



# Waitangi Tribunal, 2014

Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

He Whakaputanga me te Tiriti

The Declaration and the Treaty

Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)



Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

# **He Whakaputanga me te Tiriti The Declaration and the Treaty**

*The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*

WAI 1040

WAITANGI TRIBUNAL REPORT 2014



Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

National Library of New Zealand Cataloguing-in-Publication Data

New Zealand. Waitangi Tribunal.

He Whakaputanga me te Tiriti = The Declaration and the Treaty:  
the report on stage 1 of the Te Paparahi o Te Raki Inquiry / Waitangi  
Tribunal (author).

Includes bibliographical references.

ISBN 978-1-986956-308-0

1. Treaty of Waitangi (1840). 2. Declaration of Independence (1835)

3. New Zealand—History—To 1840. [1. Tiriti o Waitangi. reo

2. He Wakaputanga o te Rangatiratanga o Niu Tirenī. reo

3. Kōrero nehe. reo]

1. Title. II. Title: Declaration and the Treaty.

993.01—dc 23

[www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

Typeset by the Waitangi Tribunal

Published by Legislation Direct,

Lower Hutt, New Zealand

Printed by Printlink, Lower Hutt, New Zealand

18 17 16 15 14 5 4 3 2 1

Set in Adobe Minion Pro and Cronos Pro Opticals

Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)



HE MIHI

*Tātai whetū ki te rangi, mau tonu, mau tonu  
Tātai tangata ki te whenua, ngaro noa, ngaro noa*

*E koutou kua ngaro ki te pū o mahara  
E koutou i pīkau i tēnei take ki te aro o Te Rōpū Whakamana i te Tiriti o Waitangi  
Tēnei ka haku, tēnei ka mapu*

*Kua kore koutou i te tirohanga tangata  
Kua kore koutou i te pūao o te ata tū  
Tē kite i te mutunga o ngā mahi, tē rongō i te tutukinga o ngā moemoeā.  
Tēnei ka auē, tēnei ka aulhi*

*Mā ngā haumāiuiui o tēnei kaupapa koutou e hahū mai anō  
Ka rangona tonutia ō reo e ngā rau o te pūrongo*

*E Rima, Hōne, ko kōrua tēnā, ā, koutou katoa i te hīnganga o te tīni, i te moenga o te mano*

*He aha māku?  
He tangi, he mīhi, he poroporoaki*

*E moe, i te moenga roa, ki reira okioki ai*

*While the starry hosts above remain unchanged and unchanging  
The earthly world changes inevitably with the losses of precious, loved ones*

*To those of you who have been lost to the void of memories  
To you who heralded this inquiry before the Waitangi Tribunal  
For you we lament*

*To those of you who are lost from sight  
To you who will not see the dawn of a new day  
Not see the completion of your work nor to hear of the achievement of your dreams  
For you we cry of distress*

*You are remembered through the fruit of your toil and your voices are heard by the pages of our report*

*Rima Edwards, John Alexander, all of you who departed to the assembly of the hundreds and  
the congregation of the thousands*

*What am I left to do?  
Grieve, acknowledge, farewell*

*Rest now in peace*

Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

SHORT CONTENTS

Letter of transmittal .....	xxi
-----------------------------	-----

<b>CHAPTER 1: INTRODUCTION .....</b>	<b>1</b>
1.1 The meaning and effect of the treaty .....	1
1.2 Te Paparahi o Te Raki inquiry .....	3
1.3 The parties' positions .....	6
1.4 About this report .....	10

<b>CHAPTER 2: TWO PEOPLES, TWO WORLDS .....</b>	<b>19</b>
2.1 Introduction .....	19
2.2 Te Ao Māori .....	20
2.3 The British world .....	36
2.4 Conclusion: Two Peoples, Two Worlds .....	47

<b>CHAPTER 3: FROM ENCOUNTER TO ALLIANCE? .....</b>	<b>55</b>
3.1 Introduction .....	55
3.2 Early European explorers, 1769–72 .....	57
3.3 Kāwana Kingi: forging relationships .....	67
3.4 Voyages to England .....	76
3.5 Te Pahi's troubles with whalers .....	78
3.6 Ruatara, Marsden, and the establishment of the Rangihoua mission .....	84
3.7 The significance of Hongi's England trip .....	95
3.8 Ngāpuhi Appeals to British Authority, 1831 .....	108
3.9 The arrival of the British Resident .....	116
3.10 Conclusion .....	137

<b>CHAPTER 4: HE WHAKAPUTANGA AND THE DECLARATION OF INDEPENDENCE .....</b>	<b>153</b>
4.1 Introduction .....	153
4.2 The context for he Whakaputanga .....	155
4.3 The making of he Whakaputanga .....	160
4.4 Mana, rangatiratanga, law, and alliance: the Declaration's four articles .....	171
4.5 Britain's response to the Declaration .....	183

CHAPTER 4: HE WHAKAPUTANGA AND THE DECLARATION—*continued*

4.6	An emergence? .....	187
4.7	The Tribunal's views on he Whakaputanga and the Declaration of Independence ..	198
4.8	1836–37: the impact of the Declaration .....	203
4.9	Concluding remarks .....	214

CHAPTER 5: CONTESTED GROUND .....

5.1	Introduction .....	229
5.2	The question of depopulation .....	232
5.3	Economy and material culture .....	239
5.4	Māori engagement with Christianity .....	248
5.5	Mana pukapuka: the pursuit of literacy .....	257
5.6	Warfare and peacemaking .....	260
5.7	Tikanga and ture .....	263
5.8	Rangatira and rangatiratanga .....	270
5.9	The impact of land transactions .....	274
5.10	Conclusion .....	282

CHAPTER 6: THE BRITISH MOVE TOWARDS ANNEXATION .....

6.1	Introduction .....	295
6.2	Wakefield's scheme for colonisation .....	296
6.3	The New Zealand Association negotiations .....	301
6.4	The Government takes initial steps .....	307
6.5	The colonisers finally provoke action .....	312
6.6	Normanby's final instructions .....	315
6.7	Hobson departs and the instructions leak .....	325
6.8	The process adopted by the British for acquiring sovereignty .....	327
6.9	The French 'threat' – impetus for action? .....	330
6.10	Conclusion .....	333

CHAPTER 7: THE NEGOTIATION AND SIGNING OF TE TIRITI .....

7.1	Introduction .....	339
7.2	Hobson's time in Sydney, 24 December 1839 to 18 January 1840 .....	339
7.3	Hobson's arrival in the Bay of Islands .....	340
7.4	The drafting of the Treaty and te Tiriti .....	342
7.5	Te Tiriti and the Treaty: the language .....	348
7.6	Ngā Whaikōrero o Waitangi .....	351

7.7	The signing of te Tiriti at Waimate .....	376
7.8	Ngā Whaikōrero o Mangungu .....	377
7.9	The events of 13 and 14 February 1840 .....	383
7.10	Further signatures are gathered; sovereignty is asserted .....	385
7.11	Gipps's Sydney treaty .....	389
7.12	Back-translations .....	392
7.13	Conclusion .....	394

CHAPTER 8: PAST PERSPECTIVES ON TE TIRITI AND THE TREATY .....

8.1	Introduction .....	407
8.2	Scholarship about the treaty .....	408
8.3	Previous Tribunal and court statements .....	432
8.4	Conclusion .....	441

CHAPTER 9: CLAIMANT AND CROWN EVIDENCE AND SUBMISSIONS .....

9.1	Introduction .....	447
9.2	Claimant accounts of the signing of te Tiriti .....	447
9.3	Historians' evidence at our inquiry .....	460
9.4	Closing submissions .....	476
9.5	Conclusion .....	491

CHAPTER 10: OUR CONCLUSIONS .....

10.1	Introduction .....	497
10.2	He Whakaputanga and the Declaration of Independence – meaning and effect ...	499
10.3	The making of the treaty .....	503
10.4	The meaning and effect of the treaty .....	521
10.5	Kōrero whakakapi .....	527

Summary of conclusions .....	529
------------------------------	-----

APPENDIX: SELECT RECORD OF INQUIRY .....

