Given at Our Court at Buckingham Palace the 30th day of July 1839, in the Third Year of Our Reign. By Her Majesty's Command, Lord Normandy.

Royal Charter of 1840. Constitution of the Colony of New Zealand into a separate Colony on 3 May 1841.



This is New Zealand true Founding Document and first Constitution.

The Constitution Reads:

CONSTITUTIONAL CHARTER OF NEW ZEALAND

CHARTER FOR ERECTING THE COLONY OF NEW ZEALAND, AND FOR CREATING AND ESTABLISHING A LEGISLATIVE COUNCIL AND AN EXECUTIVE COUNCIL, AND FOR GRANTING CERTAIN POWERS AND AUTHORITIES TO THE GOVERNOR FOR THE TIME BEING OF THE SAID COLONY.

Victoria, & c. to all whom these presents shall come, greeting.

1. Whereas by an Act of Parliament made and passed in the fourth year of our reign, intituled, "An Act to continue, until the 31st day of December 1841, and to the end of the then next Session of Parliament, and to extend the provisions of an Act to provide for the administration of justice in New South Wales and Van Diemen's Land, and for the more effectual government thereof, and for other purposes relating thereto," after reciting amongst other things that the said colony of New South Wales is of great extent, and, that it may be fit that certain dependencies of the said colony should be formed into separate colonies, and provision made for the temporary administration of the government of any such newly-erected colony, it is enacted, that it shall be lawful for us, by Letters Patent to be from time to time issued under the great seal of the United Kingdom, to erect into a separate colony or colonies any islands which now are or which hereafter may be comprised within and be dependencies of the said colony of New South Wales; and whereas the islands of New Zealand, at the time of the passing of the above recited Act, were comprised within and were dependencies of the said colony of New South Wales. Now know ye that we, in pursuance of the said recited Act of Parliament, and in exercise of the powers thereby vested in us, of our especial grace, certain knowledge, and mere motion, have thought fit to erect, and do hereby erect the said islands of New Zealand, and all other islands adjacent thereto, and lying between the 34th degree 30 minutes north to the 47th degree 10 minutes south latitude, and between the 166th degree 5 minutes to the 172d degree of east longitude (reckoning from the meridian of Greenwich) into a separate colony, accordingly. And we do hereby declare that from henceforth the said Islands shall be known and designated as the colony of New Zealand, and the principal adjacent islands, heretofore known as, or commonly called the "Northern Island" the "Middle Island," and "Stewart's Island," shall henceforward be designated and known respectively as "New Ulster," "New Munster", and "New Leinster".
2. And whereas by the said recited Act of Parliament it is further enacted, that in case we shall by any letters patent as aforesaid establish any such new colony or colonies as aforesaid, it shall be lawful for us by any such letters patent, to authorise any number of persons, not less than seven, including the governor or lieutenant-governor of any such new colony or colonies, to constitute a Legislative Council or Legislative Councils for the same, and that every such Legislative Council shall be composed of such persons as shall from time to time be named or designated by us for that purpose, and shall hold their places therein at our pleasure, and that it shall be lawful for such Legislative Council to make and ordain all such laws and ordinances as may be required for the peace, order, and good government of any such colony as aforesaid, for which such Legislative Council may be so appointed; and that in the making all such laws and ordinances, the said Legislative Council shall conform to and observe all such instructions as we, with the advice of our Privy Council, shall from time to time make for their guidance therein. Provided always, that no such instructions and that no such laws or ordinances as aforesaid shall be repugnant to the law of England, but consistent therewith so far as the circumstances of any such colony may admit; provided

