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**From:** "Noel Hilliam" ·  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 15/07/2013 10:39 a.m.  
**Subject:** Emailing: True%20Early%20History

Further to my submission

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m: Noel Hilliam  
Sent: Sunday, May 05, 2013 1:13 PM  
To: 'Editor - Northern Advocate'  
Subject: True Early History

Mr Editor

Letter to Advocate --readers write

It is a bresh of fresh air to see in the media recently the Part Maori leader Mr. David Rankine being honest at long last a lead that I hope other leaders will follow in stating that the Maori are not the original people of this country.

The Maori are about the fourth or fifth race of people to be brought to this country which can be proved without a shadow of a doubt going on recorded records and the physical evidence right throughout this country.

These Tribes in New Zealand did not all originate from the same place they were brought here by the Chinese, Portuguese, Spanish and Dutch from all over the Pacific Basin over many centuries

Recently I wrote to the Prime Minister and MPs on both sides of the house requesting a Royal Commission of Inquiry into the true early history of New Zealand.

It appears that they all have been casturated not one of them having any balls to do something -- the only replys I received was from the PM acknowledging receipt of my request and the Treaty Minister Chris Finlayson requesting that I do not communicate with him again.

This would be a good chance to eliminate all this deceit and corruption that has prevailed in this country since this False Treaty of Waitangi Tribunal was instituted This is a good oppurtunity for one of the new Parliamentary parties to include in their election manifesto if elected a commission of Inquiry that I stated earlier

without a shadow of a doubt going on comment I hear travelling around this country they would receive seventy or eighty percent of the vote of concerned New Zealanders.

Giving one of many factual bits of this countrys early history gained from ships records discovered in Europe --It stated that in 1521 there were 30 spanish ships operating in and out of HAO Atoll one of these ships as in the Ships Log picked up 100 islanders where they brought them to the Kaipara Harbour on the

southern side and put them off at a WAITAHA village named Aotea these newly arrived peoples did not intergrate and built canoes which took them down the coast to another Harbour now known as the Raglan Harbour settling at a place they named Aotea.

It is interesting to find out some years ago the current Kaumatua decided to excavate their ancestral canoe taking timbers to the Waikato University to establish type and age -- these timbers were found to be of Kauri origin and were promptly taken back and reburied

The name of that Spanish ship that brought these Hao islanders to this country was spelt TAI ---NUI

signed

Noel Hilliam

Dargaville

NEW ZEALAND

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35 77 a)

**From:** "Noel Hilliam"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 15/07/2013 10:15 a.m.  
**Subject:** Emailing: Queen Victoria's Royal Charter  
**Attachments:** Queen Victoria's Royal Charter.pdf

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The message is ready to be sent with the following file or link attachments:

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Further to my submission -- attached copy

Queen Victoria's Royal Charter

Noel Hilliam

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.





# Queen Victoria's Royal Charter

## APPENDIX I

### 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

OUR TRUE FOUNDING DOCUMENT

AND

FIRST CONSTITUTION

THE TRIPLE WALL AND IS NOT OUR TRUE FOUNDING DOCUMENT OR PART OF OUR CONSTITUTION

**QUEEN VICTORIA'S ROYAL CHARTER , OUR "TRUE"  
FOUNDING DOCUMENT AND FIRST CONSTITUTION**

**An Important Document that has been overlooked for 173 Years!**

A member of the government's Constitutional Advisory Panel, Professor Linda Tuhiwai Smith asked, "*What is the role of the treaty or what is the role of the Treaty of Waitangi in our constitutional arrangements?*" The answer is quite simple,

**"Absolutely Nothing!"**

While this article is very radical as the Tiriti o Waitangi has been recognised as our **Founding Document** for 173 years, recent research by Ross Baker of the One New Zealand Foundation Inc has found the Tiriti o Waitangi was only to gain British Sovereignty over New Zealand and tangata Maori to be given the same rights as the people of England, no more no less. Our "true" **Founding Document** and **First Constitution** was **Queen Victoria's Royal Charter** dated the 16 November 1840. As with the Littlewood Treaty document, Hobson's final English draft of the Tiriti o Waitangi, Maoridom and Government do not want you to see this document on page 10 and it's obvious why; it puts the Tiriti o Waitangi where it belongs, in our Archives once and for all

**A brief History on the Declaration of Independence and why the Tiriti o Waitangi is not our Founding Document or part of our Constitution.**

The Declaration of Independence was a document drafted by James Busby, the British Resident in 1835 to try and unite the chiefs to assemble annually to make laws for the promotion of peace, justice, trade and to stop the fighting, cannibalism and genocide amongst the tangata maori tribes, but he could only persuade 34 Northern chiefs to sign before it was abandoned within 12 months by the signatories taking up arms against each other and without one meeting-taking place. It was obvious, tangata maori were more interested in fighting and the feasts that followed, than political co-operation. Britain reluctantly had to take a more active role if the tangata maori race were to survive. It is estimated the "inter-tribal musket wars" had slaughtered between 30,000 to 50,000 people before the Treaty was signed in 1840.

In 1840 over 500 tangata maori chiefs signed the Tiriti o Waitangi mainly from the North Island as most of the South Island's "empty" lands had been sold or were under contract by the chiefs prior to signing the Tiriti o Waitangi. The Tiriti was drafted and signed by W. Hobson, Consul & Lieutenant Governor, on behalf of Queen Victoria. The Tiriti o Waitangi was dated the 6<sup>th</sup> February 1840 and was the only Treaty signed on that day at Waitangi. An English treaty also dated the 6<sup>th</sup> February 1840 was never signed on that day or authorised by Hobson to be signed by the chiefs and was only used to collect the overflow of 39 signatures from the CMS printed Tiriti o Waitangi that had been read and discussed then signed at Waikato Heads and Manukau.

The Tiriti o Waitangi's purpose was to gain British sovereignty over New Zealand, New Zealand to come under the jurisdiction of the New South Wales government and tangata maori to be given the same rights as the people of England, no more - no



less, therefore the Treaty has nothing to do with our Constitution; the principles by which a nation is governed. **A Constitution is a body of fundamental principles by which a nation is governed.**

**Maori are not the tangata whenua or the Indigenous people of New Zealand**

"Tangata maori" was the name given to the people that signed the Tiriti o Waitangi as it was a known fact at the time the Tiriti o Waitangi was signed; tangata maori were not the tangata whenua or the Indigenous People of New Zealand. Under numerous Official Information Act requests to various Ministers, we were told, "*The New Zealand Government does not have a definition of the Indigenous People of New Zealand*".

Professor Dr Ranganui Walker, past Head of Maori Studies at Auckland University and a member of the Constitution Advisory Panel stated in the '1986 New Zealand Year Book', page 18, "*The traditions are quite clear on one point, whenever crew disembarked there were already tangata whenua (prior inhabitants). The canoe ancestors of the 14th century merged with these tangata whenua tribes. From this time on the traditions abound with accounts of tribal wars over land and its resources. Warfare was the means by which tribal boundaries were defined and political relations between tribes established. Out of this period emerged 42 tribal groups whose territories became fixed after the signing of the Treaty of Waitangi and the establishment of Pax Britannica*". Ngapuhi Chief David Rankin also endorsed Dr Walker's statement when he stated, "*Maori are not indigenous to Aotearoa/New Zealand*", in the March 2013 **Elocal Magazine**.

While 13 northern chiefs asked the King of England to become their protector and guardian in 1831, not only from themselves but also from the French, this could only be successfully achieved by Britain gaining sovereignty over the whole country and its people. The Treaty achieved this with over 500 tangata maori chiefs signing the Tiriti o Waitangi dated the 6<sup>th</sup> February 1840.

Since the Tiriti o Waitangi was signed, tangata maori have continued to intermarry of their own free will with other races forcing government to amend legislation defining a Maori many times over until, "*Maori today are a people with Maori ancestry, as one sees in legislation*", Mr John Clark, past Race Relations Conciliator of Maori descent.

Maori today can be a New Zealand Citizen with less than 1% of Maori ancestry but can claim advantage, privilege and special rights over their fellow New Zealand Citizens. This was never the intention of the Tiriti o Waitangi or those that signed; it was to treat all the tangata maori the same as the people of England (Article 3 of the Tiriti o Waitangi). The 1860 Kohimarama Conference, attended by over 200 chiefs again confirmed the chiefs' allegiance to Queen Victoria's Sovereignty and the Colonial Government under English Law over the whole country, under one flag and one law.

**Queen Victoria did not have the power or authority (jurisdiction) to give Maori any special rights in the Tiriti o Waitangi not already enjoyed by the people of England under English Law.**

Article 2 of the Tiriti of Waitangi states, "*all the people of New Zealand*" as the Tiriti had to give the same rights to non-Maori to their lands, settlements and property that

they had purchased or were under contract from the tangata maori chiefs. At the time the Tiriti was signed, the chiefs had sold or had contracts registered in the NSW Supreme Court for over two thirds of New Zealand's "empty lands", virtually the whole of the South Island had been sold or was under contract. Non-Maori were the major landowners in New Zealand at the time the Tiriti was signed, but after the it was signed, the Colonial Government confiscated most of this land from the people that had purchased it and returned to the chiefs, then re-purchased it, in some cases many times over as in the case of Taranaki. For further information on the Pre-Treaty Land Sales, please read "**Colonization The Salvation of the Maori Race**" by the One New Zealand Foundation Inc. Copies can be obtained from the ONZF with a \$15-00 donation.

#### **Governor Hobson's Proclamations.**

On the 30 January 1840 Lieutenant Governor Hobson, who had been sworn in as Lieutenant Governor to New Zealand under the jurisdiction of New South Wales met with the settlers and gave two Proclamations. In the first Proclamation he explained that, *"Her Majesty Queen Victoria has been graciously please to Direct, that Measures will be taken for the Establishment of a settled form of Civil Government over those of Her Subjects who have already Settled in New Zealand, or who may hereafter resort hither. And whereas Her Majesty has been graciously please to Direct Letters Patent .....by which the former Boundaries of the 'Colony of New South Wales' are so extended to comprehend any Part of New Zealand, that is, may be acquired in Sovereignty by Her Majesty, Her Heirs or Successors"*.

There is no mention of the Settlers being involved in Her Majesty gaining Sovereignty over New Zealand. Once New Zealand became British soil, all the British Subjects would have the same rights as if in England. Article 2 was only to inform tangata maori that the people of England had the same rights to their lands, their settlements and all their property the same as tangata maori if they signed the Tiriti o Waitangi. It was an Agreement solely between Queen Victoria and the tangata maori chiefs.

In the second Proclamation Lieutenant Governor Hobson explained, *"The Lieutenat Governor in and over such parts of New Zealand as have been or may be acquired in Sovereignty by Her Said Majesty, do hereby Proclaim and Declare to all Her Majesty's Subjects, that Her Majesty does not deem it expedient to recognise any Titles to Land in New Zealand, that are not derived from or confirmed by Her Majesty"*.

All claims to land by Europeans would go before a Commissioner to prove their validity and if found invalid would be returned/confiscated without refund from the chief that had sold the land or in most cases, repurchased by the Crown many times over. In most case those found valid were reduced to 2560 acres. No mention was made in this Proclamation of how the Queen would obtain Sovereignty over New Zealand; it was a matter between Queen Victoria and the tangata maori chiefs.

This second Proclamation also makes no mention of the settlers being involved in Her Majesty gaining sovereignty over New Zealand.

While the Tiriti o Waitangi's Second Article mentions *"all the people of New Zealand"* this was to explain to the tangata maori chiefs that the land the settlers had bought



from them and all their settlements and property they owned would also be guaranteed by Her Majesty, the same as the tangata maori. Tangata maori would have the same rights as the people of England, No more No less. Article 3.

It is interesting to note the number of hours the Colonial Government spent determining the rightful tangata maori owners to a block of land but virtually ignored the settlers that had purchased over 2/3 of New Zealand with over 1000 legal Deeds held in the New South Wales Supreme Courts, many possibly still valid!

In 1877 Chief Justice Sir James Prendergast declared the Treaty of Waitangi 'worthless' and a 'simple nullity' It is obvious now he meant it was a 'worthless' and a 'simple nullity' because it was only a document that allowed Britain to gain sovereignty over Zealand and tangata maori to be given the same rights as the people of England, therefore not part of our government, our law making or our Constitution.

This again confirms, the Tiriti o Waitangi is not our **Founding Document** or should be part of our **Constitution**, it was a "worthless and simple nullity" once Britain had gained Sovereignty over New Zealand! It was an Agreement between Queen Victoria and the tangata maori chiefs to gain Sovereignty over New Zealand to Britain and to give tangata maori the same rights as the people of England, No more no less!

#### *Queen Victoria's **Royal Charter** – Our First Constitution*

With British sovereignty now firmly asserted by November 1840, Queen Victoria's Royal Charter dated the 16 November 1840 separated New Zealand from New South Wales and New Zealand became a British Colony. On the 3 May 1841 Governor Hobson was sworn in as the Colony's first Governor to form a government to make and enforce English Law over the whole country. Once Queen Victoria gave Her Royal Charter, the Tiriti o Waitangi had served its purpose; it was just one part in the process of New Zealand becoming British soil and tangata maori British Subjects under one flag and one law. **No mention of the Tiriti is made in the Royal Charter!** At this time, the Tiriti o Waitangi should have been retired to our archives! See Royal Charter below, **New Zealand's Founding Document and First Constitution.**

#### **A Major Problem Arises; Colonisation Allowed the Slaves to Return Home!**

Once the Tiriti o Waitangi was signed and more chiefs became Christians the problems began. The Christian chiefs began releasing their slave and the slaves began wondering back to their tribal lands, but while they had been held as slaves their chiefs in many cases had traveled to Australia and sold their "unwanted and empty" tribal lands. This caused a major problem for the Colonial Government as not only the settlers had purchased this land so had the Colonial Government. In the South Island and Taranaki the Colonial Government increased the lands that had been set aside for the tangata maori but as more and more ex-slaves returned, more and more land had to be granted to accommodate them. This not only caused a problem for the Colonial Government but the settlers that had bought and settled the land now had to contend with the returning slaves that thought they still had possession of their tribal lands. Skirmishes broke out in many places and innocent settlers had their crops and buildings destroyed and in some cases, whole families were killed by the returning

slaves extremely unhappy to see their chiefs had sold their lands, and therefore took their revenge/utu out on the innocent settlers and their families, land and buildings.

The Colonial Government did their best to accommodate these returning slaves and those that had fled their tribal lands during the "Musket Wars" from 1820 through to 1840, but as the land had now been settled, a very difficult task that caused the start of the "Sovereignty Wars" of the 1860's. Maori also started settling on lands legally purchased or confiscated by the Colonial Government, such as Parihaka and were asked to move peacefully. Parihaka has been blown out of all proportion by today's part-Maori, tangata maori were squatting on land that had been purchased by the Crown from their conquer, Te Whero Whero and had no right to squat on this land. As illegal activity was known to be occurring at Parihaka, as well as the harbouring of "wanted rebels", the Colonial Government set in a large force to remove them peacefully. While one young boy had his foot stood on by a soldier's horse, there were no other casualties, although today's part-Maori say there was a "holocaust" by the troops at Parihaka. Te Whiti the leader of the group or cult was goaled for 18 months for sedition on the 14 November 1881 while others were sent to the South Island. This also occurred on the East Coast where Tuhoe harboured "rebels" that had beheaded Rev Volkner and/or played football with other Imperial Troops heads. They also harboured Te Kooti and the Hua Hua who had murdered many innocent settler and their families and destroyed their land, buldings and crops.

