

RECENT APPROACHES TO THE TREATY

In the 1970s the Third Labour Government undertook amendments to what remained of legislation that overtly discriminated against Māori, and it established the Waitangi Tribunal, although at that time the Tribunal was only allowed to consider injustices after 1975. The Fourth Labour Government was the first government to be proactive in considering what the Treaty might mean in the future (as opposed to only addressing injustices from the past), by incorporating requirements to respect the Treaty into some legislation – notably the State Owned Enterprises Act and the Resource Management Act. It also enabled the Tribunal to consider Treaty violations from 1840. In this era, the concept of ‘Treaty principles’ began to supercede previous references to ‘partnership’, but it is important to remember that the Crown has unilaterally generated these different sets of principles. None have been adopted by hapū/Māori. The principles are constantly changing with Court and Tribunal decisions and in response to public opinion, and they are not the Treaty itself.

Treaty Principles

You may come across references to Treaty principles in your work. The term is used very loosely in a wide variety of contexts.

- The Waitangi Tribunal is required by the 1975 Act to address the principles of the Treaty. Their interpretation has changed over time as they consider new cases
- The Royal Commission on Social Policy (1988) introduced the three P’s: Participation, Partnership and Protection
- Legislation passed by parliament also refers to principles (see especially the State Owned Enterprises Act of 1986)
- Because the Treaty is in some legislation passed by parliament, the Courts are involved in considering principles when interpreting legislative references to it. These continue to be developed by the Courts on a case by case basis. As Justice McKay noted in the Broadcasting case (1992) *“It is the principles of the Treaty which are to be applied, not the literal words. The English and Maori texts in the first schedule to the Treaty of Waitangi Act 1975 are not translations the one of the other, and the differences between the texts and shades of meaning are less important than the spirit”*
- Government policy includes references to principles, the strongest of which were produced by the Fourth Labour Government in 1989. The National Government (1990-1999) then developed its own set. The current Labour Government has changed its previous principles. They are continuing the preceding National Government’s policy of financial settlements for past injustices but are reluctant to include the Treaty in legislation now.

It is important to remember that the Crown alone has generated these different sets of principles. None have been adopted by hapū/Māori. The principles are constantly changing with Court and Tribunal decisions and in response to public opinion, and they are not the Treaty itself.