also, that all such laws and ordinances shall be subject to our confirmation or disallowance, in such manner and according to such regulations as we by any such instructions as aforesaid shall from time to time see fit to prescribe; provided also, that all instructions which shall, in pursuance of the said recited Act, be made by us, with the advice of our Privy Council, and that all laws and ordinances which shall be made in pursuance of the said recited Act, by any such Legislative Council of any such newly-erected colony as last aforesaid, shall be laid before both Houses of Parliament within one month from the date of any such instructions, or from the arrival in this kingdom of the transcript of any such laws or ordinances, if Parliament shall then be in session sitting, or if not, then within one month of the commencement of the next ensuing session of Parliament. Now, therefore in pursuance and further exercise of the powers so vested in us as aforesaid in and by the said recited Act of Parliament, we do by these our letters patent authorise the governor or the lieutenant-governor for the time being of the said colony of New Zealand and such other persons, not less than six, as are hereinafter designated, to constitute and be a Legislative Council for the said colony; and in further exercise of the powers aforesaid, we do hereby declare that, in addition to the said governor or lieutenant-governor, the said Legislative Council shall be composed of such public officers within the said colony, or of such other persons as shall from time to time be named or designated for that purpose by us, by any instruction or instructions or warrant or warrants to be by us for that purpose issued under our signet and sign manual and with the advice of our Privy Council, all of which Councillors shall hold their places in the said Council at our pleasure.

3. And we do hereby require and enjoin that such Legislative Council shall, in pursuance of the said Act of Parliament, make and ordain all such laws and ordinances as may be required for the peace, order, and good government of the said colony of New Zealand, and that in the making all such laws and ordinances the said Legislative Council shall conform to and observe all such instructions as we, with the advice of our Privy Council, shall from time to time make for their guidance therein.
4. And whereas it is expedient that an Executive Council should be appointed to advise and assist the governor of our said colony of New Zealand for the time being in the administration of the government thereof, we do therefore, by these our letters patent, authorise the governor of our said colony for the time being to summon as an Executive Council such persons as may from time to time be named or designated by us in any instructions under our signet and sign manual, addressed to him in that behalf.
5. And we do hereby authorise and empower the governor of our said colony of New Zealand for the time being to keep and use the public seal appointed for the sealing of all things whatsoever that shall pass the seal of our said colony.
6. And we do hereby give and grant to the governor of our said colony of New Zealand for the time being full power and authority, with the advice and consent of our said Executive Council, to issue a proclamation or proclamations, dividing our said colony into districts, counties, hundreds, towns, townships and parishes, and to appoint the limits thereof respectively.
7. And we do hereby give and grant to the governor of our said colony of New Zealand for the time being, full power and authority, in our name and on our behalf, but subject nevertheless to such provisions as may be in that respect contained in any instructions which may from time to time be addressed to him by us for that purpose, to make and execute, in our name and our behalf, under the public seal of our said colony, grants of waste land, to us belonging within the same, to private persons, for their own use and

benefit, or to any persons, bodies politic or corporate, in trust for the public uses of our subjects there resident, or any of them.