Record of hearings .....	535
Record of proceedings .....	536
Record of documents .....	561

Picture credits .....	569
-----------------------	-----

**Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)**

**Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)**



LONG CONTENTS

Letter of transmittal .....	xxi
-----------------------------	-----

<b>CHAPTER 1: INTRODUCTION .....</b>	<b>1</b>
1.1 The meaning and effect of the treaty .....	1
1.2 Te Paparahi o Te Raki inquiry .....	3
1.3 The parties' positions .....	6
1.3.1 Claimant submissions .....	6
1.3.2 Crown submissions .....	8
1.3.3 Oral tradition and written evidence .....	8
1.3.4 The meaning of 'sovereignty' .....	9
1.4 About this report .....	10
1.4.1 The scope of this report .....	10
(1) A contextual report, not a report into claims .....	10
(2) Events after the February 1840 signings of te Tiriti .....	10
(3) Geographic scope .....	10
1.4.2 Terminology .....	11
(1) Te Tiriti and the Treaty .....	11
(2) Te Paparahi o Te Raki: the name of this inquiry .....	11
(3) 'Ngāpuhi' .....	11
(4) The sound written as 'wh' .....	11
1.4.3 The structure of this report .....	11
(1) Chapter 2: Two Peoples, Two Worlds .....	12
(2) Chapter 3: From Encounter to Alliance? .....	12
(3) Chapter 4: He Whakaputanga and the Declaration of Independence .....	12
(4) Chapter 5: Contested Ground .....	13
(5) Chapter 6: The British Move towards Annexation .....	13
(6) Chapter 7: The Negotiation and Signing of Te Tiriti o Waitangi .....	14
(7) Chapter 8: Past Perspectives on te Tiriti and the Treaty .....	14
(8) Chapter 9: Claimant and Crown Evidence and Submissions .....	14
(9) Chapter 10: Conclusion .....	15

<b>CHAPTER 2: TWO PEOPLES, TWO WORLDS .....</b>	<b>19</b>
2.1 Introduction .....	19
2.2 Te Ao Māori .....	20
2.2.1 Introduction: te ao o ngā tūpuna .....	20
2.2.2 The emergence of Te Ao Mārama .....	20
2.2.3 Whanaungatanga, mana, tapu, and utu .....	22

CHAPTER 2: TWO PEOPLES, TWO WORLDS—*continued*

2.2	Te Ao Māori— <i>continued</i>	
2.2.4	Rāhiri's people	26
2.2.5	Hapū and rangatira	30
2.2.6	Relationships between groups	32
2.2.7	Hokianga and the Bay of Islands in the 1700s	34
2.3	The British world	36
2.3.1	Cook's instructions illuminate the British world	36
2.3.2	The power of property rights	38
2.3.3	The emergence and expansion of Europe	39
2.3.4	The state of the nation: British sovereignty and government	42
2.3.5	Being British in the mid-eighteenth century	43
2.3.6	Imperial Britain	43
2.4	Conclusion	47

CHAPTER 3: FROM ENCOUNTER TO ALLIANCE? . . . . . 55

3.1	Introduction	55
3.2	Early European explorers, 1769–72	57
3.2.1	Cook at the Bay of Islands, 1769	57
3.2.2	De Surville at Tokerau, 1769	63
3.2.3	Marion du Fresne at the Bay of Islands, 1772	63
3.3	Kāwana Kingi: forging relationships	67
3.3.1	Tuki and Huru at Norfolk Island, 1793	69
3.3.2	Te Pahi in Sydney, 1805–06	72
3.4	Voyages to England	76
3.4.1	Te Mahanga and Maatara	76
3.4.2	Ruatara	76
3.5	Te Pahi's troubles with whalers	78
3.5.1	Te Pahi, Atahoe, and George Bruce	78
3.5.2	The attack on the <i>Boyd</i> and the death of Te Pahi	80
3.6	Ruatara, Marsden, and the establishment of the Rangihoua mission	84
3.6.1	Ruatara's return and further mistreatment	84
3.6.2	Kendall and Hall visit Rangihoua	86
3.6.3	Hongi and Ruatara in Sydney and the mission's departure for New Zealand	88
3.6.4	The mission is established	90
3.7	The significance of Hongi's England trip	95
3.7.1	The question of British authority at the Bay	95
3.7.2	The pursuit of muskets	97
3.7.3	Hongi's meeting with George IV	98
3.7.4	Hongi's acquisition of muskets and motive for trip	100



3.7.5	Legacies of the trip: 'nation making' and warfare?	106
3.8	Ngāpuhi Appeals to British Authority, 1831	108
3.8.1	The Girls' War, 1830	109
3.8.2	The <i>Elizabeth</i> affair	110
3.8.3	<i>La Favorite</i> and the petition to William IV	111
3.9	The arrival of the British Resident	116
3.9.1	Early colonisation schemes	116
3.9.2	Busby's appointment and arrival	118
3.9.3	The selection of a national flag	128
3.9.4	The attack on the residency and Busby's crisis	134
3.10	Conclusion	137

#### CHAPTER 4: HE WHAKAPUTANGA AND THE DECLARATION OF

INDEPENDENCE . . . . .	153
4.1 Introduction . . . . .	153
4.1.1 He Whakaputanga and the Declaration . . . . .	153
4.1.2 A note on terminology . . . . .	155
4.2 The context for he Whakaputanga . . . . .	155
4.2.1 Accelerated contact . . . . .	155
4.2.2 Ardent spirits and local law . . . . .	158
4.2.3 The 'Sovereign Chief' of New Zealand . . . . .	159
4.3 The making of he Whakaputanga . . . . .	160
4.3.1 The drafting of the English-language text . . . . .	160
4.3.2 Busby's account of the hui at Waitangi . . . . .	161
4.3.3 How the declaration was drafted . . . . .	163
4.3.4 The adoption of he Whakaputanga . . . . .	165
4.3.5 Further signatures . . . . .	165
4.3.6 Tribunal views on the making of he Whakaputanga . . . . .	167
4.4 Mana, rangatiratanga, law, and alliance: the Declaration's four articles . . . . .	171
4.4.1 Interpreting the texts . . . . .	171
(1) Which text was authoritative? . . . . .	171
(2) Language and world view . . . . .	171
(3) The meanings of specific words and phrases . . . . .	172
4.4.2 Article 1 – 'wenua rangatira' and 'te Wakaminenga' . . . . .	172
(1) 'Rangatiratanga' and 'wenua rangatira' . . . . .	172
(2) 'Ko te Wakaminenga o nga Hapu o Nu Tireni' . . . . .	173
4.4.3 Article 2 – Mana, kīngitanga, law, and government . . . . .	179
(1) 'Ko te Kingitanga ko te mana i te whenua' . . . . .	180
(2) Wakarite ture or framing laws . . . . .	180
(3) Kāwanatanga and functions of government . . . . .	181
(4) ' . . . in their collective capacity . . . ' . . . . .	181

CHAPTER 4: HE WHAKAPUTANGA AND THE DECLARATION—*continued*

4.4	Mana, rangatiratanga, law, and alliance: the Declaration's four articles— <i>continued</i>	
4.4.4	Article 3 – meetings of Te Whakaminenga	182
4.4.5	Article 4 – Friendship and protection	182
4.5	Britain's response to the Declaration	183
4.6	An emergence?	187
4.6.1	Claimant evidence and submissions	187
	(1) Unification and emergence of a nation-state	187
	(2) A declaration of mana and sovereignty	188
	(3) The role of Te Whakaminenga	190
	(4) Alliance with Britain	192
4.6.2	Crown submissions	194
4.6.3	Historical interpretations of the declaration	195
4.7	The Tribunal's views on he Whakaputanga and the Declaration of Independence	198
4.7.1	Questions of interpretation	198
4.7.2	The meaning and effect of he Whakaputanga and the Declaration of Independence in 1835	199
4.8	1836–37: the impact of the Declaration	203
4.8.1	The residence loses its sacredness	203
4.8.2	War between the northern and southern alliances	206
4.8.3	A congress that never met?	209
4.8.4	A failed experiment?	211
4.9	Concluding remarks	214

CHAPTER 5: CONTESTED GROUND

5.1	Introduction	229
5.2	The question of depopulation	232
5.2.1	The population impacts of warfare	233
5.2.2	The population impacts of introduced diseases	235
5.2.3	The population impacts of tobacco, alcohol, sex, and changing labour patterns	236
5.2.4	Conclusions on Māori population decline	237
5.3	Economy and material culture	239
5.3.1	Rules of exchange	240
5.3.2	Rangatira as entrepreneurs	243
5.3.3	Implications for political structures	245
5.3.4	Economic change and the question of control	247