While the confusion of the returning slaves to lands that had been sold by their chiefs and the tangata maori now having nothing to do as the Colonial Government had stopped the slaughter and genocide amongst them, they became bored and the Waikato decided to, "*Fight the Pakeha at Taranaki*". This was the start of the "Sovereignty Wars" that raged for many years between the "rebel" tribes and the Imperial Troops and their tangata maori supporters. As Britain had promised to protect the tangata maori and all the people of New Zealand in the Tiriti o Waitangi and in Queen Victoria's Royal Charter, there was no alternative than to bring in large numbers of Imperial Troops to honour this agreement and land was confiscated as payment for the "rebels actions" by the Colonial Government after the Governor had warned them of the consequences of taking up arms against the Colonial Government.

After a number of years of fighting the Imperial Troops, the "rebels" decided to lay down their arms and honoured Her Majesty's Colonial Government and the laws based on one flag and one law for all. It must also be remember, the majority of tangata maori became very good citizens once the Tiriti was signed and began to prosper. The "rebels" saw this for themselves and decided their days of fighting were over if they were also to prosper under one flag and one law. The first time ever for tangata maori.

While there were some "genuine" claims against the Colonial Government, these were all "full and finally" investigated and settled by the Courts/Parliament in 1930 and 1940 before we accepted the Statute of Westminster in 1947.

With fabricated evidence and the apartheid Waitangi Tribunal, many of these claims, plus hundreds of others have been heard or renegotiated and millions of taxpayers dollars or assets paid out in compensation, when in fact two thirds of New Zealand



had been sold by the chiefs before the Tiriti o Waitangi was signed with legal Deeds of Sale still held in the New South Wales Supreme Court and possibly in many cases still valid to this day but non-Maori do not have a taxpayer funded Tribunal or Forest Rental Trust to hear and fund their claims, this time with legal documented evidence.

**Sold their land, had it returned, sold it again, returned again then say they were cheated by whom?**

Ngai Tahu's chiefs sold all of their land before the Tiriti o Waitangi was signed. After investigating these sales, the Colonial Government returned most the land to Ngai Tahu, then repurchased it again with reserves for the few Ngai Tahu still living in fear in the South Island. With Colonisation, the Ngai Tahu and Taranaki slaves that had been driven off their lands were now being released by their captures, therefore the Government had no other option than to grant extra reserves to accommodate the hundreds of returning slaves. The question we must ask, why has the Government continued to return land and assets to Ngai Tahu who sold all their land before the Tiriti was signed and to Taranaki that lost all their land in battle to the Waikato in 1835? Many of the Taranaki tribes then travelling to the Chatham Island and slaughtering the Moriori or farming them "like swine" into virtual extinction over the next seven years.

The Waikato tribes then fought the Colonial Government for Sovereignty and lost just as Tuhoe that harboured the "rebels" that slaughtered Rev Volkner, played football with the heads of some unfortunate Imperial Troops they had murdered and the Hau hau's and Te Kooti that had killed many innocent settler and their families. These "rebel" tribes had land confiscated in payment for breaking the laws that over 500 tangata maori chiefs had agreed to obey when they signed the Tiriti o Waitangi in 1840 and over 200 endorsed at the Kohimarama Conference in 1860.

*"The chiefs place in the hands of Queen of England, the sovereignty and the authority to make laws. Some sections of the Maori people violated that authority, war arose and blood was spilled. The law came into operation and land was taken in payment. It was their chiefs who ceded that right to the Queen. The confiscation cannot therefore be objected to in the light of the Treaty".* Sir Apirana Ngata, Minister of Native Affairs, M.A, LL.B, LL.D. 1922.

We believe people, such as the Hon Christopher Finlayson, Sir Tipene O'Regan and many others, including Government paid researchers should be charged with misleading the People of New Zealand by stealing millions of dollars and assets in compensation by "select researching and fabricating our history".

All the documents to substantiate the above can be located in our New Zealand Archives, the New South Wales Supreme Court or in Jean Jackson's collection of 24 books obtainable on disk from the One New Zealand Foundation Inc.

#### **Our First Constitution and Founding Document**

Our first Constitution and the document that founded New Zealand and its people was Queen Victoria's Royal Charter dated the 16 November 1840. It allowed New Zealand to break away from New South Wales and with the consent of the British Parliament,



form its own Colonial Government to make its own laws under the direction of the British Parliament based on English Law. The British Parliament supplied our next Constitution in 1846, which was amended and adopted by the New Zealand Colonial Government in 1852. Since then our Constitution has been amended and added to as we developed as a **Nation**.  
**The Statute of Westminster.**

In 1947 the Government adopted the Statute of Westminster that granted New Zealand complete autonomy in foreign as well as domestic affairs with all the people of New Zealand becoming New Zealand Citizens under one flag and one law, with our own Coat of Arms and own New Zealand Citizen Passports, which proclaimed the Sovereignty of the Government and its people.

#### **The Apartheid Waitangi Tribunal**

In 1975 the Government enacted the Treaty of Waitangi Act that created the Waitangi Tribunal to hear claims that may occur after 1975. All claims before this time had been "full and finally settled" or "rejected" by a Courts inquiry and Parliament. The Act was amended in 1985 to allow claims to date back to 1840, in most cases these had already been "full and finally settled" or "rejected". This Act and Tribunal breaches English law and the Magna Carta as it only allowed a New Zealand Citizen that could claim a minute trace of tangata maori ancestry to lodge a claim or participate. Non-Maori cannot lodge a claim, participate or appeal a recommendation by the Tribunal to Government, which in most cases the Select Committee misleads Parliament and Parliament accepts the Bill without further investigation. A past Chairman of the Tribunal, Chief Judge Eddie Durie admitted in the New Zealand Herald dated the 17 November 1999, that researches fabricate and modify evidence, omit evidence not helpful their claim and in some cases, were not paid unless they change their research to support the claim. Some claims that were investigated by the Court in the 1930's through 1940's, such as the Te Roroa claim and rejected by Chief Judge Shepherd and Parliament have been recommended and settled without one document of evidence. In fact the Minister of Justice, the Hon Doug Graham acknowledged this when he signed the Deed of Sale, stating the Te Roroa claim was only an "alleged" claim, but it proceeded costing the taxpayers in excess of \$30 million dollars and the people that could claim a minute trace of Te Roroa ancestry, laughing all the way to the bank! In fact Maori today with their reheard claims have accumulated in excess of \$40 billion thanks to a weak Governments and "gullible" taxpayers. Queen Victoria did not have the power or authority (jurisdiction) to give Maori any special rights in the Tiriti o Waitangi not already enjoyed by the people of England under English Law. **FACT!**

#### **The Tiriti o Waitangi Should Play no Part in our Constitution .**

The Tiriti o Waitangi should play no part in our Constitution; it had served its purpose for the reason it was drafted by the 3 May 1841. With the Treaty signed, New Zealand and its people came under the control of New South Wales. Queen Victoria's Royal Charter dated the 16 November 1840 gave New Zealand the authority to become its own British Colony with its own Colonial Government to make and enforce its own laws under its own flag on the 3 May 1841. **A Nation was Born!**

After 3 May 1841 the Tiriti o Waitangi was *worthless* and a '*simple nullity*' because it was only a document that allow Britain to gain sovereignty over Zealand and tangata maori to become British Subjects. Queen Victoria did not have the power or authority (jurisdiction) to give Maori any special rights in the Tiriti o Waitangi not already enjoyed by the people of England under English Law.

While the Tiriti o Waitangi gave Sovereignty to Britain and tangata maori British Subject status, it had nothing to do with our government, our laws or our Constitution. Queen Victoria's Royal Charter was our **Founding Document** and our first **Constitution**. It allowed New Zealand to become its own British Colony with one flag and one law for all the people of New Zealand, irrespective of race, colour or creed. Please read the copy of Queen's Victoria's Royal Charter below **Our First Constitution and Founding Document!**

APPENDIX I

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

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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 on 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

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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

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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



## PROCLAMATION.

By His Excellency WILLIAM HOBSON, Esquire, Lieutenant-Governor of the British Settlements in progress in New Zealand, &c., &c., &c.

WHEREAS, Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland, has been graciously pleased to Direct, that Measures shall be taken for the Establishment of a Settled form of Civil Government over those of Her Majesty's Subjects who are already Settled in New Zealand, or who may hereafter resort thither. And, Whereas, Her Majesty has also been graciously pleased to Direct Letters Patent to be Issued, under the Great Seal of the said United Kingdom, bearing Date the Fifteenth Day of June, in the Year One Thousand Eight Hundred and Thirty-nine, by which the former Boundaries of the Colony of New South Wales, are so extended, as to comprehend any part of New Zealand, that is, or may be, acquired in Sovereignty by Her Majesty, Her Heirs, or Successors. And, Whereas, Her Majesty has been further pleased, by a Commission under Her Royal Signet and Sign Manual, bearing Date the Thirtieth Day of July, One Thousand Eight Hundred and Thirty-nine, to appoint Me, WILLIAM HOBSON, Esquire, Captain in Her Majesty's Navy, to be Lieutenant-Governor in and over any Territory which is or may be acquired in Sovereignty by Her Majesty, Her Heirs, or Successors, within that Group of Islands in the Pacific Ocean, commonly called New Zealand, and lying between the Latitude Thirty-four Degrees Thirty Minutes and Forty-seven Degrees Two Minutes, South, and One Hundred and Sixty-six Degrees Five Minutes and One Hundred and Seventy-nine Degrees, East Longitude, from the Meridian of Greenwich: Now therefore, I, the said WILLIAM HOBSON, do hereby Declare and Proclaim, that I did, on the Fourteenth Day of January, instant, before His Excellency Sir GEORGE GIPPS, Knight, Captain-General and Governor in Chief, in and over the Territory of New South Wales and its Dependencies, and the Executive Council thereof, take the accustomed Oaths of Office as Lieutenant-Governor as aforesaid. And I do hereby further Proclaim and Declare, that I have this Day Opened and Published the Two Commissions aforesaid, that is to say, the Commission under the Great Seal extending the Boundaries of the Government of New South Wales, and the Commission under the Royal Sign Manual appointing Me Lieutenant-Governor, as aforesaid. And I do hereby further Proclaim and Declare, that I have this Day entered on the Duties of my said Office, as Lieutenant-Governor, as aforesaid. And I do call upon all Her Majesty's Subjects to be Aiding and Assisting Me in the Execution thereof.

GIVEN under my Hand and Seal at Kororaraka, this Thirtieth day of January, One Thousand Eight Hundred and Forty, and in the Third Year of Her Majesty's Reign.

(SIGNED.)

WILLIAM HOBSON, Lieutenant-Governor.

By His Excellency's Command,

GEORGE COOPER.

GOD SAVE THE QUEEN.

PARIA: Printed at the Press of the Church Missionary Society.



## PROCLAMATION.

By His Excellency WILLIAM HOBSON, Esquire, Lieutenant-Governor of the British Settlements in progress in New Zealand.

WHEREAS, Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland, has been graciously pleased, by Instructions under the hand of the most Noble the Marquis of Normanby, one of Her Majesty's principal Secretaries of State, bearing date the Fourteenth day of August, One Thousand Eight Hundred and Thirty nine; to Command, that it shall be notified to all Her Majesty's Subjects settled in or resorting to the Islands of New Zealand, that Her Majesty, taking into consideration the present, as well as future interests of Her said Subjects, and also, the interests and Rights of the Chiefs and Native Tribes of the said Islands, does not deem it expedient to recognise as valid any Titles to Land in New Zealand which are not derived from or confirmed by Her Majesty. Now, Therefore, I, WILLIAM HOBSON, Esquire, Captain in Her Majesty's Navy, and Lieutenant-Governor-in-and over such Parts of New Zealand as have been or may be acquired in Sovereignty by Her said Majesty, do hereby Proclaim and Declare to all Her Majesty's Subjects, that Her Majesty does not deem it expedient to recognise any Titles to Land in New Zealand, which are not derived from or confirmed by Her Majesty as aforesaid. But in order to dispel any apprehension that it is intended to dispossess the Owners of any Land acquired on Equitable Conditions, and not in Extent or otherwise, prejudicial to the Present or Prospective interests of the Community; I do hereby further Proclaim and Declare, that Her Majesty has been pleased to Direct that a Commission shall be appointed, with certain Powers to be derived from The Governor and Legislative Council of New South Wales, to enquire into and report on all Claims to such Land. And that all Persons having any such Claims, will be required to Prove the same before the said Commission, when appointed. And I do further Proclaim and Declare, that all Purchases of Land in any Part of New Zealand, which may be made from any of the Chiefs or Native Tribes thereof, after the Date of these Presents, will be considered as absolutely Null and Void, and will not be confirmed or in any way recognised by Her Majesty.

GIVEN under my Hand and Seal at Kororaraka, this Thirtieth day of January, One Thousand Eight Hundred and Forty, and in the Third Year of Her Majesty's Reign.

(SIGNED.)

WILLIAM HOBSON, Lieutenant-Governor.

By His Excellency's Command,

GEORGE COOPER.

GOD SAVE THE QUEEN.

PUBLISHED: Printed at the Press of the Church Missionary Society.

## Conclusion.

It's interesting to note, while Queen Victoria's Royal Charter is given very little recognition, it was our **Founding Document** and our **First Constitution**. Before then we were just part of New South Wales. Queen Victoria's Royal Charter gave us independence from New South Wales with our own British Colony, our own Governor, and our own Government to make our own laws, all under the watchful eye of the British Parliament.

When Governor Hobson arrived in New Zealand he read out two Proclamations to the settlers on the 30 January 1840. No mention was made of the Treaty of Waitangi in these Proclamations stating, "*Any part of New Zealand that is, or may be, acquired in Sovereignty by Her Majesty, Her Heirs or Successors*". The Treaty was to gain Sovereignty over New Zealand for Britain and in return; the same right for the tangata maori as the people of England. No more- no less.

**Queen Victoria did not have the power or authority (jurisdiction) to give Maori any special rights in the Tiriti o Waitangi not already enjoyed by the people of England under English Law.**

**Research shows; The Tiriti o Waitangi is not our Founding Document or part of our Constitution**

For further information or to become a member of the **ONE New Zealand Foundation Inc.** log onto: [www.onenzfoundation.co.nz](http://www.onenzfoundation.co.nz) or [www.newzealandsnewconstitution.com.au](http://www.newzealandsnewconstitution.com.au)

Compiled by Ross Baker, Researcher, on behalf of the One New Zealand Foundation Inc. 20 June 2013. (Copyright) Email: [ONZF@bigpond.com.au](mailto:ONZF@bigpond.com.au)

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## **One New Zealand Foundation Inc**

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ONZF, PO Box 7113, Pioneer Hwy, Palmerston North, New Zealand.