8. Provided always, that nothing in these our letters patent contained shall affect, or be construed to affect, the rights of any aboriginal natives of the said Colony of New Zealand, to the actual occupation or enjoyment in their own persons, or in the persons of their descendants, of any lands in the said Colony now actually occupied or enjoyed by such natives.
9. And we do hereby authorise and empower the Governor of our said Colony of New Zealand for the time being, to constitute and appoint judges, and, in cases requisite, commissioners of oyer and terminer, justices of the peace, and other necessary officers and ministers in our said Colony, for the due and impartial administration of justice, and for putting the laws into execution, and to administer or cause to be administered unto them such oath or oaths as are usually given for the due execution and performance of these offices and places, and for the clearing of truth in judicial matters.
10. And we do hereby give and grant unto the Governor of our said Colony of New Zealand for the time being, full power and authority, as he shall see occasion, in our name and on our behalf, to remit any fines, penalties, or forfeitures, which may accrue or become payable to us, provided the same do not exceed the sum of fifty pounds sterling in any one case, and to respite and suspend the payment of any such fine, penalty, or forfeiture exceeding the said sum of fifty pounds, until our pleasure thereon shall be made known and signified to such Governor.
11. And we do hereby give and grant unto the Governor of the said Colony of New Zealand for the time being, full power and authority, as he shall see occasion, in our name and on our behalf, to grant to any offender, convicted of any crime in any Court, or before any judge, justice, or magistrate within our said Colony, a free and unconditional pardon, or a pardon subject to such conditions as by any law or ordinance hereafter to be in force in our said Colony may be thereunto annexed, or any respite of the execution of the sentence of any such offender for such period as to such Governor may seem fit.
12. And we do hereby give and grant unto the Governor of our said Colony of New Zealand for the time being, full power and authority, upon sufficient cause to him appearing, to suspend from the exercise of his office, within our said Colony, any person exercising any office or place under or by virtue of any commission or warrant granted, or which may be granted by us, or in our name or under our authority, which suspension shall continue and have effect only until our pleasure therein shall be made known and signified to such Governor. And we do hereby strictly require and enjoin the Governor of our said Colony for the time being, in proceeding to any such suspension, to observe the directions in that behalf given to him by our instructions under our signet and sign manual accompanying his commission of appointment as Governor of the said Colony.
13. And in the event of the death or absence out of our said Colony of New Zealand of such person as may be commissioned and appointed by us to be the Governor thereof, we do hereby provide and declare our pleasure to be, that all and every the powers and authorities herein granted to the Governor of our said Colony of New Zealand for the time being shall be, and the same are hereby vested in such person as may be appointed by us by warrant under our signet and sign manual, to be the Lieutenant-Governor of our said Colony, or, in the event of there being no person within our said Colony commissioned and appointed by us to be Lieutenant-Governor thereof, then our pleasure is, and we do hereby provide and

declare, that in any such contingency all the powers and authorities herein granted to the Governor or Lieutenant-Governor of our said Colony shall be, and the same are hereby granted to the Colonial Secretary of our said Colony for the time being, and such Lieutenant-Governor, or such Colonial Secretary, as may be, shall possess all and every the powers and authorities herein granted until our further pleasure shall be signified, therein.

14. And we do hereby require and command all our officers and ministers, civil and military, and all other the inhabitants of our said Colony of New Zealand, to be obedient, aiding and assisting to such person as may be commissioned and appointed by us to be the Governor of our said colony, or, in the event of his death or absence, to such person as may, under the provisions of these our letters patent, assume and exercise the functions of such governor.

And we do hereby reserve to us our heirs and successors full power and authority from time to time, to revoke, alter or amend these our letters patent as to us or them shall seem meet.

In witness, &c. witness, &c.

16 November 1840



“Charter of 1840. Constitution of the Colony of New Zealand into a separate colony, 16 November 1840”

Disc supplied by the Chief Archivist, Archives New Zealand.

Above is the Royal Charter/Letters Patent dated the 16 November 1840 issued by “Victoria by the Grace of God” under “The Great Seal of the United Kingdom of Great Britain and Ireland” that separated New Zealand from New South Wales and made New Zealand into a British colony with a Governor and Constitution that set up New Zealand’s political, legal and justice systems under one flag and one law irrespective of race, colour or creed. There is no mention of the Treaty of Waitangi in this Charter.

FIRST SITTING OF THE LEGISLATIVE COUNCIL OF NEW ZEALAND.

(From the New Zealand Government Gazette.)