5.4	Māori engagement with Christianity .....	248
5.4.1	Which Māori became Christian? .....	249
5.4.2	The Christian challenge to Māori values .....	252
5.4.3	The creation of a Māori Christianity .....	254
5.4.4	The emergence of Papahurihia .....	256
5.5	Mana pukapuka: the pursuit of literacy .....	257
5.6	Warfare and peacemaking .....	260
5.7	Tikanga and ture .....	263
5.8	Rangatira and rangatiratanga .....	270
5.9	The impact of land transactions .....	274
5.10	Conclusion .....	282

CHAPTER 6: THE BRITISH MOVE TOWARDS ANNEXATION ..... 295

6.1	Introduction .....	295
6.2	Wakefield's scheme for colonisation .....	296
6.2.1	Early plans for organised settlement .....	296
6.2.2	Systematic colonisation .....	296
6.2.3	The New Zealand Association and its opponents .....	298
6.3	The New Zealand Association negotiations .....	301
6.3.1	The deputations of December 1837 .....	301
6.3.2	Busby's dispatch and the Government's response .....	302
6.3.3	The Church Missionary Society remains opposed .....	304
6.3.4	The 1838 impasse .....	305
6.4	The Government takes initial steps .....	307
6.4.1	The decision to appoint a consul .....	307
6.4.2	The first draft of the instructions to Hobson .....	310
6.4.3	Glenelg's resignation .....	311
6.5	The colonisers finally provoke action .....	312
6.6	Normanby's final instructions .....	315
6.6.1	Key features of the instructions .....	315
6.6.2	Hobson's response and Normanby's addendum .....	321
6.6.3	An overview of Normanby's instructions .....	322
6.7	Hobson departs and the instructions leak .....	325
6.8	The process adopted by the British for acquiring sovereignty .....	327
6.9	The French 'threat' – impetus for action? .....	330
6.10	Conclusion .....	333



CHAPTER 7: THE NEGOTIATION AND SIGNING OF TE TIRITI .....	339
7.1 Introduction .....	339
7.2 Hobson's time in Sydney, 24 December 1839 to 18 January 1840 .....	339
7.3 Hobson's arrival in the Bay of Islands .....	340
7.4 The drafting of the Treaty and te Tiriti .....	342
7.5 Te Tiriti and the Treaty: the language .....	348
7.5.1 The preamble .....	349
7.5.2 Article 1 .....	349
7.5.3 Article 2 .....	350
7.5.4 Article 3 .....	351
7.5.5 Postscript .....	351
7.6 Ngā Whaikōrero o Waitangi .....	351
7.6.1 The scene .....	351
7.6.2 The speeches .....	353
7.6.3 The evening of 5 February .....	367
7.6.4 Pompallier's influence .....	368
7.6.5 Waitangi, 6 February – the signing of te Tiriti .....	369
7.7 The signing of te Tiriti at Waimate .....	376
7.8 Ngā Whaikōrero o Mangungu .....	377
7.9 The events of 13 and 14 February 1840 .....	383
7.10 Further signatures are gathered; sovereignty is asserted .....	385
7.11 Gipps's Sydney treaty .....	389
7.12 Back-translations .....	392
7.13 Conclusion .....	394
CHAPTER 8: PAST PERSPECTIVES ON TE TIRITI AND THE TREATY .....	407
8.1 Introduction .....	407
8.2 Scholarship about the treaty .....	408
8.2.1 The wording of the treaty's texts .....	412
(1) The English text .....	412
(2) The translation of article 1 .....	413
(3) The translation of article 2 .....	415
(4) Was Williams deceitful or at least a poor linguist? .....	417
8.2.2 The oral debate .....	418
(1) The oral nature of Māori society .....	418
(2) The Crown's assurances .....	419
(3) Oratory .....	422
(4) The evening of 5 February .....	423
(5) The signing .....	424
8.2.3 The meaning and effect of the treaty .....	426

8.2.4	What if the rangatira had not signed? .....	432
8.3	Previous Tribunal and court statements .....	432
8.3.1	Waitangi Tribunal reports .....	432
8.3.2	Court rulings .....	437
8.4	Conclusion .....	441

**CHAPTER 9: CLAIMANT AND CROWN EVIDENCE AND SUBMISSIONS .....** 447

9.1	Introduction .....	447
9.2	Claimant accounts of the signing of te Tiriti .....	447
9.2.1	Debates before the Waitangi hui .....	450
9.2.2	Te tiriti tuatahi .....	450
9.2.3	The wording of te Tiriti and the Treaty .....	452
9.2.4	The oral debate and Māori understandings .....	455
9.2.5	The signing .....	457
9.2.6	He Whakaputanga .....	459
9.2.7	Summary .....	459
9.3	Historians' evidence at our inquiry .....	460
9.3.1	The wording of the Treaty's texts .....	460
	(1) The translation of key terms .....	460
	(2) Was Williams deceptive or a poor linguist? .....	463
9.3.2	Te tiriti tuatahi .....	464
9.3.3	The oral debate .....	466
	(1) The explanation of the treaty .....	466
	(2) Oratory .....	469
	(3) Missionary assurances on the evening of 5 February .....	469
	(4) The signing .....	470
	(5) He iwi tahi tatou .....	470
9.3.4	The meaning and effect of the treaty .....	471
9.3.5	What if the rangatira had refused to sign? .....	475
9.4	Closing submissions .....	476
9.4.1	Claimant submissions .....	476
	(1) On the Crown's 'reluctance' .....	476
	(2) Oral history and te tiriti tuatahi .....	476
	(3) The wording of te Tiriti .....	477
	(4) The relevant treaty text .....	478
	(5) The oral debate .....	478
	(6) The meaning and effect of the treaty .....	479
	(7) International law .....	480
	(8) Concluding comments and challenges .....	481
9.4.2	Crown submissions .....	483

CHAPTER 9: CLAIMANT AND CROWN EVIDENCE AND SUBMISSIONS—*continued*

9.4.3	Claimant submissions in reply .....	486
(1)	General response to the Crown's approach .....	486
(2)	The wording of te Tiriti .....	487
(3)	The relevant treaty text .....	488
(4)	The oral debate .....	488
(5)	The meaning and effect of the treaty .....	489
(6)	International law .....	490
9.5	Conclusion .....	491

CHAPTER 10: OUR CONCLUSIONS .....

10.1	Introduction .....	497
10.2	He Whakaputanga and the Declaration of Independence – meaning and effect .....	499
10.3	The making of the treaty .....	503
10.3.1	Why and how did the British seek to acquire sovereignty in New Zealand? .....	504
10.3.2	Was a draft treaty put to the chiefs? .....	506
10.3.3	The formulation of the texts of the treaty .....	508
(1)	The English text .....	508
(2)	The Māori text .....	512
(3)	The translation of the key terms .....	513
10.3.4	The oral debate .....	515
(1)	The Crown's message .....	515
(2)	The understanding of the rangatira .....	517
(3)	He Whakaputanga .....	520
10.4	The meaning and effect of the treaty .....	521
10.4.1	Relevance of texts to treaty meaning and effect .....	521
10.4.2	Te pūtake: the status of the parties to the treaty .....	522
10.4.3	The British view of the treaty's effect in the process of acquiring sovereignty .....	525
10.4.4	The treaty agreement .....	526
10.5	Kōrero whakakapi .....	527
	Summary of conclusions .....	529

APPENDIX: SELECT RECORD OF INQUIRY .....	535
Record of hearings .....	535
The Tribunal .....	535
Crown counsel .....	535
Claimant counsel .....	535
The hearings .....	536
Record of proceedings .....	536
Statements of claim .....	536
Tribunal memoranda and directions pre-hearing .....	557
Opening and closing submissions .....	559
Transcripts .....	560
Record of documents .....	561
A series documents .....	561
B series documents .....	564
C series documents .....	565
D series documents .....	567
Picture credits .....	569





We are not aware of any other description of Marsden's arrangement with Ruatara as a 'treaty', although we agree that the letter proposes a set of reciprocal obligations to make the new mission settlement work.