2357

**From:** "Noel Hilliam"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 8:59 p.m.  
**Subject:** CAP Submission

As the Maori are not the original people to settle New Zealand with all the documented and physical evidence available-I am totally for the abolishing of the maori favouritism and Racism that occurs in this country

Noel Hilliam

Dargaville

NEW ZEALAND

Email ↑



2357 a

**From:** "Noel Hilliam"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/07/2013 1:03 p.m.  
**Subject:** stone walls letter 1

Northland New Zealand, Thursday 28th March 2013.

#### Cairns:

Large piles of square or round volcanic stones, from chips to fist size in the centre whilst larger lava type rocks formed around the outer, flat on top. The electric fence to keep cattle away from harming both stock and stones.

#### Stone wall # 1.

The walls as seen here are broad at the base to taper upwards approximately five to six feet above the ground, flatten at the top and wide enough to walk on 'see video'.

#### Stone Wall # 2.

As you can see there are many such stone walls that run for some distance, some join others whilst others are single. All are man-made to either fence in or keep out whatever? Question is who built them and why?

#### Bush setting:

We entered bush and whilst doing so came across massive Native Puriri Trees some with a circumference of 30 - 40 feet. Surprising really as the bush got thicker it seemed we were going into the ancient dark ages. Note the massive boulders; some of these were truck size that was tossed out of the ancient volcano nearby.

#### Puriri Trees:

Our guide standing beside one of the Puriri trees his historical knowledge of the Northland area is truly remarkable. It seems the first white person to purchase land from the local Maori and to view these walls was Rev Williams. When questioned by the former it seems that Maori had no knowledge as to who constructed these or the reason for their purpose?

#### Fissures:

There were many of these large cracks in the ground with openings branching off in different directions. can be seen here looking for human remains stowed within the holes of these volcanic rocks. Unfortunately couldn't remember the actual location as there were so many fissures next



time he will bring a GPS.

On the back cover of Before Maori NZ's First Inhabitants mentions; "It has been recorded that old pre-Maori historical sites have been deliberately destroyed using bulldozers to cover burial sites, flattening Stone Walls and ancient buildings. These factual sites have been carbon dated and believed to be approximately 5000 years old. Why"?

28th May 2013 and I were given a guided tour of such a site by one of these bulldozer drivers as mentioned above. We were totally "Gob Smacked" at what we were witnessing and I'm sure you will be too. Whilst there one could view the ancient volcano nearby that had at some stage erupted five times sending huge stones 360 degrees from the centre of the crater these can be viewed on Google Map where one can see the actual volcano and alongside the vent there is a three sided pyramid; what we found is really strange; all the surrounding countryside is covered with volcanic rock of which the Cairns and Walls were constructed but for some unknown reason on this actual pyramid there is not one piece of volcanic rock, could it be this pyramid was constructed after the last eruption?

Unfortunately for my wife couldn't accompany us all the time having to stay near the 4WD as the surface of the ground we found a bit lumpy with moveable material not good for someone recovering from a damaged fractured foot whilst our guide and I explored.





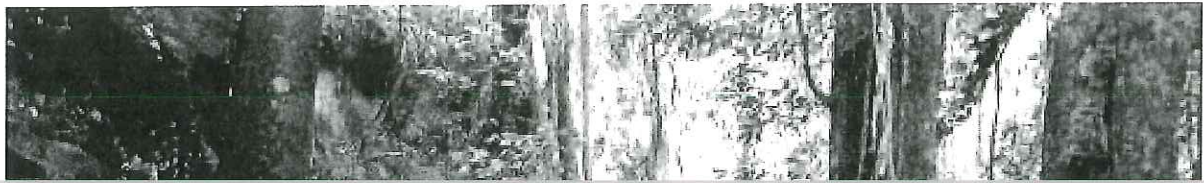
























2357b

**From:** "Noel Hilliam"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/07/2013 1:02 p.m.  
**Subject:** The Photographic Evidence

The Photographic Evidence

On the back cover of "Before Maori NZ's First Inhabitants" mentions; 'It has been recorded that old pre-Maori historical sites have been deliberately destroyed using bulldozers to cover burial sites, flattening stone walls and ancient building. These factual sites have been carbon dated and believed to be 5000 years old. Why?

On Thursday 28th of April 2013 and I had a guided tour around such a site by one of these bulldozer drivers. We were totally "Gob Smacked" at what we were witnessing and I'm sure you will be too. Before us stood volcanic stone walls (not to be confused with modern stone fences). These went through bush, down gullies and up again. The volcanic stone cairns with fist size stone in the centre, and the outer rim of larger rocks, obviously man-made. An ancient volcano stood nearby believed to have erupted five times hence the reason why the 360 degree surface being covered by fallen rock and surprisingly there before us stood a massive three sided earth pyramid without any volcanic rocks. Carbon dates suggest being 5000 years old, the same time-frame as 'Stonehenge' in England.

On ANZAC DAY 2013 a small group climbed both volcano and Pyramid taking in a series of videos and photos as proof / evidence for all to see. QUESTION: Who built these structures, and for what reason were the walls used? These people were obviously not Maori especially when nobody was meant to be living in Aotearoa / New Zealand back then? Please share our site with others who would like to read our work FREE POST in New Zealand from the author Ross M. price \$30 NZD.

edited cover Before Maori March 2012 ancient pyramid from the air ancient volcano vent

1

2

Carns 25th April another stone wall  
carns 2

2

3

4

5

crater # 21. The Crater. 2. Three sided Pyramid via Google. 3. One of many volcanic stone cairns. 4. One of many stone walls. 5. Damaged Cairn shows sizes of rock. 6. The crater with side blown out..





It has been reported that old pre-Maori historical sites have been deliberately destroyed using bulldozers to cover burial sites after flattening some ruins and ancient buildings. These ruins were made of stone and wood and are believed to be approximately 5000 years old.

Today we have apartheid, a racial problem brought on by political blundering, so much so that the native born New Zealanders within this country are now being asked for good reason, why?

It wasn't so long ago in the mid-seventies that New Zealand was voted the 'first best country in the world' but now things have changed. What happened, where did we go so terribly wrong?



What Bodle has done years of research on the subject of New Zealand's current problems and offers answers to many questions about our nation's origins and its condition today.



Before Maori - NZ's First Inhabitants

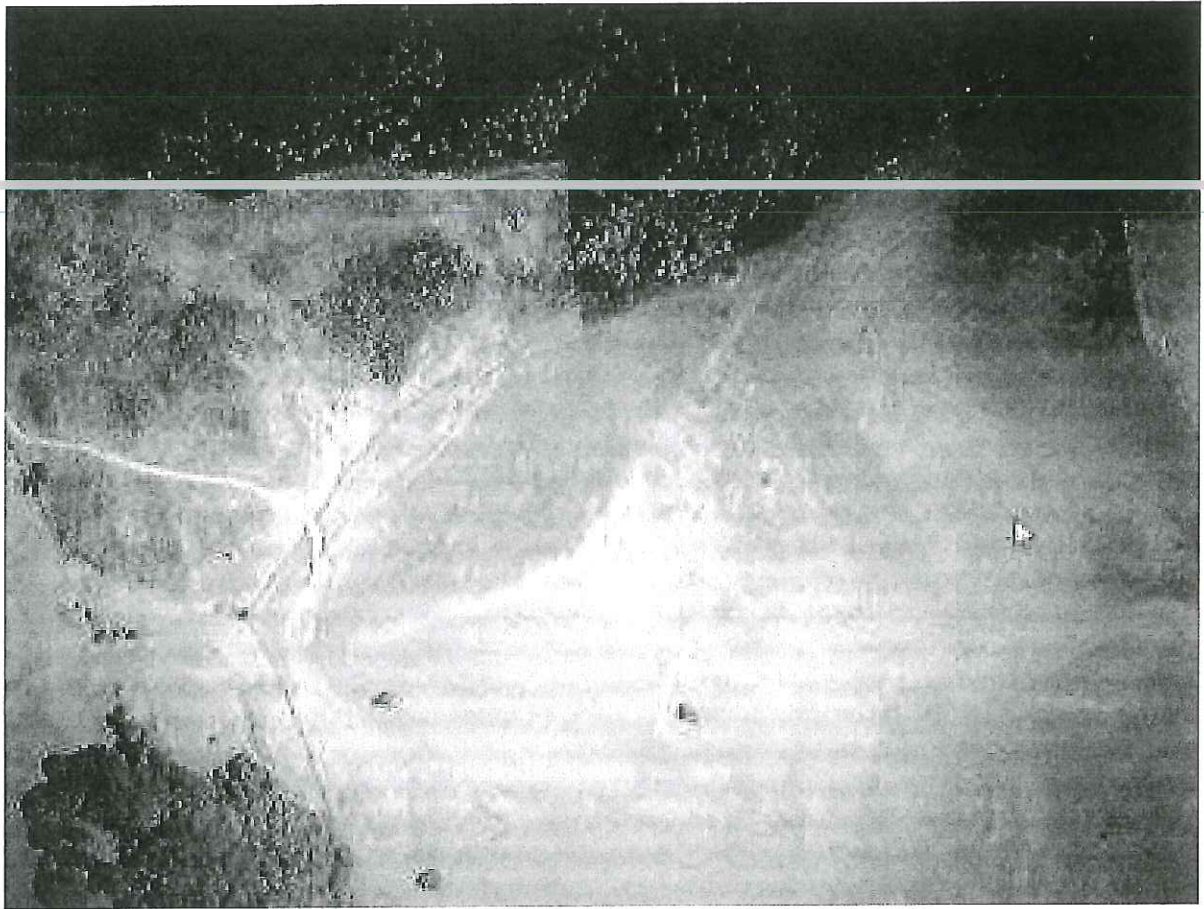
Ross M Bodle

# Before Maori NZ's First Inhabitants



Ross M Bodle













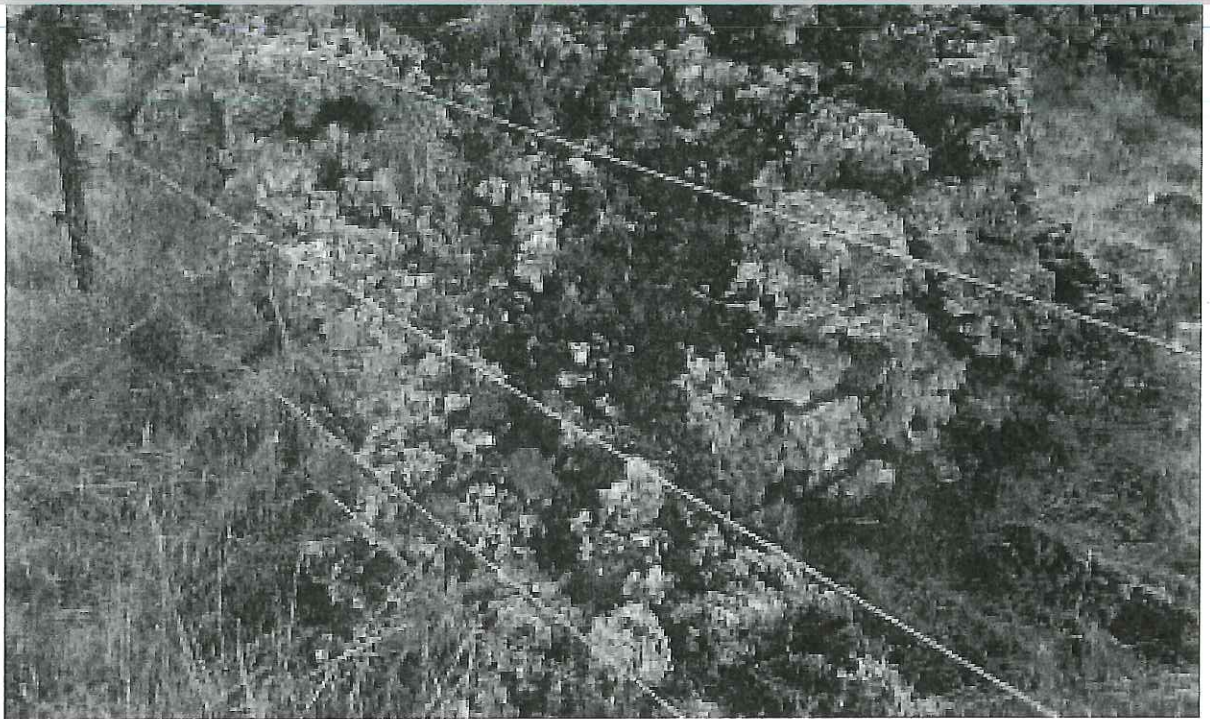




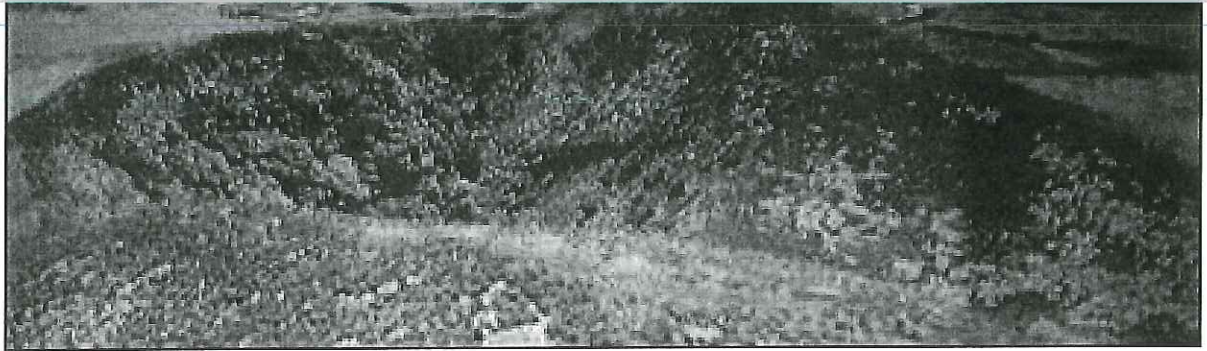
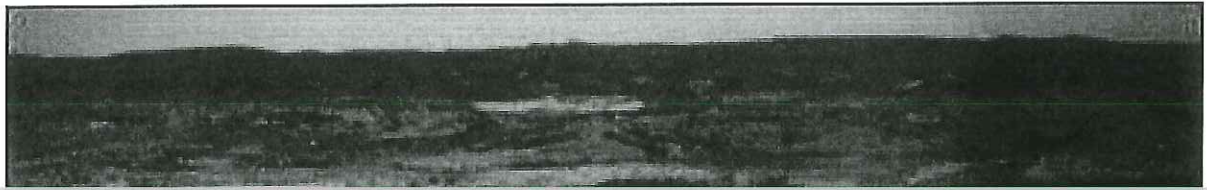
















2357c

**From:** "Noel Hilliam"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 6/07/2013 8:29 p.m.  
**Subject:** FW: Queen Victoria's Royal Charter  
**Attachments:** Queen Victoria's Royal Charter.pdf

Take this on board

Noel Hilliam

Dargaville

NEW ZEALAND

Email

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From: Noel Hilliam  
Sent: Saturday, July 06, 2013 6:19 PM  
To:  
Subject: FW: Queen Victoria's Royal Charter

Hi

Attached is Queen Victoria's Royal Charter, that has been conveniently hidden from the public for obvious reasons as explained by our researcher, Ross Baker in the attached article. Have you heard of it?