His Excellency the Governor, according to notice, opened the first session of the legislative council of New Zealand on the 24th May 1841. Hon. W. Shortland, colonial secretary, Hon. Francis Fisher, attorney general, Hon. George Cooper, colonial treasurer, E. S. Halswell, Esq., one of the three senior justices, being present, received the oaths and took their seats in the legislative council accordingly. James Coates, Esq., was appointed clerk of the council, and took the oaths of office. His Excellency then delivered the following speech: — Gentlemen—I have availed myself of this early period to assemble the members of the legislative council for the purpose of bringing under consideration certain measures which the altered circumstances of the colony seem to me urgently to require. At this our first meeting I deem it proper to draw your attention, not only to the royal charter, but to the highly important instructions under the royal signet and sign manual which accompany it. The charter, as you are already aware, erects the islands of New Zealand and certain dependencies into a separate colony, under the superintendence of a governor and commander-in-chief. It constitutes a legislative council, who are empowered to enact laws and ordinances for the local government of the colony; it authorizes the establishment of courts of justice, and the issue of commissions of the peace; and, in fact, brings into complete operation British laws throughout the whole colony of New Zealand. The instructions under the royal signet and sign manual more particularly define the functions of the governor and council, and in a clear and conspicuous manner point out the duties of each. In order that you, gentlemen, may have an opportunity of acquainting yourselves with those particular duties, I have directed the instructions to be laid on the table, and kept open for your perusal in the council chamber. I regret that I cannot at the present meeting lay before you the estimates of the ensuing year, which, although in a forward state of preparation, are incomplete, owing to the non-arrival of directions from the lords of the treasury, of which I am advised, and which may be daily expected. I shall lay before you an ordinance for the present re-adoption of all such acts of New South Wales as were in force previous to our separation and are now applicable to this colony. It is not my intention, however, eventually to propose for your adoption the laws of New South Wales, but it will be my endeavor, during the recess, aided by the advice and assistance of the law officers of the crown, to prepare for your consideration such laws as will best provide for the administration of justice, and the contingencies of social life, which may be expected to arise in New Zealand ; therefore the measures now proposed to you must be deemed temporary and contingent, as resulting from the present peculiar condition of the colony. By command of her Majesty, I will bring under your consideration the repeal of the Land Commission Act and submit for your adoption an ordinance for the same general purposes but granting to the Governor of New Zealand the same powers as those heretofore enjoyed by the Governor of New

South Wales. I will likewise lay before you bills for the regulation and collection of the revenue of her Majesty's customs, for establishing courts of quarter sessions and requests, and for the prohibition of distillation. These, gentlemen, are the only subjects for the present on which I shall require you to deliberate. We have, gentlemen, a solemn and important duty to perform; by our means conflicting interests are to be reconciled ; harmony and tranquility established, and measures are to be adopted for improving the condition and elevating the character of the aboriginal inhabitants. In this salutary work I confidently look for your cordial assistance and co-operation, and I trust under Divine Providence we shall be enabled to accomplish these important objects, and to give effect to her Majesty's gracious and benign views for the welfare, prosperity, and civilization of this colony. After laying on the table the Indemnity Bill, the Governor adjourned the council until Thursday, the 27th May, 1841. New Zealand. Anno quarto Victoriæ Reginae. No.

1.—An Ordinance to declare that the laws of New South Wales, so far as they can be made applicable, shall extend to, and be in force in, her Majesty's colony of New Zealand from and subsequent to the date of her Majesty's royal charter and letters patent, erecting into a separate colony the islands of New Zealand, and to indemnify the Lieutenant Governor and other officers thereof for certain Acts done and performed between the date of the said royal charter and letters patent and the day of passing this ordinance. Whereas by an act of the Governor and legislative council of New South Wales, made and passed in the third year of the reign of her present Majesty, entitled " An Act to declare that the Laws of New South Wales extend to her Majesty's dominions in the Islands of New Zealand, and to apply the same, as far as applicable, in the administration of justice therein, and to indemnify certain Officers for Acts already done." After reciting that her Majesty had been pleased to annex her Majesty's dominions of New Zealand to the government of New South Wales, it is enacted that all laws and acts or ordinances of the Governor and legislative council of New South Wales which then were, or thereafter might be, in force within the said colony should extend to and be applied in the administration of justice within her Majesty's dominions in the said islands of New Zealand, so far as they could be applied therein. And whereas, under and by virtue of an act of parliament made and passed in the fourth year of her said Majesty's reign, entitled, " An Act to continue until the thirty-first day of December, one thousand eight hundred and forty- one, and to the end of the then next ensuing Session of Parliament, the Provisions of any Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other purposes relative thereto," her Majesty did, by her royal charter and letters patent under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the sixteenth day of November, one thousand eight hundred and forty, erect into a separate colony the islands of New Zealand, theretofore comprised within or dependencies of the colony of New South Wales, with all other islands lying between certain latitude and longitude therein mentioned. And did further provide that from thenceforth the said islands should be known and designated as the " colony of New Zealand." And whereas, by her said royal charter and letters patent, her Majesty did constitute a legislative council for the said colony of New Zealand, with full power and authority to make and ordain all such laws and ordinances as might be required for the peace, order, and good government of the said colony. And whereas it is expedient, until all such laws and ordinances can be well considered and ordained, that all such laws, acts, and ordinances of New South Wales as are applicable to the colony of New Zealand should continue to be acted upon and be applied therein. And, in order to remove any doubt which may exist whether the said laws, acts, or ordinances of the said Governor and legislative council of New South Wales

