



Te Kāhui Tika Tangata  
Human Rights Commission



# Co-governance, human rights & te Tiriti o Waitangi

## Mana kāwana ngātahi, ngā tika tangata me te Tiriti o Waitangi

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This resource has been prepared according to the functions of the Human Rights Commission as set out in section 5(2) of the [Human Rights Act 1993](#), which include:

1. (2)(a) *to be an advocate for human rights and to promote and protect, by education and publicity, respect for, and observance of, human rights*
2. (2)(d) *to promote by research, education, and discussion a better understanding of the human rights dimensions of the [Treaty of Waitangi](#) and their relationship with domestic and international human rights law*
3. (2)(kc) *to promote and monitor compliance by New Zealand with, and the reporting by New Zealand on, the implementation of international instruments on human rights ratified by New Zealand*

### What is co-governance? | He aha te mana kāwana ngātahi?

Co-governance is a phrase used to describe various arrangements where Māori and the Crown share decision-making power or where Māori exercise a form of self-determination, albeit as a delegation of state power. Examples include co-management of resources (such as rivers and mountains) as part

of Treaty of Waitangi settlements, the provision of social services to Māori by Māori-focused entities (such as Te Aka Whai Ora | Māori Health Authority), and the guaranteed inclusion of Māori in local governance.

The justifications for co-governance are varied. These may include:

- to honour the promises in te Tiriti o Waitangi, which provides for shared governance between the Crown and Māori
- New Zealand's obligations under international human rights law, including the rights of Indigenous peoples to self-determination
- to achieve better outcomes for the environment or in social, economic, health and other areas
- to address entrenched inequalities experienced by Māori as individuals and as an Indigenous people
- to respond to policy that imposed colonial governance and laws on Māori, contrary to Māori rangatiratanga and the right to self-determination

Co-governance does not undermine the ultimate sovereign authority of Parliament. In fact, in most cases Parliament has authorised it.

In co-governance or co-management arrangements, especially in regulation of the environment, tikanga Māori (Māori law) and state law are used to govern together.

## Why do we have co-governance arrangements in Aotearoa? | He aha te take o te mana kāwana ngātahi i Aotearoa?

### *Te Tiriti o Waitangi*

Articles one and two of te Tiriti o Waitangi provide for co-existing systems of governance: Crown kāwanatanga authority and iwi and hapū rangatiratanga. The Waitangi Tribunal has found that those who signed Te Tiriti o Waitangi envisaged a sharing of power and authority, and a partnership of equals.<sup>1</sup>

However, the provisions in the [articles of te Tiriti o Waitangi](#), including the promise of shared governance authority, were not honoured.<sup>2</sup>

Co-governance arrangements are one way that kāwanatanga (or state governance) might provide limited space for rangatiratanga and the right to self-determination.

Te Tiriti o Waitangi is our founding constitutional instrument and the basis for European settlement, and subsequently all migrants, in Aotearoa. It provides the foundation for our multicultural society and gives everyone who lives here the right to call Aotearoa home. Therefore, more work is needed to reflect and uphold all the promises of te Tiriti o Waitangi.

### *Human rights | Tika tangata*

Existing examples of co-governance are consistent with New Zealand's human rights obligations under international law.

The [United Nations Charter](#), and the foundational treaties that form the [International Bill of Human Rights](#), recognise that all peoples have the fundamental right to self-determination. This is the right to make decisions for themselves, including about how they are governed, and to determine their own destinies.

The [UN Declaration on the Rights of Indigenous Peoples](#) affirms that Indigenous peoples have this right too. Māori are the Indigenous peoples of Aotearoa New Zealand. The Declaration details what the right to self-determination entails – including self-government, autonomy, and rights to make decisions about their lands and resources, determine their own priorities and deliver their own programmes through their own systems and institutions. As well as the right to self-determination, the Declaration affirms that Indigenous peoples have the right to participate in external decision-making (e.g., by state governments) that may affect them or their rights.

### **Key terms: *kāwanatanga*, *rangatiratanga* and *spheres of influence* | Ngā tautuhi: *kāwanatanga*, *rangatiratanga* me ngā whaitua whaimana**

These terms together present a way to think about decision-making as envisaged by te Tiriti o Waitangi. They are described in the report, *Matike Mai*, in the following way<sup>3</sup>:

*“Te Tiriti envisaged the continuing exercise of rangatiratanga while granting a place for kāwanatanga. It provided for what the Waitangi Tribunal recently described as “different spheres of influence” which allowed for both the independent exercise of rangatiratanga and kāwanatanga and the expectation that there would also be an interdependent sphere where they might make joint decisions.*

*We call those spheres of influence the “rangatiratanga sphere”, where Māori make decisions for Māori and the “kāwanatanga sphere” where the Crown will make decisions for its people. The sphere where they will work together as equals we call the “relational sphere” because it is where the Tiriti relationship will operate. It is the sphere where a conciliatory and consensual democracy would be most needed.*

### **Addressing inequality and achieving better outcomes | Whakatika i te manarite kore me te whaihua pai ake**

Co-governance arrangements, which enable Māori to manage issues and be involved in making decisions that affect Māori, can help to address entrenched inequalities Māori experience across numerous areas, including health, justice, employment, housing, and income.