Queen Victoria's Royal Charter superseded the Tiriti o Waitangi as the Tiriti o Waitangi only gave Sovereignty to Britain and in return, Maori the same rights as the people of England, no more - no less.

Queen Victoria did not have the power or authority (jurisdiction) to give Maori any special rights in the Tiriti o Waitangi not already enjoyed by the people of England under English Law.

The Tiriti o Waitangi should play no part in our Constitution; it had served its purpose for the reason it was drafted. With the Treaty signed, New Zealand and all its people came under the control of New South Wales. Queen Victoria's Royal Charter dated the 16 November 1840 gave New Zealand the authority to become its

own British Colony with its own Colonial Government to make and enforce its own laws under its own flag, all under the watchful eye of the British Parliament.

Queen Victoria's Royal Charter was our Founding Document and our First Constitution - A Nation was Born!

Please read the attached article, which can also be down loaded from our website, [www.onenzfoundation.co.nz](http://www.onenzfoundation.co.nz)

or books can be obtained from the ONZF with a \$10-00 donation.

Regards,

Ross Baker.

Researcher, One New Zealand Foundation Inc

P.S. Please feel free to email this to all your contacts.

# Queen Victoria's "Royal Charter"

APPENDIX I

16 November 1840

## 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 Letters Patent establish any such separate colonies as aforesaid:

OUR TRUE FOUNDDING DOCUMENT

AND

FIRST CONSTITUTION

THE TIRITI O WAIANGI IS NOT OUR FOUNDDING DOCUMENT NOR PART OF OUR CONSTITUTION



## **QUEEN VICTORIA'S ROYAL CHARTER, OUR "TRUE" FOUNDING DOCUMENT AND FIRST CONSTITUTION**

**An Important Document that has been overlooked for 173 Years!**

A member of the government's Constitutional Advisory Panel, Professor Linda Tuhiwai Smith asked, *"What is the role of the treaty or what is the role of the Treaty of Waitangi in our constitutional arrangements?"* The answer is quite simple,

**"Absolutely Nothing!"**

While this article is very radical as the Tiriti o Waitangi has been recognised as our **Founding Document** for 173 years, recent research by Ross Baker of the One New Zealand Foundation Inc has found the Tiriti o Waitangi was only to gain British Sovereignty over New Zealand and tangata Maori to be given the same rights as the people of England, no more - no less. Our "true" **Founding Document** and **First Constitution** was **Queen Victoria's Royal Charter** dated the 16 November 1840. As with the Littlewood Treaty document, Hobson's final English draft of the Tiriti o Waitangi, Maoridom and Government do not want you to see this document on page 10 and it's obvious why; it puts the Tiriti o Waitangi where it belongs, in our Archives once and for all!

**A brief History on the Declaration of Independence and why the Tiriti o Waitangi is not our Founding Document or part of our Constitution.**

The Declaration of Independence was a document drafted by James Busby, the British Resident in 1835 to try and unite the chiefs to assemble annually to make laws for the promotion of peace, justice, trade and to stop the fighting, cannibalism and genocide amongst the tangata maori tribes, but he could only persuade 34 Northern chiefs to sign before it was abandoned within 12 months by the signatories taking up arms against each other and without one meeting-taking place. It was obvious, tangata maori were more interested in fighting and the feasts that followed, than political co-operation. Britain reluctantly had to take a more active role if the tangata maori race were to survive. It is estimated the "inter-tribal musket wars" had slaughtered between 30,000 to 50,000 people before the Treaty was signed in 1840.

In 1840 over 500 tangata maori chiefs signed the Tiriti o Waitangi mainly from the North Island as most of the South Island's "empty" lands had been sold or were under contract by the chiefs prior to signing the Tiriti o Waitangi. The Tiriti was drafted and signed by W. Hobson, Consul & Lieutenant Governor, on behalf of Queen Victoria. The Tiriti o Waitangi was dated the 6<sup>th</sup> February 1840 and was the only Treaty signed on that day at Waitangi. An English treaty also dated the 6<sup>th</sup> February 1840 was never signed on that day or authorised by Hobson to be signed by the chiefs and was only used to collect the overflow of 39 signatures from the CMS printed Tiriti o Waitangi that had been read and discussed then signed at Waikato Heads and Manukau.

The Tiriti o Waitangi's purpose was to gain British sovereignty over New Zealand, New Zealand to come under the jurisdiction of the New South Wales government and tangata maori to be given the same rights as the people of England, no more - no



less, therefore the Treaty has nothing to do with our Constitution; the principles by which a nation is governed. **A Constitution is a body of fundamental principles by which a nation is governed.**

**Maori are not the tangata whenua or the Indigenous people of New Zealand**

"Tangata maori" was the name given to the people that signed the Tiriti o Waitangi as it was a known fact at the time the Tiriti o Waitangi was signed; tangata maori were not the tangata whenua or the Indigenous People of New Zealand. Under numerous Official Information Act requests to various Ministers, we were told, "*The New Zealand Government does not have a definition of the Indigenous People of New Zealand*".

Professor Dr Ranganui Walker, past Head of Maori Studies at Auckland University and a member of the Constitution Advisory Panel stated in the '1986 New Zealand Year Book', page 18, "*The traditions are quite clear on one point, whenever crew disembarked there were already tangata whenua (prior inhabitants). The canoe ancestors of the 14-century merged with these tangata whenua tribes. From this time on the traditions abound with accounts of tribal wars over land and its resources. Warfare was the means by which tribal boundaries were defined and political relations between tribes established. Out of this period emerged 42 tribal groups whose territories became fixed after the signing of the Treaty of Waitangi and the establishment of Pax Britannica*". Ngapuhi Chief David Rankin also endorsed Dr Walker's statement when he stated, "*Maori are not indigenous to Aotearoa/New Zealand*", in the March 2013 **Elocal Magazine**.

While 13 northern chiefs asked the King of England to become their protector and guardian in 1831, not only from themselves but also from the French, this could only be successfully achieved by Britain gaining sovereignty over the whole country and its people. The Treaty achieved this with over 500 tangata maori chiefs signing the Tiriti o Waitangi dated the 6<sup>th</sup> February 1840.

Since the Tiriti o Waitangi was signed, tangata maori have continued to intermarry of their own free will with other races forcing government to amend legislation defining a Maori many times over until, "*Maori today are a people with Maori ancestry, as one sees in legislation*", Mr John Clark, past Race Relations Conciliator of Maori descent.

Maori today can be a New Zealand Citizen with less than 1% of Maori ancestry but can claim advantage, privilege and special rights over their fellow New Zealand Citizens. This was never the intention of the Tiriti o Waitangi or those that signed; it was to treat all the tangata maori the same as the people of England (Article 3 of the Tiriti o Waitangi). The 1860 Kohimarama Conference, attended by over 200 chiefs again confirmed the chiefs' allegiance to Queen Victoria's Sovereignty and the Colonial Government under English Law over the whole country, under one flag and one law.

**Queen Victoria did not have the power or authority (jurisdiction) to give Maori any special rights in the Tiriti o Waitangi not already enjoyed by the people of England under English Law.**

Article 2 of the Tiriti o Waitangi states, "*all the people of New Zealand*" as the Tiriti had to give the same rights to non-Maori to their lands, settlements and property that

they had purchased or were under contract from the tangata maori chiefs. At the time the Tiriti was signed, the chiefs had sold or had contracts registered in the NSW Supreme Court for over two thirds of New Zealand's "empty lands", virtually the whole of the South Island had been sold or was under contract. Non-Maori were the major landowners in New Zealand at the time the Tiriti was signed, but after the it was signed, the Colonial Government confiscated most of this land from the people that had purchased it and returned to the chiefs, then re-purchased it, in some cases many times over as in the case of Taranaki. For further information on the Pre-Treaty Land Sales, please read "**Colonization    The Salvation of the Maori Race**" by the One New Zealand Foundation Inc. Copies can be obtained from the ONZF with a \$15-00 donation.

#### **Governor Hobson's Proclamations.**

On the 30 January 1840 Lieutenant Governor Hobson, who had been sworn in as Lieutenant Governor to New Zealand under the jurisdiction of New South Wales met with the settlers and gave two Proclamations. In the first Proclamation he explained that, *"Her Majesty Queen Victoria has been graciously please to Direct, that Measures will be taken for the Establishment of a settled form of Civil Government over those of Her Subjects who have already Settled in New Zealand, or who may hereafter resort hither. And whereas Her Majesty has been graciously please to Direct Letters Patent .....by which the former Boundaries of the 'Colony of New South Wales' are so extended to comprehend any Part of New Zealand, that is, may be acquired in Sovereignty by Her Majesty, Her Heirs or Successors".*

There is no mention of the Settlers being involved in Her Majesty gaining Sovereignty over New Zealand. Once New Zealand became British soil, all the British Subjects would have the same rights as if in England. Article 2 was only to inform tangata maori that the people of England had the same rights to their lands, their settlements and all their property the same as tangata maori if they signed the Tiriti o Waitangi. It was an Agreement solely between Queen Victoria and the tangata maori chiefs.

In the second Proclamation Lieutenant Governor Hobson explained, *"The Lieutenat Governor in and over such parts of New Zealand as have been or may be acquired in Sovereignty by Her Said Majesty, do hereby Proclaim and Declare to all Her Majesty's Subjects, that Her Majesty does not deem it expedient to recognise any Titles to Land in New Zealand, that are not derived from or confirmed by Her Majesty".*

All claims to land by Europeans would go before a Commissioner to prove their validity and if found invalid would be returned/confiscated without refund from the chief that had sold the land or in most cases, repurchased by the Crown many times over. In most case those found valid were reduced to 2560 acres. No mention was made in this Proclamation of how the Queen would obtain Sovereignty over New Zealand; it was a matter between Queen Victoria and the tangata maori chiefs.

This second Proclamation also makes no mention of the settlers being involved in Her Majesty gaining sovereignty over New Zealand.

While the Tiriti o Waitangi's Second Article mentions "*all the people of New Zealand*" this was to explain to the tangata maori chiefs that the land the settlers had bought



from them and all their settlements and property they owned would also be guaranteed by Her Majesty, the same as the tangata maori. tangata maori would have the same rights as the people of England, No more` No less. Article 3.

It is interesting to note the number of hours the Colonial Government spent determining the rightful tangata maori owners to a block of land but virtually ignored the settlers that had purchased over 2/3 of New Zealand with over 1000 legal Deeds held in the New South Wales Supreme Courts, many possibly still valid!

In 1877 Chief Justice Sir James Prendergast declared the Treaty of Waitangi 'worthless' and a 'simple nullity' It is obvious now he meant it was a 'worthless' and a 'simple nullity' because it was only a document that allowed Britain to gain sovereignty over Zealand and tangata maori to be given the same rights as the people of England, therefore not part of our government, our law making or our Constitution.

This again confirms, the Tiriti o Waitangi is not our **Founding Document** or should be part of our **Constitution**, it was a "worthless and simple nullity" once Britain had gained Sovereignty over New Zealand! It was an Agreement between Queen Victoria and the tangata maori chiefs to gain Sovereignty over New Zealand to Britain and to give tangata maori the same rights as the people of England, No more` no less!

#### *Queen Victoria's **Royal Charter** – Our First Constitution*

With British sovereignty now firmly asserted by November 1840, Queen Victoria's Royal Charter dated the 16 November 1840 separated New Zealand from New South Wales and New Zealand became a British Colony. On the 3 May 1841 Governor Hobson was sworn in as the Colony's first Governor to form a government to make and enforce English Law over the whole country. Once Queen Victoria gave Her Royal Charter, the Tiriti o Waitangi had served its purpose; it was just one part in the process of New Zealand becoming British soil and tangata maori British Subjects under one flag and one law. **No mention of the Tiriti is made in the Royal Charter!** At this time, the Tiriti o Waitangi should have been retired to our archives! See Royal Charter below, **New Zealand's Founding Document and First Constitution.**

#### **A Major Problem Arises; Colonisation Allowed the Slaves to Return Home!**

Once the Tiriti o Waitangi was signed and more chiefs became Christians the problems began. The Christian chiefs began releasing their slave and the slaves began wondering back to their tribal lands, but while they had been held as slaves their chiefs in many cases had traveled to Australia and sold their "unwanted and empty" tribal lands. This caused a major problem for the Colonial Government as not only the settlers had purchased this land so had the Colonial Government. In the South Island and Taranaki the Colonial Government increased the lands that had been set aside for the tangata maori but as more and more ex-slaves returned, more and more land had to be granted to accommodate them. This not only caused a problem for the Colonial Government but the settlers that had bought and settled the land now had to contend with the returning slaves that thought they still had possession of their tribal lands. Skirmishes broke out in many places and innocent settlers had their crops and buildings destroyed and in some cases, whole families were killed by the returning

slaves extremely unhappy to see their chiefs had sold their lands, and therefore took their revenge/utu out on the innocent settlers and their families, land and buildings.

The Colonial Government did their best to accommodate these returning slaves and those that had fled their tribal lands during the "Musket Wars" from 1820 through to 1840, but as the land had now been settled, a very difficult task that caused the start of the "Sovereignty Wars" of the 1860's. Maori also started settling on lands legally purchased or confiscated by the Colonial Government, such as Parihaka and were asked to move peacefully. Parihaka has been blown out of all proportion by today's part-Maori, tangata maori were squatting on land that had been purchased by the Crown from their conquer, Te Whero Whero and had no right to squat on this land. As illegal activity was known to be occurring at Parihaka, as well as the harbouring of "wanted rebels", the Colonial Government set in a large force to remove them peacefully. While one young boy had his foot stood on by a soldier's horse, there were no other casualties, although today's part-Maori say there was a "holocaust" by the troops at Parihaka. Te Whiti the leader of the group or cult was goaled for 18 months for sedition on the 14 November 1881 while others were sent to the South Island. This also occurred on the East Coast where Tuhoe harboured "rebel's" that had beheaded Rev Volkner and/or played football with other Imperial Troops heads. They also harboured Te Kooti and the Hua Hua who had murdered many innocent settler and their families and destroyed their land, buldings and crops.

While the confusion of the returning slaves to lands that had been sold by their chiefs and the tangata maori now having nothing to do as the Colonial Government had stopped the slaughter and genocide amongst them, they became bored and the Waikato decided to, "*Fight the Pakeha at Taranaki*". This was the start of the "Sovereignty Wars" that raged for many years between the "rebel" tribes and the Imperial Troops and their tangata maori supporters. As Britain had promised to protect the tangata maori and all the people of New Zealand in the Tiriti o Waitangi and in Queen Victoria's Royal Charter, there was no alternative than to bring in large numbers of Imperial Troops to honour this agreement and land was confiscated as payment for the "rebels actions" by the Colonial Government after the Governor had warned them of the consequences of taking up arms against the Colonial Government.

After a number of years of fighting the Imperial Troops, the "rebels" decided to lay down their arms and honoured Her Majesty's Colonial Government and the laws based on one flag and one law for all. It must also be remember, the majority of tangata maori became very good citizens once the Tiriti was signed and began to prosper. The "rebel's" saw this for themselves and decided their days of fighting were over if they were also to prosper under one flag and one law. The first time ever for tangata maori.