are and continue in force within the said colony of New Zealand from and subsequent to the date and proclamation of such her Majesty's royal charter and letters patent. 1. Be it therefore enacted and ordained by his Excellency the Governor in and over the colony of New Zealand, with the advice of the legislative council thereof, that so much of all and every of the laws, acts, and ordinances heretofore made by the Governor and legislative council of New South Wales, and now in force therein, as have already been, and can hereafter during the continuance of this ordinance be, applied within the said colony of New Zealand shall be, and the same are hereby, adopted and declared and directed to be extended to and applied in the administration of justice in the said colony of New Zealand, in the like manner as all other the laws of England, and as if the same had been repeated and re-enacted in this ordinance. And whereas doubts may arise as to the validity of acts done and performed in the said colony of New Zealand since the date of her said Majesty's royal charter and letters patent by his Excellency as the Lieutenant Governor of the same, and by justices of the peace, officers of the customs, constables, and other officers, under and by virtue of the said in part recited act of the Governor and legislative council of New South Wales ; for the removal whereof 2. Be it therefore further enacted that the said Lieutenant Governor of the colony of New Zealand, and all justices of the peace, officers of the customs, constables, and other officers, and all persons whomsoever therein who may have acted under and by virtue of any commission or appointment of her Majesty, or of the governor of New South Wales, or of the said lieutenant governor of the said colony of New Zealand, or under any orders and directions of the same lieutenant governor, or of his excellency the governor, since his assuming the government of the said colony of New Zealand, previous and up to the passing of this ordinance, shall be, and they, and each and every one of them, are hereby indemnified against, and freed and discharged from, all damages, penalties, and forfeitures to which they, or any one of them, may have heretofore, or may now otherwise be liable for any act so done or performed. 3. And be it further enacted that no act done or performed by any such officer or other person aforesaid, shall be questioned or avoided in any court of law, by reason of any supposed want of power and authority, and that all such acts so done and performed shall be, and they are declared to be, as valid and effectual in law, to all intents and purposes, as if each of such officers and persons aforesaid had done and performed such acts within and under, or by virtue of, any law or statute of the parliament of Great Britain and Ireland. 4. And be it further enacted and ordained that in all or any of the said acts of the Governor and legislative council of New South Wales, which shall under and by virtue of this ordinance be brought into operation, and extended to and applied to the said colony of New Zealand, whenever the words " Governor, with the advice of the executive council, Governor, justice, or justices of the peace, or Government Gazette, of New South Wales," are used in such act or acts, the same words shall be construed to mean, and shall include and extend to " the Governor, with the advice of the executive council of New Zealand," or "Governor for the time being," or " all or any justices or justice of the peace, and to the Government Gazette of the said colony of New Zealand;" and that all words or expressions referring, and having relation, to New South Wales shall be, and the same are hereby directed to be, applied and construed to extend to the said colony of New Zealand. WILLIAM HOBSON, Governor. Passed the legislative council this 3rd day of June, in the year of our Lord one thousand eight hundred and forty-one. JAMES COATES, Clerk of Councils.

Prepared by: Ross Baker, Researcher, One New Zealand Foundation Inc.. Est: 1988.

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NOTE

See documented evidence below obtained under the Official Information Act 1982, New Zealand, Australian and American Archives as well as the British Parliamentary Papers.

For further information, please do not hesitate to contact Ross Baker, Researcher, One New Zealand Foundation Inc. on ONZF@bigpond.com.au.