Hall and Kendall stayed six weeks. Despite the enmity between those on the southern and northern shores of the Bay of Islands, Marsden had sent a very similar letter to Tara at Kororāreka, and when Hall and Kendall visited him they were well received. They also spent a pleasant time with Pōmare at Matauwhi. In Salmond's view, these meetings with southern alliance leaders made the northerners nervous, and when Ruatara introduced Hall and Kendall to his uncle, Hongi Hika, he stressed the great number of fighting men at Hongi's disposal. Hongi possessed 10 muskets and knew how to fire them, but he nevertheless struck Kendall as having 'a very mild disposition'. As it happened, when the *Active* was ready to leave the Bay of Islands in late July, Hongi came on board as a passenger with his eight-year-old son Ripiro. As Ruatara's senior relation, Hongi insisted that Ruatara come too and act as interpreter. Various other Bay Māori joined or rejoined the vessel, including Tui and his brother Korokoro.<sup>197</sup> According to Dr (later Professor) James Belich, Korokoro accompanied them to 'keep an eye on' Hongi and Ruatara.<sup>198</sup>

### 3.6.3 Hongi and Ruatara in Sydney and the mission's departure for New Zealand

The *Active* arrived at Port Jackson on 22 August 1814. Kendall and Hall reported on the Bay of Islands' wonderful climate, scenery, and soil. Marsden now had 12 Māori visitors at Parramatta, who were shown all kinds of trades and skills: spinning, weaving, carpentry, smithing, brickmaking, gardening, mechanics, and various types of farming. They observed the church-going of the Sabbath and Marsden dispensing justice as a magistrate. Marsden wrote:

'They tell me when they return, they shall sit up whole nights, telling their People what they have seen, and that their

men will stop their Ears with their Fingers – We have heard enough, they will say, of your incredible Accounts, and we will hear no more – they are impossible to be true.'<sup>199</sup>

The visitors also met Governor Macquarie, who made them gifts of clothing and promised them livestock when they went home. Ruatara noted the current scarcity of wheat in New South Wales, and hatched plans to export wheat to Sydney – as Salmond put it, 'the first Maori scheme for an export venture'.<sup>200</sup>

Marsden pushed on with his plans for the establishment of his New Zealand mission, full of anticipation for his evangelical work. He wrote:

I consider New Zealand as the Great Emporium of the South Sea Islands, inhabited by a numerous race of very intelligent men. I hope to erect the Standard of Christ's Kingdom there.<sup>201</sup>

In early November 1814, Macquarie gave Marsden permission to go, on the condition that he would ascertain the potential for New Zealand as the site of an official British settlement. Macquarie issued a new proclamation which granted Marsden formal leave for a period of four months to establish a mission in New Zealand; Kendall was also appointed as

1814

one of his Majesty's Justices of the Peace in the Bay of Islands, in New Zealand, and throughout the Islands of New Zealand, and those immediately contiguous thereto.

Kendall, the proclamation stated, was to be 'respected and obeyed as such throughout the said Islands and Places'.<sup>202</sup>

In a separate proclamation issued three days earlier, Macquarie had also declared that ships' masters and crew had been 'offering great Insult and Injury' to Māori of the Bay of Islands and other parts of New Zealand, and that this was causing 'great Prejudice to the fair Intercourses of Trade which might be otherwise productive of mutual Advantages'. The Governor was

equally solicitous to protect the Natives of New Zealand and the Bay of Islands, in all their just Rights and Privileges, as those of every other Dependency of the Territory of New South Wales...

This was the first of such proclamations targeted specifically at New Zealand, and the first time a New South Wales Governor had described New Zealand as a 'Dependency': a territory over which the full legal powers of another territory would apply. As we have seen, New South Wales did not possess these powers over New Zealand, but Macquarie's proclamation suggested further means by which certain powers would be exercised. Māori could not be removed from their districts without the permission of their families or chiefs; Kendall (who was described as Resident Magistrate in this proclamation) would have to certify any such permission as having been granted. The proclamation further disallowed the landing or discharge of any sailors in New Zealand without similar approval. In order to carry this into effect, Ruatara, Hongi, and Korokoro were

invested with Power and Authority . . . and are to receive due Obedience from all Persons to whom these Orders have Reference, so far as they relate to their obtaining Permission to remove or carry away any of the Natives of New Zealand, or the adjacent Isles, or to land or discharge any Sailors or other Persons thereon.<sup>203</sup>

As had been the case with his 1813 proclamation, Macquarie was again asserting a form of jurisdiction over New Zealand, despite the full range of his actions – from Kendall's appointment to the vesting of authority in rangatira – lacking specific authorisation. This 1814 proclamation, however, was an important development, for it marked the first operative designation of identified individuals (one British and three Māori) in New Zealand as purportedly having official powers. The proclamation was additionally important, as McHugh noted, as 'one of the earliest signs of what was to become a consistent feature

of British practice in New Zealand', in that it 'recognised the power and authority of the Chiefs and through them purported to establish some British authority over its own seafaring subjects.'<sup>204</sup>

In any event, the *Active* sailed from Sydney on 28 November 1814. The large party included Marsden; J L Nicholas; the missionaries Hall, Kendall, and King and their families; a new captain (Thomas Hansen) and his wife; the crew (including five Māori and a Tahitian); Ruatara; Hongi and his son; Korokoro; Tui; and a number of others. Aside from their officers' uniforms, Macquarie gave the three rangatira a cow each.<sup>205</sup> Before the boat left Port Jackson it sat for several days in Watson's Bay waiting for the winds to change. Marsden and Nicholas noticed that Ruatara and the other chiefs appeared 'gloomy, sullen, and reserved', and wondered if there had been some ill-feeling caused by the distribution of gifts. As Nicholas later wrote in his book, *Narrative of a Voyage to New Zealand*,

this was not the true cause, and, to our very great surprise and alarm, it was one which of all others we could least suppose; a jealousy and distrust of the Missionary establishment, which, from some wicked misrepresentations, they regarded as ruinous to the independence of their country, and fatal to their own influence; while not only their liberties, but even their lives, would be compromised by it. Duaterra, after some hesitation, gave this as the true reason of the change in his own manner, and in that of his companions; and told us plainly, he regretted, from his heart, the encouragement he had given us to go to his country; as he was informed by a gentleman at Sydney, that the Missionaries then going, would shortly introduce a much greater number; and thus, in some time, become so powerful, as to possess themselves of the whole island, and either destroy the natives, or reduce them to slavery. The gentleman, he said, desirous to convince him of the truth of this assertion, bid him look at the conduct of our countrymen in New South Wales, where, on their first arrival, they despoiled the inhabitants of all their possessions, and shot the greater number of them with a merciless cruelty; while, in some few



years, the whole race of that once happy people would be entirely extinct. This diabolical reasoning succeeded but too well in awakening all the fears and suspicions of Duaterra, who communicated his apprehensions to the other chiefs[.]<sup>206</sup>

Marsden considered that the idea of being overrun by Europeans had 'darted into [Ruatarā's] mind like a poisoned arrow'. Ruatarā now also feared the anger of his own people 'if he should be the author of their country being taken and given to the English'.<sup>207</sup> Marsden offered to turn the ship back and 'never more think of holding any intercourse with his country' – a position O'Malley and Hutton described as a 'resort to brinkmanship'. Ruatarā relented upon receiving Marsden's assurance that the missionaries would make their settlement at Rangihoua, 'where he and his tribe could easily protect it'. With this arranged, wrote Marsden, Ruatarā 'resumed all his usual good humour'.<sup>208</sup>

It is not clear exactly who was pressuring whom here. Dr (later Dame Professor) Judith Binney described Ruatarā as 'torn between his fears and his desire to introduce the techniques of agriculture' and as offering his agreement only 'reluctantly'.<sup>209</sup> Belich, by contrast, thought it little wonder Ruatarā's mood had improved, for he 'had just secured a monopoly over the first permanent European settlement in New Zealand, a goose that would reliably lay eggs of iron, if not gold'.<sup>210</sup> Wilson summed up the exchange between the two men like this:

Marsden, it seems, outwitted Ruatarā but it is possible that Ruatarā had outwitted Marsden. We can be certain that Marsden had no intention of abandoning his missionary voyage, nor of going elsewhere than to the Bay of Islands. But if his offer, or threat, was no more than bluff, one may almost suspect Ruatarā of having put on a show with the sole object of getting the mission more firmly under his control.<sup>211</sup>