The proven effectiveness of Māori leading their own solutions has been demonstrated numerous times in Aotearoa,<sup>4</sup> and is supported by international research carried out by the Harvard Project on Indigenous Governance and Development.<sup>5</sup> The long-running Harvard research project has found:<sup>6</sup>

*When Native nations make their own decisions about what development approaches to take, they consistently out-perform external decision makers—on matters as diverse as governmental form, natural resource management, economic development, health care and social service provision.*

There is also evidence to show that Crown systems and structures have, in many instances, disadvantaged and failed Māori, and have contributed to the deep disparities that have impacted generations of Māori whānau and communities.<sup>7</sup>

## Co-management in action | Mana whakahaere ngātahi

### *The Whanganui River*

The co-management arrangement of the Whanganui river uses both traditional mātauranga Māori (Māori knowledge) and Western conservation frameworks, where Māori and local authorities come together to focus on uplifting the wellbeing of the river. The shared management aims to uplift the wellbeing of the whole environment and ecosystem, which in turn uplifts the health and wellbeing of the people and the surrounding community. This example of co-management was the result of a negotiated Treaty settlement agreement between Whanganui iwi and the Crown, as a way to address past injustices and move forward together.

### *Te Aka Whai Ora | Māori Health Authority*

Despite health policies by successive governments aimed at achieving health equity for Māori, Māori health outcomes remain significantly poorer than other New Zealanders. Past approaches have failed Māori. The Waitangi Tribunal found that the “health system has not addressed Māori health inequities in a Treaty-compliant way, and this failure is in part why Māori health inequities have persisted”.<sup>8</sup>

Te Aka Whai Ora has been established as a better means to address disparities in Māori health.

Even though Te Aka Whai Ora model reflects co-management, it does not necessarily reflect a rangatiratanga approach because it still reports to and is funded by the Crown.

## What about existing Crown governance structures? | Me pēhea ngā rākau a te Kāwana o nāianeī?

The Westminster system of government we have in Aotearoa means that ultimate decision-making power rests with Parliament. This is the concept of Parliamentary sovereignty.

While this process concentrates power primarily in the government, which is the majority in Parliament, it can devolve decision-making power to other individuals and groups. It does so with a democratic mandate, and delegated power always remains subject to the power of Parliament.

All state-recognised co-governance arrangements have been established within the constitutional rules of New Zealand’s democratic system of governance. Sometimes this has been as the result of negotiated agreements between the Crown and iwi or hapū, recognising and providing some redress for past injustices and creating new processes that aim to prevent further rights violations.<sup>9</sup>

Overseas, there are numerous examples of pluralistic systems – that is, governance arrangements that allow for multiple governance bodies to operate alongside each other. Federal systems, such as Australia, Canada and the United States are pluralist in that power is shared between federal governments and state or provincial governments.

Examples of pluralism that recognise Indigenous peoples’ governance authority, albeit to a limited extent, include:

- Sami Parliaments in Finland, Norway, and Sweden, and
- The inherent sovereignty of almost 600 American Indian nations, which includes law making power, and constitutional protection of Indigenous peoples’ legal systems.



## Endnotes

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<sup>1</sup> Fletcher, N. (2022). *The English Text of the Treaty of Waitangi*. [Bridget Williams Books](#). See also: Waitangi Tribunal (2014). *He Whakaputanga me te Tiriti: Report on stage 1 of the Te Paparahi o te Raki Inquiry*, Wai 1040, at p529.

<sup>2</sup> Human Rights Commission (n.d.) *Human rights and Te Tiriti o Waitangi*. Accessed 12 September 2023 at: <https://tikatangata.org.nz/human-rights-in-aotearoa/human-rights-and-te-tiriti-o-waitangi>

<sup>3</sup> The Independent Working Group on Constitutional Transformation (2016) *Matike Mai Aotearoa*. Retrieved from: <http://www.converge.org.nz/pma/MatikeMaiAotearoaReport.pdf>

<sup>4</sup> For example, marae-led responses to Cyclone Gabrielle, iwi-led responses in the Covid-19 pandemic, and in the Whānau Ora model of community healthcare.

<sup>5</sup> Harvard University. (n.d.). *Project on Indigenous Governance and Development*. Retrieved from: <https://indigenousgov.hks.harvard.edu/>

<sup>6</sup> *Ibid.*

<sup>7</sup> See for example the Waitangi Tribunal's Housing Policy and Services Inquiry, available at: <https://waitangitribunal.govt.nz/inquiries/kaupapa-inquiries/housing-policy-and-services-inquiry/>

<sup>8</sup> Waitangi Tribunal (2020) *Hauora Stage One Report of the Health Services and Outcomes Kaupapa Inquiry*. Wellington: Waitangi Tribunal; 2020. Retrieved from: [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_195476216/Hauora%202023%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_195476216/Hauora%202023%20W.pdf)

<sup>9</sup> Some examples are provided in the Office of the Auditor General's 2016 *Principles for effectively co-governing natural resources*, available at: <https://oag.parliament.nz/2016/co-governance/part1.htm>