While there were some "genuine" claims against the Colonial Government, these were all "full and finally" investigated and settled by the Courts/Parliament in 1930 and 1940 before we accepted the Statute of Westminster in 1947.

With fabricated evidence and the apartheid Waitangi Tribunal, many of these claims, plus hundreds of others have been heard or renegotiated and millions of taxpayers dollars or assets paid out in compensation, when in fact two thirds of New Zealand



had been sold by the chiefs before the Tiriti o Waitangi was signed with legal Deeds of Sale still held in the New South Wales Supreme Court and possibly in many cases, still valid to this day but non-Maori do not have a taxpayer funded Tribunal or Forest Rental Trust to hear and fund their claims, this time with legal documented evidence.

**Sold their land, had it returned, sold it again, returned again then say they were cheated by whom?**

Ngai Tahu's chiefs sold all of their land before the Tiriti o Waitangi was signed. After investigating these sales, the Colonial Government returned most the land to Ngai Tahu, then repurchased it again with reserves for the few Ngai Tahu still living in fear in the South Island. With Colonisation, the Ngai Tahu and Taranaki slaves that had been driven off their lands were now being released by their captures, therefore the Government had no other option than to grant extra reserves to accommodate the hundreds of returning slaves. The question we must ask, why has the Government continued to return land and assets to Ngai Tahu who sold all their land before the Tiriti was signed and to Taranaki that lost all their land in battle to the Waikato in 1835? Many of the Taranaki tribes then travelling to the Chatham Island and slaughtering the Moriori or farming them "like swine" into virtual extinction over the next seven years.

The Waikato tribes then fought the Colonial Government for Sovereignty and lost just as Tuhoe that harboured the "rebels" that slaughtered Rev Volkner, played football with the heads of some unfortunate Imperial Troops they had murdered and the Hau hau's and Te Kooti that had killed many innocent settler and their families. These "rebel" tribes had land confiscated in payment for breaking the laws that over 500 tangata maori chiefs had agreed to obey when they signed the Tiriti o Waitangi in 1840 and over 200 endorsed at the Kohimarama Conference in 1860.

*"The chiefs place in the hands of Queen of England, the sovereignty and the authority to make laws. Some sections of the Maori people violated that authority, war arose and blood was spilled. The law came into operation and land was taken in payment. It was their chiefs who ceded that right to the Queen. The confiscation cannot therefore be objected to in the light of the Treaty".* Sir Apirana Ngata, Minister of Native Affairs, M.A, II.B, Lit.D. 1922.

We believe people, such as the Hon Christopher Finlayson, Sir Tipene O'Regan and many others, including Government paid researchers should be charged with misleading the People of New Zealand by stealing millions of dollars and assets in compensation by "select researching and fabricating our history".

All the documents to substantiate the above can be located in our New Zealand Archives, the New South Wales Supreme Court or in Jean Jackson's collection of 24 books obtainable on disk from the One New Zealand Foundation Inc.

#### **Our First Constitution and Founding Document**

Our first Constitution and the document that founded New Zealand and its people was Queen Victoria's Royal Charter dated the 16 November 1840. It allowed New Zealand to break away from New South Wales and with the consent of the British Parliament,

form its own Colonial Government to make its own laws under the direction of the British Parliament based on English Law. The British Parliament supplied our next Constitution in 1846, which was amended and adopted by the New Zealand Colonial Government in 1852. Since then our Constitution has been amended and added to as we developed as a Nation.  
**The Statute of Westminster.**

In 1947 the Government adopted the Statute of Westminster that granted New Zealand complete autonomy in foreign as well as domestic affairs with all the people of New Zealand becoming New Zealand Citizens under one flag and one law, with our own Coat of Arms and own New Zealand Citizen Passports, which proclaimed the Sovereignty of the Government and its people.

#### **The Apartheid Waitangi Tribunal**

In 1975 the Government enacted the Treaty of Waitangi Act that created the Waitangi Tribunal to hear claims that may occur after 1975. All claims before this time had been "full and finally settled" or "rejected" by a Courts inquiry and Parliament. The Act was amended in 1985 to allow claims to date back to 1840, in most cases these had already been "full and finally settled" or "rejected". This Act and Tribunal breaches English law and the Magna Carta as it only allowed a New Zealand Citizen that could claim a minute trace of tangata maori ancestry to lodge a claim or participate. Non-Maori cannot lodge a claim, participate or appeal a recommendation by the Tribunal to Government, which in most cases the Select Committee misleads Parliament and Parliament accepts the Bill without further investigation. A past Chairman of the Tribunal, Chief Judge Eddie Durie admitted in the New Zealand Herald dated the 17 November 1999, that researches fabricate and modify evidence, omit evidence not helpful their claim and in some cases, were not paid unless they change their research to support the claim. Some claims that were investigated by the Court in the 1930's through 1940's, such as the Te Roroa claim and rejected by Chief Judge Shepherd and Parliament have been recommended and settled without one document of evidence. In fact the Minister of Justice, the Hon Doug Graham acknowledged this when he signed the Deed of Sale, stating the Te Roroa claim was only an "alleged" claim, but it proceeded costing the taxpayers in excess of \$30 million dollars and the people that could claim a minute trace of Te Roroa ancestry, laughing all the way to the bank! In fact Maori today with their reheard claims have accumulated in excess of \$40 billion thanks to a weak Governments and "gullible" taxpayers. Queen Victoria did not have the power or authority (jurisdiction) to give Maori any special rights in the Tiriti o Waitangi not already enjoyed by the people of England under English Law. **FACT!**

#### **The Tiriti o Waitangi Should Play no Part in our Constitution.**

The Tiriti o Waitangi should play no part in our Constitution; it had served its purpose for the reason it was drafted by the 3 May 1841. With the Treaty signed, New Zealand and its people came under the control of New South Wales. Queen Victoria's Royal Charter dated the 16 November 1840 gave New Zealand the authority to become its own British Colony with its own Colonial Government to make and enforce its own laws under its own flag on the 3 May 1841. **A Nation was Born!**

After 3 May 1841 the Tiriti o Waitangi was *worthless* and a '*simple nullity*' because it was only a document that allow Britain to gain sovereignty over Zealand and tangata maori to become British Subjects. Queen Victoria did not have the power or authority (jurisdiction) to give Maori any special rights in the Tiriti o Waitangi not already enjoyed by the people of England under English Law.

While the Tiriti o Waitangi gave Sovereignty to Britain and tangata maori British Subject status, it had nothing to do with our government, our laws or our Constitution. Queen Victoria's Royal Charter was our **Founding Document** and our first **Constitution**. It allowed New Zealand to become its own British Colony with one flag and one law for all the people of New Zealand, irrespective of race, colour or creed. Please read the copy of Queen's Victoria's Royal Charter below **Our First Constitution and Founding Document!**



## APPENDIX I

### 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

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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 on 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

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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



## PROCLAMATION.

By His Excellency WILLIAM HOBSON, Esquire, Lieutenant-Governor of the British Settlements in progress in New Zealand, &c., &c., &c.

WHEREAS, Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland, has been graciously pleased to Direct, that Measures shall be taken for the Establishment of a Settled form of Civil Government over those of Her Majesty's Subjects who are already Settled in New Zealand, or who may hereafter resort thither. And, Whereas, Her Majesty has also been graciously pleased to Direct Letters Patent to be Issued, under the Great Seal of the said United Kingdom, bearing Date the Fifteenth Day of June, in the Year One Thousand Eight Hundred and Thirty nine, by which the former Boundaries of the Colony of New South Wales, are so extended, as to comprehend any part of New Zealand, that is, or may be, acquired in Sovereignty by Her Majesty, Her Heirs, or Successors. And, Whereas, Her Majesty has been further pleased, by a Commission under Her Royal Signet and Sign Manual, bearing Date the Thirtieth Day of July, One Thousand Eight Hundred and Thirty nine, to appoint Me, WILLIAM HOBSON, Esquire, Captain in Her Majesty's Navy, to be Lieutenant-Governor in and over any Territory which is or may be acquired in Sovereignty by Her Majesty, Her Heirs, or Successors, within that Group of Islands in the Pacific Ocean, commonly called New Zealand, and lying between the Latitude Thirty-four Degrees Thirty Minutes and Forty-seven Degrees Two Minutes, South, and One Hundred and Sixty-six Degrees Five Minutes and One Hundred and Seventy-nine Degrees, East Longitude, from the Meridian of Greenwich: Now, therefore, I, the said WILLIAM HOBSON, do hereby Declare and Proclaim, that I did, on the Fourteenth Day of January, instant, before His Excellency Sir GEORGE GIPPS, Knight, Captain-General and Governor in Chief, in and over the Territory of New South Wales and its Dependencies, and the Executive Council thereof, take the accustomed Oaths of Office as Lieutenant-Governor as aforesaid. And I do hereby further Proclaim and Declare, that I have this Day Opened and Published the Two Commissions aforesaid, that is to say, the Commission under the Great Seal extending the Boundaries of the Government of New South Wales, and the Commission under the Royal Sign Manual appointing Me Lieutenant-Governor, as aforesaid. And I do hereby further Proclaim and Declare, that I have this Day entered on the Duties of my said Office, as Lieutenant-Governor, as aforesaid. And I do call upon all Her Majesty's Subjects to be Aiding and Assisting Me in the Execution thereof.

GIVEN under my Hand and Seal at Kororareka, this Thirtieth day of January, One Thousand Eight Hundred and Forty, and in the Third Year of Her Majesty's Reign.

(Signed)

WILLIAM HOBSON, Lieutenant-Governor.

By His Excellency's Command,

GEORGE COOPER.

GOD SAVE THE QUEEN.

PUBLISHED: Printed at the Press of the Church Missionary Society.



## PROCLAMATION.

By His Excellency WILLIAM HOBSON, Esquire, Lieutenant-Governor of the British Settlements in progress in New Zealand.

WHEREAS, Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland, has been graciously pleased, by Instructions under the hand of the most Noble the Marquis of Normanby, one of Her Majesty's principal Secretaries of State, bearing date the Fourteenth day of August, One Thousand Eight Hundred and Thirty nine, to Command, that it shall be notified to all Her Majesty's Subjects settled in or resorting to the Islands of New Zealand, that Her Majesty, taking into consideration the present, as well as future Interests of Her said Subjects, and also, the Interests and Rights of the Chiefs and Native Tribes of the said Islands, does not deem it expedient to recognise as valid any Titles to Land in New Zealand which are not derived from or confirmed by Her Majesty. Now, Therefore, I, WILLIAM HOBSON, Esquire, Captain in Her Majesty's Navy, and Lieutenant-Governor-in-and over such Parts of New Zealand as have been or may be acquired in Sovereignty by Her said Majesty, do hereby Proclaim and Declare to all Her Majesty's Subjects, that Her Majesty does not deem it expedient to recognise any Titles in Land in New Zealand, which are not derived from or confirmed by Her Majesty as aforesaid. But in order to dispel any apprehension that it is intended to dispossess the Owners of any Land acquired on Equitable Conditions, and not in Extent or otherwise, prejudicial to the Present or Prospective Interests of the Community, I do hereby further Proclaim and Declare, that Her Majesty has been pleased to Direct that a Commission shall be appointed, with certain Powers to be derived from The Governor and Legislative Council of New South Wales, to enquire into and report on all Claims to such Lands. And that all Persons having any such Claims will be required to Prove the same before the said Commission, when appointed. And I do further Proclaim and Declare, that all Purchases of Land in any Part of New Zealand, which may be made from any of the Chiefs or Native Tribes thereof, after the Date of these Presents, will be considered as absolutely Null and Void, and will not be confirmed or in any way recognised by Her Majesty.

GIVEN under my Hand and Seal at Kororarua, this Thirtieth day of January, One Thousand Eight Hundred and Forty, and in the Third Year of Her Majesty's Reign.

(Signed.)

WILLIAM HOBSON, Lieutenant-Governor.

By His Excellency's Command,

GEORGE COOPER.

GOD SAVE THE QUEEN.

PRINTED: Printed at the Press of the Church Missionary Society.

## Conclusion.

It's interesting to note, while Queen Victoria's Royal Charter is given very little recognition, it was our **Founding Document** and our **First Constitution**. Before then we were just part of New South Wales. Queen Victoria's Royal Charter gave us independence from New South Wales with our own British Colony, our own Governor, and our own Government to make our own laws, all under the watchful eye of the British Parliament.

When Governor Hobson arrived in New Zealand he read out two Proclamations to the settlers on the 30 January 1840. No mention was made of the Treaty of Waitangi in these Proclamations stating, "*Any part of New Zealand that is, or may be, acquired in Sovereignty by Her Majesty, Her Heirs or Successors*". The Treaty was to gain Sovereignty over New Zealand for Britain and in return; the same right for the tangata maori as the people of England. No more- no less.

**Queen Victoria did not have the power or authority (jurisdiction) to give Maori any special rights in the Tiriti o Waitangi not already enjoyed by the people of England under English Law.**

**Research shows; The Tiriti o Waitangi is not our Founding Document or part of our Constitution**

For further information or to become a member of the **ONE New Zealand Foundation Inc.** log onto: [www.onzf.org.nz](http://www.onzf.org.nz) or [www](http://www.onzf.org.nz).

Compiled by Ross Baker, Researcher on behalf of the One New Zealand Foundation Inc. 20 June 2013. (Copyright) Email:

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1322

**From:** "Denise & Bruce Hills"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 12/06/2013 6:03 p.m.  
**Subject:** cap submission

Re the constitutional review of NZ Hello We would like to contribute our submission to this review. We would like a binding referendum from all NZ citizens on the governments constitutional review. This government is politicing (so national can remain in POWER by getting the maori party support), pernicious and dictatorial in wanting to rush this through parliament so quickly. Nothing but trouble will emerge from such legislation.

We reject any references to the treaty of Waitangi or its principles in any constitutional document

We strongly oppose any separatism within any legislation

We ask for one peoples ,one nation equal for all citizens who inhabit NZ

Written by Denise & Bruce Hills

Tauranga NZ (citizens)

3503

**From:** "jim\_"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 12/07/2013 9:26 a.m.  
**Subject:** CAP Submission

abolish all maori seats and have a united goverment  
jim hills.



3503a

**From:** "jim\_  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 24/07/2013 9:54 a.m.  
**Subject:** CAP Submission

this may be a different matter but it cocerns the christchurcyh  
earth quake, in the 1960/1970 years the war and earth quake  
fund had so much money it was embrassing muldoon put his sticky fingers into it and used it up to get  
his party out of trouble  
nothing has beensaid about this and now we are being asked  
to cover the short fall i think some one should be held to account for this . jim hills.

862

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 17/05/2013 8:47 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Margaret Hills Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal  
City: Postal Region: bay OF Plenty Postal Post Code: Postal Country: New  
Zealand Submission: New Zealand's Constitution should be left exactly as it stands today. It has  
served New Zealanders for a lengthy period and should not be changed simply to appease a small  
minority of New Zealanders such a move would be totally undemocratic.