#### 3.6.4 The mission is established

The *Active* reached the coast of New Zealand on 16 December 1814. It anchored first at North Cape and then again further south at the Cavalli Islands. Ruatarā and Hongi took the opportunity to make peace with Te Āra and Te Puhi, who were passing through Matauri Bay with

150 Ngāti Uru warriors after attending a tangi. Marsden quizzed Te Āra about the *Boyd* killings, and gained further confirmation that they had been provoked by European cruelty and that Te Pahi was innocent of blame. The *Active* reached Rangihoua on 22 December 1814. The locals were astonished by the livestock unloaded, particularly when a cow ran amok, and when Marsden mounted and rode his horse along the beach. For Ruatarā, whose stories about the Europeans' animals had been greeted with such scepticism by his people, this was another moment of vindication.<sup>212</sup> He told Marsden triumphantly,

I have now introduced the cultivation of wheat in New Zealand. It will become a great country, for in two years more I shall be able to export wheat to Port Jackson in exchange for hoes, axes, spades, and tea and sugar.<sup>213</sup>

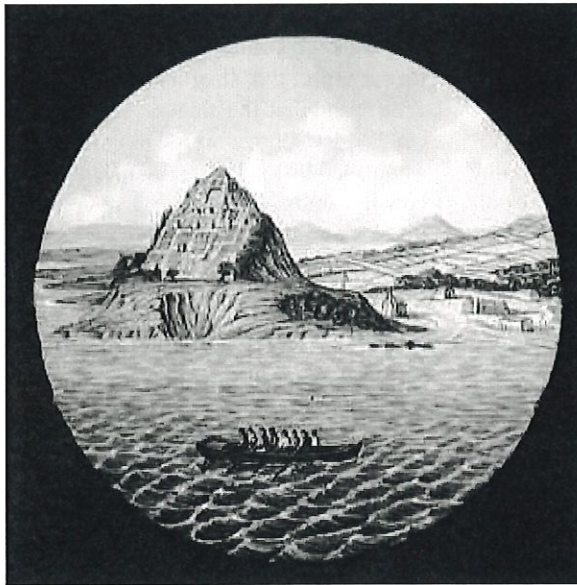
On 24 December, a spectacular welcome for the European settlers took place. Korokoro and a large body of his warriors brought Marsden and Nicholas to the shore in a fleet of canoes, and then held what Nicholas described as a 'sham fight' with an equivalent party of Ruatarā's people. Jones and Jenkins were critical of historians' lack of emphasis on – or even mention of – this 'amazing and electrifying event'.<sup>214</sup> As they put it,

The grand choreography of the event ensured that the arrival of Marsden was to be understood by local iwi as particularly auspicious. The pōwhiri at Rangihoua was spectacular: it took up a large amount of space – the whole beach and foreshore, as well as the valley leading to the body of the pā. Significantly, during the wero the tangata whenua came charging into the midst of the manuhiri (represented here by Korokoro's men) – a massive display of confidence, defiance, and challenge towards the arriving Europeans. An intensely emotional mingling of both sides occurred early in the event.<sup>215</sup>

From the Māori perspective, they argued,

a commitment to a relationship was made at that event; a relationship that was to be characterised by wehi and ihi and





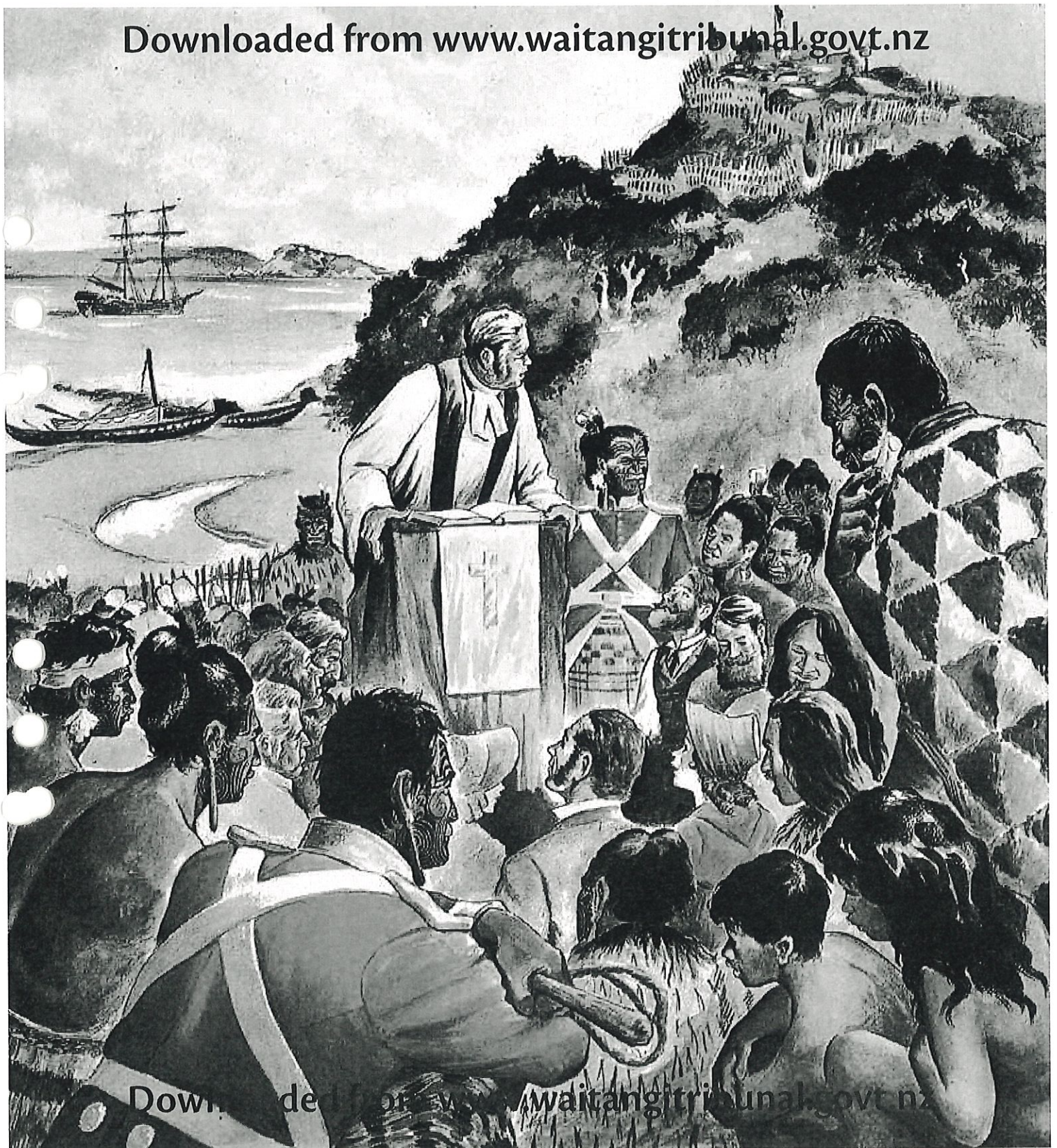
◀ Rangihoua Pā and the Oihi missionary settlement, circa 1830. This image does nothing to convey the steep and enclosed nature of the site on which the mission settlement was located. The location of the pā, while also steep, was in reality not quite so vertical as depicted here.

▼ Samuel Marsden landing at Rangihoua, December 1814. This is a rather fanciful reconstruction, complete with a snow-covered peak in the background. In reality, in Marsden's formal welcome on 24 December, a dramatic 'sham fight' was staged between hundreds of warriors, signifying the great importance of the occasion.





Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)



Downloaded from [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)





manaakitanga and which would be productive for both its partners. In more dramatic terms, because of the relationship between Ruatara and Marsden, and the successful pōwhiri on the beach that engaged the people, Māori in the north-eastern Bay of Islands now became locked into a highly significant shared project that would change their lives and the history of their country for ever.<sup>216</sup>

On Christmas Day, Ruatara flew the Union Jack at Rangihoua. Marsden, who saw it when he awoke on the *Active*, wrote:

I considered it the signal for the dawn of Civilization, liberty and Religion in that dark and benighted land. I never viewed the British Colors with more gratification, and flattered myself they would never be removed till the Natives of that Island enjoyed all the happiness of British Subjects.<sup>217</sup>

1814 Marsden went on shore in his surplice to deliver his first sermon, while Hongi, Ruatara, and Korokoro wore their officers' uniforms, including their swords. A large number of Korokoro's people remained present; together with the Rangihoua locals, there would have been several hundred people in attendance. At the conclusion of the service, Ruatara translated Marsden's sermon for them. That evening Marsden rejoiced that 'the time was at hand when the Glory of the Lord would be revealed to these poor benighted Heathens'.<sup>218</sup>

Just what Ruatara said on this occasion is an intriguing question. We can be relatively certain that he did not translate Marsden's words too closely or literally. Jones and Jenkins wrote:

The sermon, with all the settlers present, was Ruatara's opportunity for publicly demonstrating his 'control' of the Europeans, as well as for reinforcing through his kōrero the

possibility of positive social and economic change for his region. . . . Ruatara was *not* merely Marsden's interpreter, quite the contrary. Marsden, on this day, had become the *assistant* in Ruatara's – and his more powerful and ambitious uncle Hongi's – plans. All this is not to suggest that Marsden was *merely* a bit-player in Ruatara's independent scheme. Marsden appears to have had a big influence on Ruatara's thinking about the possibilities for his people, and Marsden had his own ambitious plans for expansion of his control. The occasion of the Pākehā tohunga's public performance brought the crowd together, but it was Ruatara who made the important speech, and to whom the people responded with a rousing haka.<sup>219</sup>

Despite the ceremony that attended the first days of the mission, Ruatara remained obviously ambivalent about it. Kendall complained that Ruatara 'had prepared the way for our entrance, but seemed to be almost unwilling to aid us any further',<sup>220</sup> while King wrote that 'There has been a great deal said about Duaterra and a great deal expected from him, by some . . . but his mind was much prejudiced against us'.<sup>221</sup> Ruatara would have valued the mana and trade that accrued to him through the presence of the missionaries, but – aside from his fear of being overrun – was probably not much interested in religious moralising and talk of civilisation.<sup>222</sup> He kept the mission under his watchful eye and resisted any notion of its relocation (a genuine concern given that at least one rival chief had tried to tempt Marsden into settling elsewhere).<sup>223</sup> Ruatara even controlled the mission's stores and once took charge of the missionaries' entire stock of iron in order, as Belich put it, 'to remind them who was boss'.<sup>224</sup>

What compounded everything was the mission settlement's location, on the steeply sloping, south-facing hillside named Oihi above Rangihoua Bay.<sup>225</sup> The site has been described as a 'barren, claustrophobic cove',<sup>226</sup> and its utter unsuitability for agriculture left the missionaries with no hope of establishing any kind of independence from their Māori hosts. They were left at Ruatara's mercy, which was undoubtedly his intention.<sup>227</sup> This may have been Marsden's preference too, for making the mission equally reliant on his dispatch of supplies from Sydney

◀ Samuel Marsden delivering his first sermon at Oihi, Christmas Day 1814. Hongi Hika, Ruatara, and Korokoro wore the uniforms presented to them by Governor Macquarie. As Professor Alison Jones and Dr Kuni Jenkins suggested, Ruatara's translation of Marsden's words would have been regarded by those assembled as the main event.





committee included a number of members of Parliament who were very sympathetic to his message, among them William Hutt and Francis Baring, and its highly favourable report reflected this. Wakefield's performance at the select committee is generally credited as the inspiration for the formation of the New Zealand Association the following year.<sup>8</sup>

### 6.2.3 The New Zealand Association and its opponents

A meeting was thus held in London on 22 May 1837, with Wakefield himself in the chair, to discuss the founding of a Wakefieldian colony in New Zealand. A publication had already been printed, entitled *A Statement of the Objects of the New Zealand Association*. The meeting duly resolved to form a society by this name to pursue the object of systematic colonisation in New Zealand. The *Statement* foresaw Māori happily selling their 'unused' lands for nominal sums and being willingly 'brought to adopt the language, usages, laws, religion, and social ties of a superior race'. It also saw a need to obtain Māori consent, through a treaty, prior to the formation of any settlements, since Māori

national independence has been virtually, not to say formally acknowledged by the British Government . . . [by] the appointment of a Resident at the Bay of Islands, and the recognition of a New Zealand flag.

Baring, however, also contended in a letter to the Prime Minister, Lord Melbourne, that Captain James Cook's discovery and Macquarie's 1814 proclamation (which, as we saw in chapter 3, referred to New Zealand as a dependency of New South Wales) meant that Britain had rights over New Zealand 'as against other European nations'. The *Statement* set out the object of obtaining parliamentary approval, explaining that a Bill had been drafted which would grant the Association's leaders a charter to colonise. Essentially, the Association was offering the Crown a British colony at no cost, in return for the Association having the power to make laws and acquire and sell land, using the profits to fund further emigration.<sup>9</sup>

The Association's second meeting, a week after the first, was well attended and full of optimistic speeches. At the

next meeting, a committee was elected which included no fewer than 10 Members of Parliament. Much publicity was generated in the *Spectator* and the *Colonial Gazette*. Burns concluded that, 'On the whole, it would be hard to find an organisation which began in a more feverish state of excitement than the New Zealand Association.'<sup>10</sup>

No sooner had the Association come to prominence, however, than its opponents went on the attack. The Church Missionary Society (CMS), under the leadership of its lay secretary, Dandeson Coates, immediately focused its lobbying in opposition to the Association. Once the CMS committee had been able to read the Association's *Statement*, it promptly resolved that 'all suitable means' be used to stop the plan from 'being carried into execution'.<sup>11</sup> The CMS's opposition was based on several grounds. First, it believed that Parliament had no business supporting land transactions in a country where the British had no legitimate claim to sovereignty. It would appear from this that the CMS placed no faith in the Association's stated intention to acquire Māori consent. Secondly, it pointed to the '[u]niversal experience' of 'uncivilized Tribes' that came into contact with European colonisers: the suffering of 'the greatest wrongs and most severe injuries'. Thirdly, it considered that any significant colonisation would

from its unavoidable tendency . . . interrupt, if not defeat, those measures for the Religious Improvement and Civilization of the Natives of New Zealand which are now in favourable progress through the labours of the Missionaries.<sup>12</sup>

But neither was the Association guaranteed a warm reception from the Government. The Colonial Office was already overstretched, dealing with more than 30 colonies located around the globe, and its staffing numbers were unable to keep pace with the rate of colonial expansion.<sup>13</sup> Dr (later Professor) Paul Moon put it this way:

the larger agony of managing the almost unmanageable Indian sub-continent, and the struggle to rein in disobedient or incompetent colonial officials, shunted Britain's less significant colonial possessions very much into the background of official priorities.<sup>14</sup>



### 6.3.2 Busby's dispatch and the Government's response

The Government, for its part, had a difficult task in responding to what Adams accurately described as the CMS and Association's 'tug-of-war' for official approval. Melbourne and Lord Howick, the Secretary at War, had been generally encouraging when meeting the Association in June, and Howick had offered some criticisms of the Association's draft Bill. Melbourne had even approved these before they were sent to the Association. Howick prefaced his comments, though, with the warning that they were merely his opinion. In fact, while sympathetic to the Association's objectives, he shared Stephen's estimation of its plans as 'so vague and so obscure as to defy all interpretation'. But the Association, which had approached Melbourne in June because it expected Glenelg to be hostile, proceeded on the basis that it had the requisite support.<sup>36</sup> The deputation that met Melbourne and Glenelg on 13 December declared themselves betrayed by the former's non-commitment, and volubly expressed their outrage. As Adams observed, there were no reasonable grounds for such indignation.<sup>37</sup>

But despite the Association's over-confidence, both this reaction and Wakefield's lobbying were beginning to pay dividends. On 16 December, Melbourne wrote to Howick: 'So many people are engaged in this New Zealand business, that they have a right to an answer & I hope you will make up Glenelg's mind on the subject.' Pondering Wakefield's arguments about the situation in New Zealand, he added,

If we really are in that situation that we must do something . . . it is only another proof of the fatal necessity by which a nation that once begins to colonize is led step by step over the whole globe.<sup>38</sup>

When Glenelg met the Association's representatives at the Colonial Office on 20 December, they cannot have been particularly confident of a favourable outcome. As the meeting went on, Glenelg indeed gave them no cause for optimism, as he reiterated all the reasons for the Government's position. But then he said this:

The intelligence which Her Majesty's Government have received from the most recent and authentic sources justifies the conclusion that it is an indispensable duty, in reference both to the natives and to British interests, to interpose by some effective authority to put a stop to the evils and dangers to which all those interests are exposed, in consequence of the manner in which the intercourse of foreigners with those islands is now carried on.<sup>39</sup>

As Adams noted, this could conceivably have been leading on to an announcement that Busby was to be replaced or the Resident's powers increased. But any prospect of that was laid aside by Glenelg's explanation that the Government considered the select committee's idea of consular agents 'inadequate to meet the existing evil'. Rather, he said, preventing injury to Māori could 'be accomplished only by the establishment of some settled form of government within that territory, and in the neighbourhood of places resorted to by British settlers.' His point was ultimately this:

Colonization to no small extent is already effected in these islands; the only question, therefore, is between a colonization desultory, without law, and fatal to the natives, and a colonization organized and salutary.

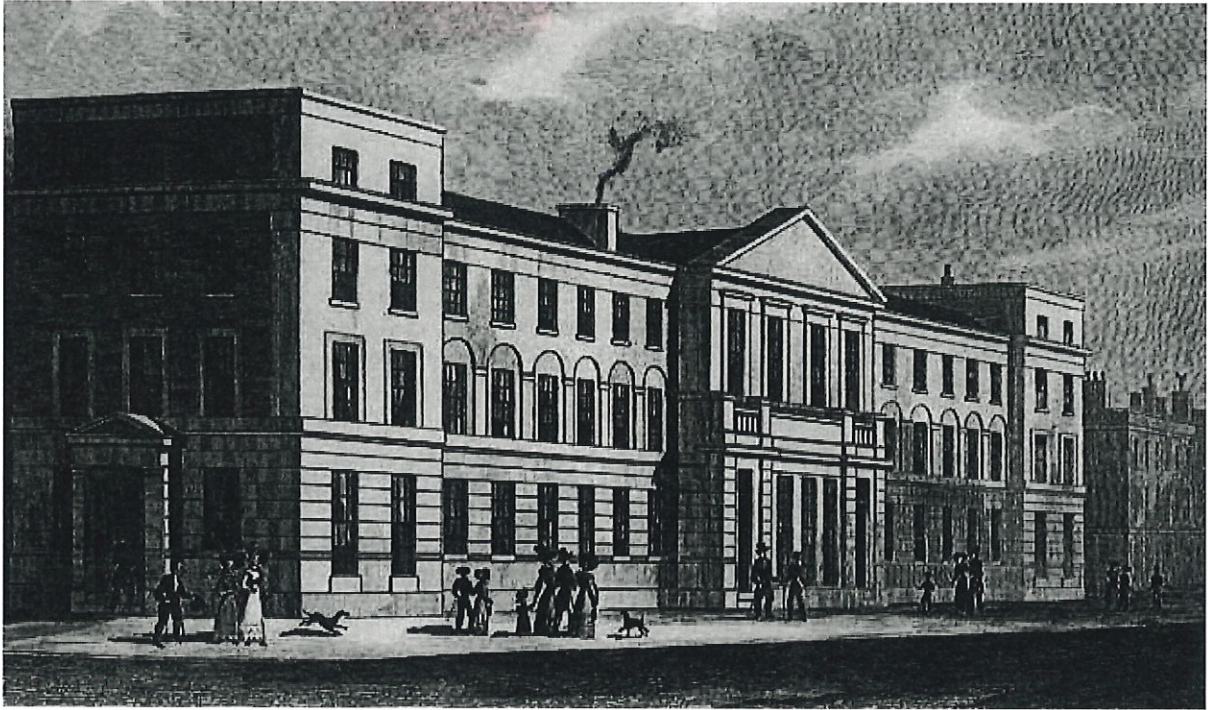
Glenelg thus told the Association that the government was

willing to consent to the incorporation, by a Royal charter, of various persons, to whom the settlement and government of the projected colony . . . would be confined.

This would be based on 'precedents of the colonies established in North America by Great Britain in the sixteenth and seventeenth centuries'.<sup>40</sup>

This was certainly an unexpected development: as Adams put it, the Association 'appeared to have won a decisive victory'. While Wakefield wrote some years later that Melbourne had brought Glenelg into line, this appears not to have been the case. As we have seen, the Prime Minister merely asked Howick to help the rather





The Church Missionary Society's training college in Islington, London, 1827. In the late 1830s, the Society fought an ideological battle with the New Zealand Association over the latter's plans to colonise New Zealand.

indecisive Glenelg make up his mind. Howick saw Glenelg as weak and not up to the job of Secretary of State for War and the Colonies, and probably did try to persuade him to support the Association – not least because Durham's support was so vital to the Government. But there was an altogether much more important factor in Glenelg's about-face: Busby's 16 June 1837 report, which reached the Colonial Office on 18 December 1837, almost on the eve of Glenelg's meeting with the Association at which he had promised to deliver his final answer. This was the 'intelligence' Glenelg was referring to.<sup>41</sup>

We have already discussed this dispatch in chapters 4 and 5. Its importance to this chapter lies in the profound impact it had on the chain of events in London that led

to the British Government's eventual decision to acquire sovereignty in New Zealand. In fact, historians generally regard the 20 December 1837 meeting between Glenelg and the Association as a pivotal moment.<sup>42</sup> Before the arrival of Busby's report, the likelihood – although not the certainty – was that Glenelg's response to the Association would be 'no'. Adams even argued that 'For a few crucial days in the winter of 1837 the immediate future of New Zealand hung in the balance.'<sup>43</sup> But Busby's dire description of Māori disease and mortality – including even on mission stations, where Māori were meant to be protected from European vices – appeared to strike a fatal blow to the arguments of those opposed to state-sponsored colonisation. While Glenelg had concerns for both Māori and

18?



British interests, Adams summed up his views on protecting Māori in this way:

Up until the middle of December 1837, Glenelg had favoured the argument of the protestant missionary societies: that colonization by whites invariably destroyed indigenous races; that this could be prevented in New Zealand if the country was left to the missions, backed by the Government; and that therefore the New Zealand Association must be opposed. At a stroke Busby's report destroyed the middle term of this argument. Haphazard white colonization of New Zealand was already occurring, accompanied by disastrous results for the Maoris. More important, the missions had failed to lessen the impact of this colonization, for the disastrous results were just as apparent among the Maori population subject to their immediate influence as elsewhere.<sup>44</sup>

Glenelg had little option but to back down by proposing terms on which a charter would be offered.

But by no means did he do so entirely, because his offer came with important conditions. Among these, as set out in a letter to Durham of 29 December 1837, were: the colony could not be established without Māori consent, freely given; the Crown could veto nominations to the governing body and overturn any of its laws; Crown officials would vet all land transactions with Māori; other chartered colonies could potentially be established elsewhere in New Zealand (that is, there was no guarantee of a monopoly for the Association); and, perhaps most importantly, the founder members of the venture would need to invest their own capital through forming a joint-stock company. Durham objected to these conditions but took particular umbrage at the last. The Association's committee members had 'expressly stipulated that they shall neither run any pecuniary risk, nor reap any pecuniary advantage' from the venture, and he argued that investment of their own money would conflict with their governing duties in New Zealand.<sup>45</sup>

### 6.3.3 The Church Missionary Society remains opposed

The CMS met Glenelg, Grey, and Stephen on 4 January 1838. Prior to this, Coates had borrowed Busby's report

from Glenelg and written to him to dispute some of the Resident's claims, such as the decline of Māori on mission stations. Adams described Coates as 'unable to square the incontrovertible facts with his own idealized conception of the missionaries as saviours of the Maoris in this world, as well as in the next'.<sup>46</sup> Coates also suggested that Britain might deviate 'from the strict letter of the law of nations' in New Zealand to obtain the sovereignty over one or two enclaves, and thus facilitate the introduction of British law. Loveridge considered that the suggestion that Britain acquire sovereignty over any land in New Zealand represented 'a significant departure from the previous policies of the missionary societies', and showed again the impact of Busby's dispatch. Coates recommended, however, that the enclaves be under 'the entire administration of the [British] Government', and exclude both colonisation and commerce.<sup>47</sup>