Sent on the 17 May 2013 at 20:46

171

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 9/04/2013 10:54 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Shane Hills Organisation Name: Private Individual Email:  
Phone: Postal AddressA: Postal  
AddressB: Postal City: Auckland Postal Region: Auckland Postal Post Code:  
Postal Country: New Zealand Submission: 1. Thinking of the future, what role do you think the Treaty of Waitangi could have in our constitution?

I believe the treaty document and any principles has out lived its original purpose. Even though a large portion of new Zealand recognise there have been unfair treatment of the Moari tribal assets and there should be some financial compensation and even apologies from the crown, the treaty should cease to exist at the end of the current round of financial settlements. The documents should be removed from any legal ongoing principles and become a document with historical significance only,

The reason for this is we are one nation and the current stream of the two parties is now become financial extortion of a nation. Natural resources water and air belong to the nation and not the property of one culture or race. While this avenue continues to be open for financial benefits, more and more radical claims will continue to be identified and claimed.

It is now time to unite the nation with a single document which applies to all New Zealanders with no special benefits for any race. Any segregation of services or benefits ie medical just divides the nation even further.

New Zealand is suffering no progress to all forms of infra structure as all surplus funds are having to be directed to treaty settlements. This financial burden can not continue with out the country infrastructure lagging behind other developed nations which is where we are today.

2. Do you think that the Treaty should be made a formal part of the constitution? Why?

Under no circumstances should the treaty references or principle be embedded into the constitution. The country rules and legislation can not provide any special conditions or concessions for a specific races within our nation.

Sent on the 9 April 2013 at 22:53

2054<sup>1</sup>

**From:** Ted Hilson <  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 2/07/2013 9:08 p.m.  
**Subject:** CAP Submission

Maori seats are another form of apartheid not relevant in todays world in  
NZ. should be abolished



2054a

**From:** Ted Hilson  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 6:06 p.m.  
**Subject:** CAP Submission

Maori seats are not democratic, they are race based and do not have a place  
in NZ

280

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>

PROPER ROLE OF THE STATE I believe that the proper role of the state is defensive, not aggressive. It is to protect, not to provide; for if the state is granted the power to provide for some, it must also be able to take from others, and that always leads to legalized plunder and loss of freedom. If the state is powerful enough to give us everything we want, it also will be powerful enough to take from us everything we have. Therefore, the proper function of the state is to protect the lives, liberty, and property of its citizens, nothing more. That state is best which governs least.

Sent on the 13 April 2013 at 13:48

## Submission to the New Zealand Constitutional Advisory Panel 2013

As a supporter of Amnesty International, I write to add my voice in support of its submission to the current constitutional conversation.

I am concerned that all our human rights are not adequately protected in New Zealand law.

For example, our Bill of Rights Act 1990 only incorporates civil and political rights. Yet, it is widely recognised that human rights are interrelated, interdependent and indivisible; this means that one set of rights cannot be enjoyed in a meaningful way if the other set of rights is not also adequately protected and respected too.

I believe civil and political rights, such as the right to life, cannot truly be achieved without the equal right to work, accessible health care, adequate housing and education, which are enshrined in the concepts of economic, social and cultural rights.

Despite having ratified the International Covenant on Economic, Social and Cultural Rights in 1978, successive New Zealand Governments have failed to fulfill their obligations to respect, promote and fulfil these human rights.

While the Government says economic, social and cultural rights are currently protected by subject specific statutes, current issues involving these rights, such as child poverty, show that the current system is not working to adequately protect our rights. The maze of laws and policies around economic, social and cultural rights make it difficult for New Zealanders to understand and access their rights.

Without a clear framework to guide legislation and policy it also makes it difficult to see if laws policies are actually working to recognise New Zealanders rights. In addition many human rights in New Zealand lack avenues to remedies if they are breached, which limit New Zealanders' access to justice - an essential right of victims of all human rights violations.

I therefore submit the following recommendations:

- The incorporation of economic, social and cultural rights into the Bill of Rights Act 1990;
- The entrenchment of the Bill of Rights Act 1990 so that the weight and importance of these rights is adequately recognised;
- The explicit inclusion of the power for judges to provide remedies when the Bill of Rights Act is violated;
- That New Zealand ratify the Optional Protocol for International Covenant of Economic Social and Cultural Rights, including opting in to its inquiry and inter-state mechanisms, so that New Zealanders have access to an international remedy;
- The establishment of a Human Rights Select Committee to ensure that the impact of legislation on human rights is sufficiently considered;
- The requirement of all levels of Government to take a human rights approach to addressing human rights issues; and
- Increased human rights education initiatives to increase awareness of economic, social and cultural rights.

I believe these recommendations will provide for stronger protections within our constitutional framework for economic, social and cultural rights.

Taking these measures will ensure a strong legal framework in which all rights are equally protected. It will ensure that the Government can take a rights-based approach to addressing rights issues in New Zealand such as child poverty.

New Zealand has an obligation to take steps to progressively realise such rights as the rights to health, education, and adequate housing. Ensuring they are explicitly protected in New Zealand law is a significant step in ensuring that New Zealand is a place where human rights are protected, respected and fulfilled.

Patrick Hinchey  
Auckland  
New Zealand



5075

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 7/08/2013 3:25 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Janet Hinde Organisation Name: individual Email Address:  
Phone: Postal AddressA: Postal AddressB:  
Postal City: Wellington Postal Region: Postal Post Code: Postal  
Country: New Zealand Submission: Dear friends

Thank you for inviting us to make submissions to the CAP, about the consitutional arrangements for Aotearoa New Zealand.

What future role do I think the Treaty of Waitangi could have in our constitution?

The Treaty is the founding document of our country. It needs to be the foundation for our constitution.

Te Tiriti o Waitangi provided the framework for an ongoing relationship between Maori and others who came to settle here. Any future constitution needs to develop from the starting point of this document. He Wakaputanga (the Declaration of Independence) and

te Tiriti o Waitangi provide the fundamentals for governing in this country. Any further constitution needs to develop from the starting point of these two covenants.

Do I think the Treaty should be made a part of our constitution?

Yes. The entire process for determining our constitution needs to be based on the Treaty-rather than

trying to fit the Treaty into an existing constitutional framework.

As Pakeha/Tauiwi I understand that te Tiriti o Waitangi provided for the establishment of a government which allowed my people/me to come here. It's important to our status as non-Maori that this document is the basis for our constitution.

The Treaty of Waitangi benefits all New Zealanders and enriches us as a country, therefore it should be central to the constitution. The Treaty is the foundation document of our nation, therefore the constitution needs to reflect this. The Treaty provides a

basis for honourable and just relationships between Maori and all other New Zealanders.

I am making this submission as an individual. I am also a member of the Treaty Relations Group of Aotearoa New Zealand, which has separately made a submission to the CAP following more than a year of consultation and education on this topic. I also work for

a Treaty-based organisation whose Governance Group comprises a Tangata Whenua caucus and a Tangata Tiriti caucus. These kinds of organisations point to future ways of working, which allow for partnerships which meaningfully reflect the Treaty of Waitangi.

Our country has made a statement of support for the United Nations Declaration on the Rights of Indigenous Peoples. If we are going to live up to that commitment it is essential that we honour the Treaty relationship.

nga mihi nui - with all good wishes

Jan Hinde

Submitted on the 17 June 2013 at 18:12

4186

**From:** "Royden Hindle"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 30/07/2013 1:59 p.m.  
**Subject:** CAP submission  
**Attachments:** Human Rights and Legislative Wrongs Prospect for a Declaration of Inconsistency Jurisdiction.docx

I attach a paper presented to the New Zealand Centre for Human Rights Law, Policy and Practice Symposium, 7-8 June 2013 at Auckland.

I was under the impression that these papers were to have been collected and submitted to the CAP by the Centre for Human Rights Law, but I gather that I should submit my piece direct. In essence, I argue for an expanded declaration of inconsistency jurisdiction, and that consideration be given to the establishment of a constitutional court.

I trust that submitting this paper in this way will meet the Panel's expectations for presentation.

Regards

Royden Hindle

Email signature version 2





# Human Rights and Legislative Wrongs:

## How about a widened declaration of inconsistency jurisdiction?<sup>1</sup>

"Some matters are too important to be left to majority vote"<sup>2</sup>

### Introduction

- [1] When I agreed to contribute to this conference, I thought only to make the suggestion that the Constitutional Advisory Panel should investigate, and consider recommending the adoption of, an 'across the board' declaration of inconsistency jurisdiction to apply to all of the rights that are protected by the New Zealand Bill of Rights Act 1990<sup>3</sup> and not just the anti-discrimination right. That would, I think, be an advance for the protection of human rights that is both feasible and desirable.
- [2] Recent legislation in the form of a new s.70 in the New Zealand Public Health and Disability Act now demands attention as well.
- [3] The conference organisers have asked for an opinion piece. That is what this is. Although of necessity I refer to legislation, case law and commentary, this is not an academic work.<sup>4</sup> It is just my two-cents worth.
- [4] I should say, however, that for the decade from 2002 to 2011 I was the Chair of the Human Rights Review Tribunal<sup>5</sup>. My appointment coincided almost exactly with the coming into force of the Human Rights Amendment Act 2001, which conferred the Part 1A declaration of inconsistency jurisdiction on that Tribunal. It was my privilege to have presided over the first cases in New Zealand in which parties have asked the Tribunal to exercise that jurisdiction. I do not pretend to have the broad academic

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<sup>1</sup> Opinion piece prepared for the New Zealand Centre for Human Rights Law, Policy and Practice Symposium, 7-8 June 2013 by Royden Hindle, Arbitrator and Barrister, Bankside Chambers, Auckland. This paper is a draft and should not be quoted without my permission, please.

<sup>2</sup> I am sure there are many iterations of this idea – I take this as attributed to Grano, *Judicial Review and a Written Constitution in a Democratic Society* 28 Wayne L Rev 1, 7 (1981) writing of the limits of judicial review in the context of the US Constitution (as quoted in E Cherminsky, *The Price of asking the wrong question: An essay on Constitutional Scholarship and Judicial Review* 62 Texas Law Review 1207 (1984)).

<sup>3</sup> 'NZBORA'.

<sup>4</sup> I have not, for example, even begun to work on a comparative analysis of relevant regimes outside New Zealand. Time has not permitted, as it is a big job. It is not just a question of looking at other jurisdictions (e.g., the UK) with a wide declaration of inconsistency, but a proper survey should also consider the ways in which legislation in jurisdictions with 'hard' bills of rights (e.g., Canada) have softened the jurisdiction with clauses that effectively limit (perhaps a better word is 'manage' the effects of an inconsistency finding.

<sup>5</sup> 'The Tribunal'.

overview of human rights scholars, but I do have some experience at the coalface in dealing with the issues raised.

### What have we got? The Tribunal's Part 1A jurisdiction

- [5] Part 1A of the Human Rights Act 1993<sup>6</sup> was inserted to that enactment by the Human Rights Amendment Act 2001. It took effect from 1 January 2002. It is made up of four deceptively short sections, although there are important consequential amendments elsewhere in the HRA as well.<sup>7</sup>
- [6] Part 1A of the HRA applies to the acts and omissions of the legislative, executive or judicial branches of the New Zealand government, or of any person or body in the performance of any public function, power or duty imposed by law.<sup>8</sup> The operative provision is section 20L, which provides that an act or omission to which Part 1A of the HRA applies is in breach of that part if it is inconsistent with section 19 of NZBORA. Section 20L(2) then explains that for those purposes, an act or omission is inconsistent with section 19 of NZBORA if it limits the right to freedom from discrimination affirmed by that section *and* it is not a justified limitation of that right under section 5 of NZBORA.
- [7] The legislative structure can be a bit distracting. The fact that Part 1A is placed in the HRA, and depends on the HRA for the list of grounds on which discrimination is unlawful, rather obscures the reality that Part 1A has a much more direct and substantive connection to NZBORA than it does to the HRA itself. The net result, however, is clear. Any public function or duty – including but not limited to the function of legislating itself – is to be subject to the anti-discrimination provisions of NZBORA.
- [8] I have written elsewhere about the history behind this set of provisions.<sup>9</sup> I do not repeat that, but it is relevant to what follows to remember that the legislation was not introduced as an act of selfless altruism by the Legislature. Far from it. The reason that Part 1A was introduced was because New Zealand was obliged to introduce it in

<sup>6</sup> 'The HRA'.

<sup>7</sup> See for example sections 21A to 21B (as to the applicability of Parts 1A & 2 of the HRA), section 79 (as to how different complaints are to be received, and dealt with, by the Human Rights Commission, and sections 92I (governing remedies, in particular section 92J of the HRA regarding declarations of inconsistency).

<sup>8</sup> See HRA section 20J(1). There are specific sections set out in section 20J(2), namely in relation to employment, exciting racial disharmony, sexual and racial harassment and victimisation. I note that Parts 1A & 2 of the HRA are mutually exclusive – if one applies the other does not (sections 20J(3) & 21B(1)).

<sup>9</sup> See 'Rights Against Legislative Discrimination: A Sleeping Giant? Part 1A of the Human Rights Act 1993' [2008] New Zealand Law Review 213.

consequence of its (New Zealand's) international treaty commitments.

- [9] Specifically, Art. 2(1) of the United Nations International Covenant on Civil and Political Rights<sup>10</sup> obliges state parties to:

*'...respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'*

- [10] According to article 2(3) of the ICCPR, state parties particularly undertook:<sup>11</sup>

*'(a) To ensure that any person whose rights or freedoms as here recognised are violated **shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.***

*(b) To ensure that any person claiming such a remedy shall have his right fairly determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy...' (my emphasis)*

- [11] Part 1A contemplates two quite separate categories of remedy when an unjustified infringement from the right to freedom from discrimination is found. For all functions other than the legislative function (including but by no means limited to the setting of Government policy) there is a wide range of remedies available in s. 92I, namely:

- a declaration that the defendant has committed a breach;
- an order restraining the defendant from continuing or repeating the breach;
- damages;
- orders to remedy and to declare (e.g, a contract) illegal (and relief under the Illegal Contracts Act)
- orders for education;
- anything else the Tribunal thinks fit.

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<sup>10</sup> 'ICCPR'.

<sup>11</sup> Article 26 of the ICCPR deals with discrimination as well, and affirms that all person are equal before the law, which must prohibit discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.



[12] By contrast, if what is at issue is an Act of Parliament, then there is only one remedy that can be granted. It is the declaration of inconsistency that is provided for in section 92J:

**‘92J Remedy for enactments in breach of Part 1A**

- (1) If, in proceedings before the Human Rights Review Tribunal, the Tribunal finds that an enactment is in breach of Part 1A, the only remedy that the Tribunal may grant is the declaration referred to in subsection (2).
- (2) The declaration that may be granted by the Tribunal, if subsection (1) applies, is a declaration that the enactment that is the subject of the finding is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990.
- (3) The Tribunal may not grant a declaration under subsection (2) unless that decision has the support of all or a majority of the members of the Tribunal.<sup>12</sup>
- (4) Nothing in this section affects the New Zealand Bill of Rights Act 1990.’

[13] When a legislative measure is found to be inconsistent:

**‘92K Effect of declaration**

- (1) A declaration under section 92J does not—
  - (a) affect the validity, application, or enforcement of the enactment in respect of which it is given; or
  - (b) prevent the continuation of the act, omission, policy, or activity that was the subject of the complaint.
- (2) If a declaration is made under section 92J and that declaration is not overturned on appeal or the time for lodging an appeal expires, the Minister for the time being responsible for the administration of the enactment must present to the House of Representatives—
  - (a) a report bringing the declaration to the attention of the House of Representatives; and
  - (b) a report containing advice on the Government’s response to the declaration.
- (3) The Minister referred to in subsection (2) must carry out the duties imposed on the Minister by that subsection within 120 days of the date of disposal of all appeals against the granting of the declaration or, if no appeal is lodged, the date when the time for lodging an appeal expires.’

<sup>12</sup> The Tribunal sits as a panel of three. I have never been sure why this sub-section was thought necessary.



### Some Observations

[14] The power to declare public functions generally to be inconsistent with the right to freedom from discrimination is important enough, but the power to declare legislation to be at odds with the anti-discrimination right is of undoubted constitutional significance.

[15] When the same kind of jurisdiction was enacted in the United Kingdom, that significance did not escape the attention of the commentators and academics. There is a very great deal written about whether and to what extent the introduction of the Human Rights Act 1998 in the United Kingdom affected the constitutional balance of powers between executive, legislature and judiciary. Some sense of the tone of that discussion may be conveyed by the observations of Professor Klug writing in 2003:<sup>13</sup>

*'The quest to re-establish appropriate boundaries between the judiciary and executive/legislature drove the debate which preceded incorporation of the [European Convention on Human Rights] into [United Kingdom] law. There was a concern across the political spectrum and in judicial as well as academic circles, that incorporating broad human rights standards into law would lead to the demise of the British system of Parliamentary supremacy (or sovereignty) over the courts without the transparency that preceded such constitutional earthquakes in other jurisdictions...'*

After referring to the Canadian and New Zealand models:

*The [UK HRA] – and in particular the intersection of sections 3 & 4 – was deliberately and carefully crafted to differ from both of these models. The issues of judicial deference to the legislature was settled through the intersection of those two sections. If they are applied as intended no further doctrine of judicial deference to the legislature (or legislation) is required.'*<sup>14</sup>

[16] An important idea behind the jurisdiction is that of a constitutional dialogue. Speaking of the comparable jurisdiction in the United Kingdom, Professor Hickman has written:<sup>15</sup>

*"...On the face of the [UK HRA], section 4 presents itself as an engine for dialogue between the branches of government. It provides the courts with a voice to inform the executive that despite having considered its arguments to the contrary they consider primary legislation to be incompatible with the [ECHR]. This in turn triggers a power to amend the legislation by a fast track process which has governmental impetus but which also requires parliamentary approval. It is a process that involves input from each body at different junctures and appears to take a conversational form. For this reason section 4 is at the centre of the views of those who present [the UK HRA] in dialogic terms...'*

[17] The extent of reform in New Zealand in 2001 was, of course, very much more limited.

<sup>13</sup> Klug, *Judicial Deference under the Human Rights Act 1998* (2003) 2 *EHLR* 125.

<sup>14</sup> This piece was written of NZBORA as it stood before amendment in 2001.

<sup>15</sup> Hickman, *Constitutional Dialogue, Constitutional Theories and the Human Rights Act 1998*, [2005] PL306.

The only NZBORA right in respect of which the declaration of inconsistency jurisdiction is available is the anti-discrimination right. Even so, one would have thought it significant. Nonetheless, for reasons that are not altogether clear to me, the establishment of the jurisdiction does not seem to have not caught the attention of commentators and academics in New Zealand in anything like the way that those corresponding reforms in the United Kingdom did. Perhaps one reason is that the jurisdiction was placed at the lowest level within our judicial hierarchy, in a Tribunal presided over by jobbing adjudicators not sworn Judges. I have no doubt that if the same jurisdiction had been vested in (say) the High Court, a very great deal would have been written about it by now.

[18] In contrast, much has been written in the decade since Part 1A of the HRA came into force as to whether or not the High Court has inherent power to declare inconsistency.<sup>16</sup> Such a jurisdiction - if it exists at all - is of necessity self-appointed<sup>17</sup> and the consequences of any such declaration remain speculative. I do think that the bird we have had in the hand deserved at least as much attention - at least, from a constitutional perspective - as the birds that are (for now) still in the bushes.<sup>18</sup>

[19] In any event, as it seems to me, the great advantage of a declaration of inconsistency jurisdiction (as opposed to the introduction of a 'supreme' Bill of Rights) is that it deflects discussion away from the essentially political question as to whether or not Parliament should be sovereign in all respects and at all times, or whether there are circumstances in which judicial determinations should take priority. Part 1A provides an opportunity for policy - even policy already enshrined in legislation - to be subjected to scrutiny for compliance with the anti-discrimination right. As Miller J said in *Attorney-General v Human Rights Review Tribunal & Child Poverty Action Group*:<sup>19</sup>

*'It is true that CPAG's claim is essentially political in nature and ultimately can be resolved only by political means; it must be balanced against other claims on the public purse, resolution of which is the province of politicians, who are accountable to the electorate for such decisions, and the legislature has provided that the only remedy available before the Tribunal is a declaration of inconsistency. Further, the proposition that the Courts have no business adjudicating upon claims that have serious resource allocation implications has a very respectable pedigree. The proposition was eloquently framed by Professor J A G Griffith in The Political Constitution (1979) 42 MLR 1. He contended that such claims reflect social conflict*

<sup>16</sup> For a comparatively recent review of that debate, see Geiringer, *On a Road to Nowhere: Implied Declarations of Inconsistency and the New Zealand Bill of Rights Act* (2009) 40 VUWLR 613.

<sup>17</sup> Unlike the Tribunal's power, it certainly has not been conferred by the Legislature.

<sup>18</sup> Perhaps one silver lining in the dark clouds of the budget night changes to the Public Health and Disability Act this year may be that commentators are beginning to engage in discussion about Part 1A.

<sup>19</sup> *Attorney-General v Human Rights Review Tribunal & Child Poverty Action Group* [2006] NZHC 1661; (2006) 18 PRNZ 295.



over resources that can only be resolved by political means; to address them in litigation is to disguise them as questions of law, and as unqualified rights that a Court may remedy, when in reality they are merely claims upon the community.

By admitting claims of discrimination in respect of enactments, however, Parliament has made available a cause of action and a forum in which such claims may be publicised and to some degree vindicated, if not actually remedied. Armed with a declaration, the plaintiff may press its case for a remedy in the community and in the legislature. In other words, the legislation manifestly admits claims having a political purpose.'

[20] This is not a question about interpreting statutes in a rights protecting way, but actually grappling with the complex problem of applying general legislative provisions in specific cases.

[21] As I have written elsewhere<sup>20</sup>, adopting such a jurisdiction draws discussion away from the well-worn exchanges about parliamentary sovereignty on the one hand, and legalism on the other, and allows the effort to be focussed on finding solutions to particular problems thrown up in the practical application of governmental activity (including the activity of legislating) as it impacts on the anti-discrimination right. It is a far more productive thing to be doing.

#### **Does it work?**

[22] Yes, if it is allowed to.<sup>21</sup>

[23] There has been only one declaration of inconsistency made in relation to primary legislation, in the case of *Howard v Attorney General*.<sup>22</sup> Remarkably, it was a case brought by a litigant in person, without legal assistance.

[24] Mr Howard challenged the legislation under which people aged over 65 were no longer eligible for consideration for vocational rehabilitation after suffering personal injury.<sup>23</sup>

[25] With reference to the fact that Mr Howard was representing himself, the Tribunal

<sup>20</sup> See note 9 above.

<sup>21</sup> Since I was Chair of the Tribunal for the period during which all of the cases mentioned below were dealt with, I must accept that observers might say 'Of course he would say that'.

<sup>22</sup> *Howard v Attorney General* (No.3) (2008) 8 HRNZ 378.

<sup>23</sup> More specifically, the plaintiff has applied for a declaration that cl.52 of the First Schedule to the Injury Prevention, Rehabilitation, and Compensation Act 2001 was inconsistent with the right to freedom from discrimination affirmed by s.19 of NZBORA. In their essentials, the effect of the relevant legislative provisions were that eligibility for support by way of vocational rehabilitation after personal injury was more restricted for those who are near 65 and older, than it was for younger people.

said<sup>24</sup>:

*'The matter has some significance, not least because it is the first time that a claim under Part 1A of the Human Rights Act 1993 (the HRA) has reached the stage of a hearing on the substantive issues. Inevitably the matter has raised issues that are novel and, at points, complex.*

*The plaintiff was not represented by counsel. That is not a criticism; to the contrary, we regard the case as exemplifying the very thing was intended by Parliament when Part 1A was introduced to the HRA by the Human Rights Amendment Act 2001, and the power to make declarations of inconsistency was given to a Tribunal so as to be accessible to lay litigants: see (for example) s.92C(1)(a) of the HRA. ...'*

[26] After analysing the arguments, the Tribunal concluded<sup>25</sup>:

*Even acknowledging all due deference that needs be allowed, and notwithstanding all of the other matters raised by Crown counsel, we have not been persuaded that the prima facie age-related discrimination that we have identified in s.85 and cl.52 IPRCA is justified under s.5 NZBORA, when there is no material additional cost to the ACC scheme in removing it, and no other adverse social or economic consequences that could possibly be said to follow if the age limit on eligibility were removed. In our assessment, the limiting measures no longer serve a purpose that is sufficiently important to justify curtailment of the right to freedom from discrimination by reason of age (if they ever did).*

*We therefore conclude that s.85 and cl.52 are inconsistent with the right to freedom from discrimination as affirmed by s.19 NZBORA. In our view the plaintiff is entitled to have a declaration accordingly.*

[27] Although Mr Howard succeeded on the inconsistency point, is fair to say that he advanced other points which did not succeed – for example, a claim that cl.52 amounted to disproportionately severe treatment and punishment, and was thus at odds with s.9 of NZBORA, had earlier been struck out on the basis that it was outside jurisdiction.<sup>26</sup> Furthermore, even at the hearing in the Tribunal the matter had an air of mootness about it, since it was clear that the legislation was in the process of being amended to ameliorate the ageist exclusion of people over 65 from consideration for vocational rehabilitation.

[28] One might have hoped that the Crown would have accepted the outcome, given that nothing really turned on it. But it did not. An appeal was commenced, but out of time. That then gave rise to a series of arguments in the High Court and the Court of Appeal about the rules relating to appeals from the Tribunal to the High Court. In the

<sup>24</sup> Para's [3] to [5] of the Tribunal's decision. The point that Parliament intended that claims of this kind should be open to lay litigants was later endorsed by the Chief Human Rights Commissioner Rosslyn Noonan: *"It is absolutely people like Mr Howard who claim their rights and stand up and insist that they be respected ... it's a message to ordinary New Zealanders the laws are there to protect you and not to be used against you."* (as quoted in *'Injured man beats ACC in ageism fight'* NZ Herald online 20 May 2008).

<sup>25</sup> At para's [86] and [87].

<sup>26</sup> *Howard v Attorney General* [2006] NZHRR 46. It is difficult to see how the claim that Mr Howard was effectively being tortured by the legislation and/or the ACC would have succeeded in any event.



end it was decided that the High Court did not have power to deal with the appeal, since informalities in the way it had purportedly been commenced could not be cured.<sup>27</sup>

- [29] Realistically, if *Howard* is an access to justice success story, it is probably only because both the Director of Human Rights Proceedings and the Human Rights Commission swung into action after the Tribunal's decision to take up the issues on Mr Howard's behalf. It is hard to imagine that Mr Howard would have been able to cope on his own with the technical arguments about procedure that followed.
- [30] A related observation about the case has to do with the lengths that the Crown was willing to go to in order to challenge the Tribunal's declaration after it had been made. As noted, by the time the matter finally reached the Court of Appeal the legislation at issue had long since been changed to remove the offending restrictions. Quite what value the Crown saw in expending so much effort and cost to have a chance to challenge a declaration that was no longer really going to make any difference, is not clear. Certainly the decision has some modest historic value as the first such declaration in New Zealand, but the Tribunal's decision would have had limited precedent value, and could not possibly have prevented the Crown from taking any of the points that were subsequently explored in detail in cases like *Child Poverty Action Group Inc v Attorney-General*<sup>28</sup>, *Atkinson & Ors v Ministry of Health*<sup>29</sup>, *Idea Services v Attorney General*<sup>30</sup> and even (although not a Part 1A case) *Winthur v Housing Corporation of New Zealand*.<sup>31</sup>
- [31] It would be unfortunate if the appeal-related litigation in *Howard* was all just to keep the Crown's 'slate clean'. Certainly it is hard to imagine that the same steps would have been taken had the case been litigated in the United Kingdom, where the underlying idea of a constructive 'dialogue' between the legislature and the courts has matured, and declarations are, for the most part, respected and acted on.<sup>32</sup>

<sup>27</sup> *Attorney General v Howard* [2010] NZCA 58.

<sup>28</sup> *Child Poverty Action Group Inc v Attorney-General* [2008] NZHRRT 31.

<sup>29</sup> *Atkinson & Ors v Ministry of Health* (2010) HRNZ 902.

<sup>30</sup> *Idea Services Ltd v Attorney-General* [2011] NZHRRT 11; and in the High Court, *Attorney General v Idea Services Limited* [2012] NZHC 3229 (3 December 2012).

<sup>31</sup> *Winthur v Housing Corporation of New Zealand* [2011] NZHRRT 18.

<sup>32</sup> <http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/peoples-rights/human-rights/pdf/decl-incompat-tabl.pdf> (last accessed 8/3/2013). I commented on this data when writing in 2008: see note 9 above. More recently, see also <http://www.justice.gov.uk/downloads/publications/moj/2010/responding-human-rights-judgements-2009-2010.pdf> (accessed 8/3/2013).

- [32] When writing about these things as recently as March this year<sup>33</sup>, I ended this part of my paper with this note:

'In fairness, every case under Part 1A will come with a particular context, and single out the acts or omissions of a particular Government agency for scrutiny. Generalisations may not be appropriate. It was probably also inevitable that early cases under the legislation were going to involve a good deal of legal analysis, and reflect a legitimate effort on behalf Crown Counsel to ensure that the legislation is properly understood. But as the case law settles down, and the parameters of what is expected of Government in the Part 1A era become easier to identify<sup>34</sup>, it is to be hoped that Crown agencies will feel more comfortable about accepting a finding of inconsistency, and responding by working to solve the underlying problem (as opposed to arguing about the application of Part 1A). Certainly the idea that Part 1A is aimed to encourage a dialogue between the judicial and legislative arms of government will not flourish unless the relevant government agencies are willing to engage in a solution-centred consideration of the issues.'

- [33] I was trying to be nice about it. It never occurred to me that Government might be willing to act as it subsequently has in respect of the 'parents as caregivers' litigation (*Atkinson v Ministry of Health*<sup>35</sup>), of which more below. But that is why I say that the jurisdiction will work, if it is allowed to. I worry that the Crown's 'defeat the declaration at all costs' attitude in *Howard*, and the 'legislate if you can't win' approach in *Atkinson*, indicate an unwillingness on the part of the executive and legislative branches of Government to let Part 1A work.

### Extending the jurisdiction to other rights?

- [34] Before getting to that, however, I want to advance the central proposition that I would offer the Constitutional Advisory Panel.

- [35] I submit that the declaration of inconsistency model has a valuable role to play in protection of human rights in New Zealand, and in our constitutional arrangements generally, that consideration should be given to extending it so as to make it available in respect of some (perhaps all) of the other rights in NZBORA. Indeed I suggest that is far more likely to be a productive discussion than simply spinning the wheel again on the old debate about whether we should have a supreme Bill of Rights or not.<sup>36</sup>

<sup>33</sup> *The Human Rights Review Tribunal: Problems and Possibilities*, a paper prepared for the Legal Research Foundation Conference 'Access to Justice in an Age of Austerity' at Auckland 11 March 2013.

<sup>34</sup> Which, I submit, has now been achieved for all practical purposes by the High Court's very thorough decision in the *Idea Services* case: *Attorney-General v Idea Services* [2012] NZHC 3229. I hope I may be allowed to respectfully disagree with some of the conclusions (although none of them affect the end result), but the Court's systematic approach to the issues now provides a practical and comprehensive template for analysing Part 1A matters.

<sup>35</sup> *Supra* note 29.

<sup>36</sup> The reference to spinning the wheel echoes the title of Dame Sian Elias' 2003 paper 'Sovereignty in the 21<sup>st</sup> century: Another spin on the merry-go-round' (2003) 4 Public L Rev 148. As for the improbability that debate about a supreme bill



- [36] Of course there will be some practical difficulties to be grappled with.
- [37] One of the more obvious problems has to do with synchronising any declaration of inconsistency process that may be allowed for in a criminal matter with the trial process itself. As the *R v Hansen* case demonstrates<sup>37</sup> there are situations in which NZBORA issues inevitably have to be determined in the context of an unfolding criminal trial. Any procedure for a declaration of inconsistency would either have to be available to the trial court or, if vested in some other independent authority, then there will have to be procedures to see that the issue can be taken up, dealt with and remitted back to the trial court in a timely way.
- [38] Furthermore, it is wholly unacceptable that the adjudicators of these kinds of fundamental rights do not presently have the independence that comes with full judicial tenure.<sup>38</sup>
- [39] Perhaps the greatest difficulty, however, will be to ensure that the procedures by which the remedy of a declaration of inconsistency can be accessed are set up in such a way that they are accessible to self-representing lay litigants. Access to justice was, after all, the primary reason why the limited declaration of inconsistency jurisdiction we do have in New Zealand was conferred on the Tribunal in 2001 (i.e., as opposed to the courts). At the same time, it has to be accepted that when large issues are at stake, the procedures need to be sufficiently robust to ensure that the subject matter is properly prepared for hearing.
- [40] My present preference is to suggest the establishment of an independent constitutional court with a wide declaration of inconsistency power. If that sounds grandiose, well, perhaps. But surely it is a more productive focus of attention than yet another iteration of the 'Should we have a supreme Bill of Rights' argument which, if past experience teaches anything, is doomed to fail.
- [41] The essential idea involves establishing a court of properly appointed judges, with

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of rights will actually achieve one, any excitement about that at the start of the present Constitutional Arrangements review process was flattened by hearing the Prime Minister, Professor Geddes and Professor Joseph all expressing doubts that much actual change (at least, on the written constitution topic) is likely to come of the Review (all interviewed on Radio New Zealand Morning Report, 8.42 am Tuesday 5 March 2013).

<sup>37</sup> *R v Hansen* [citation]

<sup>38</sup> Refer to the paper I did for the last conference in March 2013.

particular experience in dealing with NZBORA issues (and Treaty of Waitangi issues?) to consider and, where appropriate, declare inconsistency with any or all of the rights in the NZBORA.<sup>39</sup> As with the Tribunal's present jurisdiction, the remedy for inconsistency between a legislative measure and NZBORA should properly be limited to that of declaration; but where there is some other function involved then I see no reason not to give the court the same scope of powers as apply in the Tribunal's jurisdiction to all other public functions.

### ***An unexpected headwind***

[42] All of this discussion depends, of course, on the notion that the Legislature is willing to engage in dialogue with the courts over rights issues. Until about a month ago, there was no reason to doubt that it would. But the events of Budget Night this year now cast a shadow over all of this discussion.

[43] The *Atkinson* case<sup>40</sup> concerned claims by a number of people who have care of adult disabled children.<sup>41</sup> They asked to be paid for the work done in that capacity, just as they would have been if they were not family members but had been employed at arms-length to care for the disabled persons in question. The Tribunal upheld the claim.<sup>42</sup> An appeal to the High Court failed.<sup>43</sup> An appeal to the Court of Appeal also failed.<sup>44</sup> The net result was a clear message from the judicial branch of government that the policy which prevents parents and family members from being paid as caregivers was inconsistent with the right to freedom from discrimination, and in a way that was not justified.

[44] Undoubtedly the Government saw a prospect of a significant financial liability. Whether and to what extent that was ever true will probably now never be known. It will certainly not be tested in the Tribunal/Courts. Parliament was not prepared to let those processes unfold. Instead it chose to deal with the problem by enacting s.70 of the New Zealand Public Health and Disability Act (as amended by the New Zealand

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<sup>39</sup> I am aware, of course, that there is also a debate as to whether the rights in NZBORA should be extended to include (for example) property or cultural rights. I am not engaging in that discussion here, not because it is not important, but because the idea of a constitutional court would embrace all of the rights in the NZBORA.

<sup>40</sup> *Supra*, note

<sup>41</sup> This is an opinion piece, and readers are entitled to know that I am the father of a young man who has profound developmental delays and autism.

<sup>42</sup> Reference. Note that although the discussion is about declarations of inconsistency, the claim related to policy not legislation - so the range of remedies went well beyond simply declaring inconsistency, and included the possibility of damages.

<sup>43</sup> reference

<sup>44</sup> reference



Public Health and Disability Amendment Act 2013). The legislation was enacted as part of the Budget night legislation, with no chance for any scrutiny by Select Committee, and in circumstances in which the Government's coalition partners were unable to take an independent view since this was part of confidence and supply.

- [45] I do not discuss the question as to whether and to what extent the provisions of the Act will meet the concerns of the affected class. Of present concern are the provisions of s.70E which provides:

***'70E Claims of unlawful discrimination in respect of this Act or family care policy precluded***

- (1) *In this section, **specified allegation** means any assertion to the effect that a person's right to freedom from discrimination on 1 or more of the grounds stated in section 21(1)(b), (h), (i), and (l) of the Human Rights Act 1993, being the right affirmed by section 19 of the New Zealand Bill of Rights Act 1990, has been breached—*
  - (a) *by this Part; or*
  - (b) *by a family care policy; or*
  - (c) *by anything done or omitted to be done in compliance, or intended compliance, with this Part or in compliance, or intended compliance, with a family care policy.*
- (2) *On and after the commencement of this Part, no complaint based in whole or in part on a specified allegation may be made to the Human Rights Commission, and no proceedings based in whole or in part on a specified allegation may be commenced or continued in any court or tribunal.*
- (3) *On and after the commencement of this Part, the Human Rights Commission must not take any action or any further action in relation to a complaint that—*
  - (a) *was made after 15 May 2013; and*
  - (b) *is, in whole or in part, based on a specified allegation.*
- (4) *On and after the commencement of this Part, neither the Human Rights Review Tribunal nor any court may hear, or continue to hear, or determine any civil proceedings that arise out of a complaint described in subsection (3).*
- (5) *Nothing in this section or in section 70D affects—*
  - (a) *a complaint that is, in whole or in part, based on a specified allegation but that has been lodged with the Human Rights Commission or any court before 16 May 2013; or*
  - (b) *the jurisdiction of the Human Rights Review Tribunal or of a court to hear and determine proceedings that arise out of a complaint described in paragraph (a).*
- (6) *Despite subsection (5)(b), if in proceedings to which that subsection applies*

the Human Rights Review Tribunal or a court finds that a specified allegation has been proved, the Human Rights Review Tribunal or the court may grant no remedy other than the declaration described in subsection (7).

(7) The declaration that may be granted by the Human Rights Review Tribunal or the court in proceedings to which subsection (5)(b) applies is a declaration that the policy to which the finding relates is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990.

[46] There is so much that is wrong about this legislation that is hard to know where to begin. Sir Geoffrey Palmer has described it as 'unconstitutional' and 'against the rule of law'.<sup>45</sup> Professor Geddes commented '*I think National just broke our constitution*'.<sup>46</sup> The Law Society has written to the Attorney-General pointing out that preventing the courts from reviewing decisions made in the exercise of legislative functions and refusing to provide reasons for doing so '*... is quite alien to the expectations we have of our parliamentary system*'.<sup>47</sup> Dame Anne Salmond has written:

*'How low can you go? These [the plaintiffs in Atkinson and the group they represent] are people whose family members are disabled and need care, and who seek to give it to them, and want the same support from the State as paid carers from outside the family. Denying them the legal rights to which they are entitled is a shabby piece of legislation, as the New Zealand Herald says, and shoving it through under urgency is a disgrace'*<sup>48</sup>

[47] There can be no doubt that the legislation discriminates, and even the Attorney-General's very short s.7 report expressed the view that the discrimination is not justified.<sup>49</sup>

### Some notes

[48] I am sure that there is a great deal of water yet to go under the bridge on this issue. For what they are worth, I add these points (not in any order of importance):

[a] There should be significant concern about the way in which the Regulatory Impact Statement that was made available to Parliament on budget night has been redacted in the version that has subsequently been issued publicly.<sup>50</sup> The reason given is that

<sup>45</sup> As reported in the Waikato Times [www.stuff.co.nz/waikato-times/news/8700775/](http://www.stuff.co.nz/waikato-times/news/8700775/) (accessed 1/6/13).

<sup>46</sup> [www.pundit.co.nz/content/i-think-national-just-broke-our-constitution](http://www.pundit.co.nz/content/i-think-national-just-broke-our-constitution) (accessed 28/5/13).

<sup>47</sup> Limits imposed by new law alarming' [www.lawsociety.org.nz/home/for-the-public/for-the-media/latest-news](http://www.lawsociety.org.nz/home/for-the-public/for-the-media/latest-news) (accessed 30/5/13).

<sup>48</sup> [www.pundit.co.nz/content/government-or-playground-bully](http://www.pundit.co.nz/content/government-or-playground-bully) (accessed 28/5/13). The NZ Herald editorial referred to was that for 28 May 2013.

<sup>49</sup>

<sup>50</sup> Regulatory Impact Statement – Government Response to the Family Carers Case 15 March 2013.



the information that is withheld is 'legally privileged'. That means that we the public cannot know what other options for solving the problem thought to have been created by the *Atkinson* litigation were considered by parliament. Legally privileged? How so? We are, after all, talking about information that was disclosed to our elected representatives before they voted on primary legislation. There is an issue of constitutional importance in this alone;<sup>51</sup>

[b] I wonder if the Human Rights Commission/Director of Human Rights Proceedings will give consideration to the question of whether this legislation should be challenged using the vehicle for such a challenge that was enacted by Parliament for this very purpose in 2001, i.e., under Part 1A? I suggest that they should. The Attorney-General's report tells us that the legislation is an unjustified limitation of rights – and, unlike the rest of us, he presumably saw the Regulatory Impact Statement in an unedited form. If nothing else, proceedings under Part 1A should at least winkle out of Government what it saw as the alternatives to passing the legislation.

[c] Another avenue that should be given careful consideration relates to the possibility of taking the issue up with the United Nations Committee on Human Rights. After all, the explicitly stated objective of this legislation is to deny a class of people who suffer discrimination any effective judicial remedy. That seems to be a florid violation of New Zealand's obligations under ICCPR.

[49] In the meantime, I hope the Constitutional Advisory Panel will not be discouraged by this unfortunate turn of events from considering the possibility of a widened declaration of inconsistency jurisdiction. I still think that to be a desirable advance in our constitutional arrangements. Nor is it really a very dramatic a suggestion. Adopting such a jurisdiction would, after all, only bring us into line with the United Kingdom – the country from which much of our constitutional heritage derives.

<sup>51</sup> We should not think this is an isolated event in the context of human rights issues. Something similar happened when the Child Poverty Action Group case was dealt with by the Tribunal. See para's 78 & 79:

*"During the hearing there was at least a suggestion that the fact of the plaintiff's complaint, and the possibility that the issues thus raised might in due course be the subject of litigation, meant that whatever work was done by or for the Crown in these respects was covered by litigation privilege. Perhaps so. Nonetheless we were left wondering about the tension between a claim to litigation privilege in the circumstances, as against the underlying objective of s.7 NZBORA. The issues were, after all, being raised in the context of proposed legislation that was before the House of Representatives for consideration. The issues of prima facie discrimination and justification are topics the House might have expected to be dealt with.*

*The evidence we heard does not allow us to say why the issues raised in this case were not mentioned in the s.7 Report, or what work (i.e., of the kind foreshadowed by the WFF Cabinet Paper) was done to provide any justifications, or what the Crown might have considered the justification(s) to be, before the relevant legislation was considered by the House and passed into law. We can only say that we think it was unfortunate that the issues we have had to deal with are not mentioned in the s.7 Report at all."*





1507

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 21/06/2013 2:24 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Anthony Hine Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Riverton Postal Region:  
Southland Postal Post Code: Postal Country: New Zealand Submission: The New  
Zealand Constitution should include phraseology which:

- Welcomes immigrants, but only those who agree, & subsequently prove, that they respect & will abide by our principles, laws and social expectations. They should not choose to come here then, when their population reaches a certain critical threshold, demand society change to suit their cultural &/or philosophical &/or religious characteristics.
- does not include The Treaty Of Waitangi, nor its principles - it is divisive
- treats every individual as a New Zealander, rather than as a member of a minority group, no matter how vocal that group may be.
- Enshrines free speech
- Prevents governments from using opaque means to operate all or any of its functions - transparency should be paramount and no USA-style invoking 'National Security' should be permitted to hide events/actions from the public.

Sent on the 21 June 2013 at 14:23

1020

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/06/2013 3:27 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Roland Robert Hinton Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB:  
Postal City: Auckland Postal Region: Postal Post Code: Postal Country: New  
Zealand Submission: All New Zealand born citizens should be equal and subject to all laws passed  
by a New Zealand Government elected free of any racial influence. The Treaty has no place here  
today as under international law, no form of apartheid is permitted and there are  
few if any full-blooded legal heirs of any signatories. Only grandchildren of British descent have UK  
patriality rights, all the following generations are full NZ citizens and therefore owe their full allegiance  
to the Country of their birth. All Parliamentary  
representation must be on the basis of all citizens being equal, no-one can claim to have more rights  
in Parliament or in law. All NZ laws must be applicable to all citizens irrespective of race, colour or  
creed. All Government Departments and Agencies must  
be free of any outside bias or influence and not swayed by Ministerial interference of any kind. Public  
Referendums to be compulsory when anything that can effect the source and integrity of the nation's  
wealth, now and in the future.

Sent on the 4 June 2013 at 03:26