At the 4 January meeting itself, the CMS deputation could not help but suspect that the Association was to receive a charter. The offer was eventually confirmed in a letter from Grey to the CMS on 25 January 1838, although he stressed that CMS objectives would be safeguarded. In reply, Coates wrote that

no conditions under which a Charter could be granted to that Association for the colonization of New Zealand could . . . effectively guard against the evils to be apprehended both to the Society's Mission and to the Natives from such a proceeding if it should be adopted.<sup>48</sup>

In other words, the CMS's objection was based on the principle that *any* form of colonisation would have destructive consequences. Coates's Wesleyan Missionary Society colleague Beecham next took up the war of words in a pamphlet produced in early February 1838. As Loveridge remarked, its contents were predictable: 'the Association and its plans were found wanting in all respects'. But Beecham did make the point that the only measure taken in New Zealand to counter the impact of 'our immoral countrymen' had been to appoint a Resident who had been little more than 'a mere spectator'. Now the Government was contemplating going 'from one extreme



to another'. He advocated an intermediate position, such as the idea of consular agents.<sup>49</sup>

Hobson's own August 1837 dispatch, which we discussed in chapter 4, arrived in London on 1 February 1838. In sum, Hobson proposed that 'factories' be established in specific locations where European settlers had congregated, with the consent of local Māori obtained by means of treaty. In these British enclaves, which would be dependencies of New South Wales, a 'factor' would rule over Māori and British subjects alike, police and courts of law would eradicate the issue of frontier disorder, and Māori would be exposed at first hand to the workings of civil government.<sup>50</sup> Hobson's dispatch and Busby's June 1837 report were published together on 7 February 1838. Beecham seized on Hobson's view that Busby's grim account of New Zealand conditions went too far, and – as Loveridge put it – 'rushed back into print' with another pamphlet that set out the Government's options for New Zealand: namely, colonisation, Busby's protectorate, consular agents, and Hobson's 'factories'. Inevitably, Beecham rated consular agents first and colonisation last. His key criticism of the Association was that it would be 'impossible for any private commercial company' to deal adequately with New Zealand's difficulties. Instead, the situation could 'only be met by a Government measure, to be entrusted, as to its execution, to public officers whose sole business it shall be to carry it into full effect'.<sup>51</sup>

#### 6.3.4 The 1838 impasse

As it transpired, the negotiations between the Association and the Government collapsed over the latter's requirements for an input of funds by the founders and its refusal to allow the colony to encompass the whole of New Zealand (thus leaving open the possibility of a rival colonising venture). Glenelg announced that the Association would not be awarded a charter. Durham decided instead to attempt again to prepare a Bill for consideration by Parliament. Glenelg did not object to this plan, although he warned that the Government's support was by no means guaranteed. Reflecting on these events, Wakefield reasoned that Glenelg and the Colonial Office were under the sway of the CMS, and that the joint-stock condition

had been insisted upon principally because it was known the Association would reject it and the negotiations would break down accordingly.<sup>52</sup> This line of thought was maintained by Dr Alexander McLintock, who wrote in 1958 that Coates was trusted 'implicitly' by Glenelg, who turned to him routinely for advice:

Had Glenelg been left to his own devices, the course of events might have proceeded differently and more happily. As it was, he gave way [to Coates] on all counts and the Association was doomed, leaving to Wakefield the unenviable task of creating a new design from out of the wreckage of the old.<sup>53</sup>

Writing two decades later, Adams contended that it would be wrong to exaggerate the extent of CMS influence, even over Glenelg. He noted the ways in which the CMS was routinely rebuffed, and observed that '[s]uch treatment reveals the Colonial Office's dislike of amateur advice and interference', regardless of where it came from. He added that Glenelg, Grey, and Stephen 'were all wary of Dandeson Coates, who was by no means on the intimate terms with them or with the Colonial Office files that has sometimes been supposed'.<sup>54</sup>

Into 1838, therefore, there was now relative uniformity of opinion in Britain among the missionaries, colonisers, and the Government as to the necessity for the establishment of an official British presence in New Zealand beyond that already represented by the British Resident. What remained in dispute was the form this enhanced presence should take. As the year went on, the CMS and the Association continued to vie for the Government's favour. In a way, the two bodies had some aspirations in common. As Belich put it, 'both wanted just enough intervention to facilitate their goals, but not so much as to impede them'.<sup>55</sup>

Adams usefully summed up the impasse like this. The CMS's primary weakness was that it refused to see that its solutions – such as preventing all colonisation (save for the families of missionaries), and convincing Parliament to increase the Resident's power and give him naval support – were impractical and outdated now that informal

Colonel William Wakefield was already initiating his land 'purchases' with Māori in the Cook Strait area. By the time that Hobson reached Sydney, the first of the New Zealand Company's fleet of six immigrant ships, the *Aurora*, was less than a month away from arriving at Port Nicholson.

It was private land transactions that preoccupied Hobson upon his arrival. He reported with his instructions to Gipps, who had been growing concerned about the consequences of the claims of various Sydney businessmen to have acquired vast tracts of New Zealand land. On 6 January, Gipps scuttled an auction in Sydney of 2,000 acres of Bay of Islands land by warning that the Crown might not recognise any purchases made. A week later, Hobson met a deputation of indignant colonists, who demanded to know what right the British Government thought it had to interfere in 'a free and independent state'. Hobson replied that the 1835 declaration had not been understood by Māori at the time, had never been put into effect, and applied only to the northern part of the North Island. But, while it was 'an experiment wh[ich] had failed', the British Government of course still recognised the chiefs' independence. Moreover, Hobson reassured the deputation – as Secretary of State for War and the Colonies Lord Normanby had instructed him to – that the Government had no intention of dispossessing any purchasers whose land had been obtained fairly. When asked if there was an intention to 'colonize the whole of New Zealand', he said he hoped that it 'might be accomplished'.<sup>3</sup>

Gipps then acted upon Normanby's instructions by drawing up three proclamations, dated 14 January 1840.<sup>4</sup> These were not issued until after Hobson's departure for New Zealand several days later so that they might be announced more or less concurrently on either side of the Tasman.<sup>5</sup> They declared that:

- the boundaries of New South Wales were expanded to include 'any territory which is or may be acquired in sovereignty by Her Majesty . . . within that group of Islands in the Pacific Ocean, commonly called New Zealand', as provided for in the Letters Patent issued in Britain on 15 June 1839;
- Gipps had sworn Hobson in as Lieutenant-Governor on the basis of the latter's commission, issued in

Britain on 30 July 1839, to act in that capacity over any such territory so acquired; and

- the Crown would recognise no private purchases of land made from Māori after 14 January 1840, and would not accept the validity of any purchases made prior to that date until an investigation had taken place and a Crown title issued.<sup>6</sup>

The Sydney land speculators were most alarmed by these statements. New Zealand was not yet a British possession and Hobson was, in the words of historian Edward Sweetman, who wrote about these events in 1939, a 'purely theoretical Lieut[enant]-Governor'. The land buyers resorted to Sydney's leading lawyers, who concluded that bona fide purchases in a foreign country made prior to such a proclamation could not be invalidated.<sup>7</sup> We return in chapter 10 to the Crown's intentions behind these proclamations, and the date upon which the British considered sovereignty technically passed in New Zealand. Suffice it to note here that, despite subsequent events, the date of 14 January continued to have a particular status.

In all, while awaiting the preparation of *HMS Herald*, his onward ship to New Zealand, Hobson remained in Sydney for nearly four weeks. Normanby had instructed him to select the individuals he needed as subordinate officers from amongst the New South Wales or New Zealand settlers. Gipps obliged by providing Hobson with four police troopers, a sergeant, and what Peter Adams called 'a threadbare establishment of second-rate New South Wales civil servants' to serve in his colonial administration – a far cry from the 67 members of staff Hobson had requested.<sup>8</sup> The officers provided were George Cooper (Treasurer), Felton Mathew (Surveyor-General), Willoughby Shortland (Police Magistrate), and James Freeman (Chief Clerk). This party sailed for New Zealand on 18 January, with another clerk, Samuel Grimstone, following in March, along with five further mounted police.<sup>9</sup>

### 7.3 HOBSON'S ARRIVAL IN THE BAY OF ISLANDS

*HMS Herald* entered the Bay of Islands on the morning of 29 January, Mathew noting Hobson's anxiety at the possibility that they might encounter a French warship:



