

# KAWANSTANGA NETWORK

LEARNING AND UNDERSTANDING  
THESE ARE THE DIFFERENT  
WAYS OF  
KNOWLEDGE AND  
WISDOM

A *Panatcha* – Initial proposal by presiding discussion on  
Kawanching's insusuality.

*Ta zill a Mallangl* – The duty for developing a formal Constitution

- The *Atanach* is a combination of the *Panatcha* and *Ta zill a Mallangl* that provides a mechanism for how to deal with the issues.
- The *Atanach* provides a clear structure of how to deal with the issues.
- It is important for the members and community to understand how to deal with the issues and how to deal with the issues in a clear and concise way.

IT IS THE PROCESS OF DISCUSSION THAT IS IMPORTANT  
TO UNDERSTANDING THE FINAL OUTCOME

## BACKGROUND

In 1995 a national gathering of Kawanatanga Network representatives spent two days exploring the roles and responsibilities inherent in the Paakeha/Tauwi *kawanatanga* function, as guaranteed by *Te Tiriti o Waitangi*. It had been for this purpose that Kawanatanga Network established itself twelve months earlier, and members of the 1995 conference represented Paakeha/Tauwi *Te Tiriti-Worker* groups from Christchurch to Whangarei. At the end of that gathering and in keeping with Network objectives, Waikato members agreed to explore ways of stimulating collective discussion about what Paakeha/Tauwi want considered for inclusion in a written *Te Tiriti*-based Constitution, as members of the Crown party to *Te Tiriti*.

Our own attempt to draft some Paakeha/Tauwi ideas began in March 1996 with the word *partnership* ready on our tongues. Twelve weeks later we had begun to better-identify *Te Tiriti* guarantees which simply do not 'fit' with familiar Paakeha/Tauwi partnership-practice. And that is still very much our view, as practised in mainstream structures today 'partnership' is generally not a fitting vehicle for a *Te Tiriti*-based relationship.

Such change in our *ways of seeing issues* lies at the heart of both future Paakeha/Tauwi relationships with *tangata whenua* and development of community, in our view. Today Kawanatanga Network-Waikato members find ourselves more satisfied with thinking which reflects some inter-connecting tension between values that earlier appeared simply contradictory. The acceptance of such tension as indicators of opportunity-for-development is a constructive way of *making space for* opposing or minority views, and may itself show change to be underway. Over the next eleven months, our first draft went through seven further stages before reaching its present form. We offer the attached document as a 'trigger' for wide-spread discussion and understanding amongst Paakeha/Tauwi communities. The document is supported with the above suggestions and our conviction of there today being need for some transformation of social structures, rather than reform.

# PAAKEHA/TAUIWI DISCUSSION PAPER ON FUTURE CONSTITUTION

FEBRUARY 1997 KAWANATANGA NETWORK - WAIKATO

THE DECLARATION OF INDEPENDENCE (1835) AND TE TIRITI O WAITANGI (1840) TOGETHER PROVIDE THE FOUNDATION OF ANY FORMALISED CONSTITUTIONAL RELATIONSHIP DEVELOPED FOR AOTEAROA, BEING - AS IT WERE - BOTH "THE SHADOW BEHIND OUR CONSTITUTION" AND THE IMMUTABLE FRAMEWORK GIVING IT STRUCTURE

## PREAMBLE - A SETTING FOR PAAKEHA/TAUIWI DISCUSSION

<p>1.01 Te Tiriti o Waitangi and The Declaration of Independence over-ride ALL constitutional components and considerations identified in this discussion. Their over-arching position indicates their paramount importance in terms of constitutional development today.</p>	<p>1.02 While generosity has characterised much past Tangata Whenua behaviour, KN-W believe present Paakeha/Tauwiwi expectations about their future roles and circumstances within a Te Tiriti-based relationship, must realistically be based initially upon Te Tiriti guarantees.</p>
<p>1.03 KN-W members speak as descendants of those whose agents drew up Te Tiriti of Waitangi, members of the 'Crown' party to that two-party covenant. We anticipate the tangata whenua will wish to reach certain decisions amongst themselves before discussing constitutional issues with Paakeha/Tauwiwi. Paakeha/Tauwiwi therefore have this general opportunity to clarify thinking about what we wish included in a joint constitution. This clarification will also help prepare our party for later dialogue with hapu/iwi.</p>	<p>1.04 KN-W thinking on constitutional issues has progressed to now stand upon one underlying principle: <b>positive approaches to a Te Tiriti-based relationship with the tangata whenua will include major changes to Paakeha/Tauwiwi ways of being - changes which essentially transform our systems and selves.</b></p>
<p>1.05 This constitution must challenge the purposes of global capitalism, as do Martin Luther King's words: <i>"I have the audacity to believe that peoples everywhere can have three meals a day for their bodies, education and culture for their minds, and dignity, equality, and freedom for their spirits"</i>.</p>	<p>1.06 The constitution shall also reflect King's view that: <i>"An individual has not started living until (s)/he can rise above the narrow confines of (her)/his individual concerns to the broader concerns of all humanity"</i> (KN-W inserts).</p>

<p>1.07          Constitutions must inevitably be based on certain assumptions - in this instance, expectations and beliefs about what is 'real' or 'proper' in the (Paakeha) world, and equally powerful but negative beliefs about Tangata Whenua world(s). Some suggestions for consideration in following sections rest on less-familiar assumptions than those which direct present systems (those to which Paakeha are accustomed). <b>These assumptions need also to be uncovered and debated amongst Paakeha/Tauwi.</b> Discussion of constitutional matters can be expected to simultaneously expand our understanding of a Te Tiriti-based relationship.</p>	<p>1.08          While as Paakeha/Tauwi we may feel a certain apprehension in speaking publicly of such ideas, KN-W members believe that any constitution the Te Tiriti parties develop <b>must provide for hope, good faith and</b> (for want of a less-worn word) <b>love - amongst all sections of society.</b></p>
<p>1.09          Notwithstanding realistic need for Aotearoa's participation in Pacific and global concerns, <b>the primary constitutional focus will reflect the bilateral<sup>1</sup> experiences and realities of this country.</b></p>	<p>1.10          Awareness of the likelihood of as-yet-unseen Tiriti and Declaration implications for a Tiriti-based relationship <i>continuing to slowly emerge for Paakeha/Tauwi</i>, can reasonably be expected to prepare us for another important probability: <b>present concepts of a Te Tiriti-based relationship will change rapidly as understanding of those implications grows<sup>2</sup>.</b></p>

<sup>1</sup>. The term *bilateral* is here used in the sense of *two-stranded, each strand being different yet parallel to its 'other'* (Programmes on Racism first used this concept, we believe).

<sup>2</sup>. To illustrate how such implications may produce major shifts of understanding, we offer a KN-W's experience:

When beginning this discussion, and in keeping with our understanding of common expectations at that time, KN-Waikato members thought of the constitutional expression of future Treaty-based relationships mainly in terms of some *partnership*. However, examples of 'partnership' with Tangata Whenua open to our scrutiny over a number of years, have generally been shown to be cynically inadequate. An exception to that analysis is often claimed for The Women's Refuge Movement. That organisation doggedly pursues a *parallel development* vision more effectively than any other 'partnership' known to KN-W. Yet its reliance upon 'mainstream' funding (**while entirely justified in one sense**) also ultimately can be shown to restrict Maaori women's (and whanau/hapu/iwi) expression of *tino rangatiratanga*. And the success that *kohanga reo* and *kura kaupapa* movements achieve, comes today from resolute Tangata Whenua commitment - **in spite of, rather than thanks to** - Ministry 'partnership' interventions! Those interventions also bring heavy costs. From that background of knowledge, and as KN-W members saw more practical implications of *tino rangatiratanga*, *tangata whenua status*, and *kaitiakitanga* for Paakeha/Tauwi regimes, the acute inadequacy of all partnership examples known to us **had to be faced** (we do not feel sufficiently informed to comment here on church partnership-initiatives). Most so-called 'bicultural partnerships' - although 'acknowledging' the fact that the two parties have been historically-positioned to enter the relationship differently - do little to **structurally counter such imbalance**. Instead - (possibly) assuming the remedial potential of 'goodwill' and 'education' to be sufficient to satisfy Te Tiriti injustice - bicultural partnerships have simply been 'spoken into place'. They exist, mainly because one party says they exist; they overwhelmingly have been defined by one party. Apparently it matters little that such 'partnerships' involve parties who, although presumed to share identical entitlements, do so within *colonisation-constructed settings* that were specifically designed to ensure each must bring *un-equal status, dis-similar expectation, and irreconcilably disparate* access-to-resources to the relationship. Whatever claim of 'improvement' (for which party?) proves justified, the vast majority of such 'bicultural partnerships' **have excluded structural change** (power and control - *tino rangatiratanga*). Recent Crown initiatives concede only very limited self-management. Within such circumstances and given KN-W members' understanding today, hapu/iwi demands for *parallel development* offer very moderate approaches to a Te Tiriti-based future relationship - probably as an interim strategy. Initially, not all our members shared that conclusion.

<p style="text-align: center;"><b>2.00: SUGGESTED PROCESSES, STRUCTURES AND/OR ACTIONS (LEADING TO ADJACENT PRINCIPLES)</b></p> <p style="text-align: center;"><b>FOR INITIAL PAAKEHA/TAUIWI CONSIDERATION</b></p>	<p style="text-align: center;"><b>3.00: SUGGESTED CONSTITUTIONAL PRINCIPLES (FOR CONSIDERATION AS POSSIBLE ARTICLES)</b></p> <p style="text-align: center;"><b>INITIALLY FOR DISCUSSION AMONGST PAAKEHA/TAUIWI</b></p>
<p>2.01</p> <p>a. As specified in subsequent Process/Action proposals, te kawanatanga will invite and fund community exploration of issues arising from the proposed changes to Paakeha/Tauwi ways of being. Such 'community exploration' shall be controlled and directed by communities, after Te Tiriti parties collectively define 'community'. Having been collated, reconciled, and debated with Tangata Whenua the resulting preferences will be offered to the tangata whenua for consideration during negotiation of kawanatanga policies.</p>	<p>3.01</p> <p>This constitution shall be committed to establishing a way of life which features a collective identity and communal existence amongst Paakeha/Tauwi , while at the same time <i>making space for</i> and accepting individuality and difference<sup>3</sup>. (NB: 2.01, 2.03, 2.04, 2.05 and 2.07 in the adjacent column include processes intended to help achieve the above principle.)</p>
<p>2.02</p> <p>a. All Crown lands shall be returned to the tangata whenua, who alone shall determine its distribution.</p> <p>b. Ultimate control of all Conservation Estates shall be returned to hapu/iwi.</p> <p>c. As an interim measure, the Department of Conservation (doc) shall continue in its present roles and functions until such time as the tangata whenua advise otherwise. This provision being subject to a change of primary accountability to hapu/iwi; DoC will therefore also seek to negotiate systems of accountability with the tangata whenua. Meanwhile DoC funding will continue as at present, being provided by te kawanatanga.</p> <p>d. Te kawanatanga shall request direction from hapu/iwi to modify the Waitangi Tribunal and its founding legislation, so as to speed up resolution of historical injustices.</p>	<p>3.02</p> <p>The constitution shall provide for continuing to 'put right' past Tiriti injustices, until current hapu/iwi satisfaction is achieved.</p>
<p>2.03</p> <p>a. The development of a Te Tiriti-based society requires the reviewing of factors directing economic, political, and social policies. Systems requiring review are thought to include:</p> <ul style="list-style-type: none"> <li>- those used for accessing and distributing basic living resources</li> <li>- maintenance of 'employment' as the principal means for accessing living resources</li> <li>- consequences of and justifications for re-defining citizens primarily as consumers</li> <li>- systems for attributing value to alternative means of 'contributing to society's well-being'</li> <li>- long-term outcomes of individual and corporate accumulation of wealth and property</li> <li>- outcomes of present systems encouraging 'privatisation' of property and possession</li> <li>- the relationship between such factors and global trade patterns (e.g. APEC), global capitalism, and the effect of such relationships on a Te Tiriti-based future</li> </ul> <p>b. The kawanatanga will stimulate, resource, and organise widespread community debate on all such issues, as a forerunner to the negotiation of mutual policy with the tangata whenua.</p>	<p>3.03</p> <p>Within the framework of the Te Tiriti-based relationship, a balance of contemporary notions of 'subsistence economies', 'progress', the selective application of technology, and the maintenance of sustainable physical, 'spiritual', and intellectual environments shall be sought and evaluated. The main objective of this endeavour, shall be the co-operative construction of a development model for a bilateral<sup>4</sup> future.</p>

<sup>3</sup> Collectively Paakeha/Tauwi *may be short on* the skills, perceptions, or understandings that are likely to be help advance these objectives, and perhaps also troubled by their apparent integral contradiction. However, this Discussion Draft promotes actions which *make space for and include as best we may* all Paakeha/Tauwi viewpoints, 'realities', and beliefs in today's context. Most importantly, given Tangata Whenua endorsement of its primary objectives, IT WILL PRIORITISE THEIR REALISATION ABOVE ALL ELSE.

<p>2.04</p> <p>a. Mutually acceptable processes shall be negotiated to facilitate and encourage communal re-evaluation of expectations and practices regarding <i>ownership</i> and <i>possession</i> in Aotearoa, with particular reference to Western traditions of <i>individualised</i> and <i>privatised</i> ownership.</p> <p>b. As consequent change is likely to appear more momentous to Paakeha/Tauiwi, that Te Tiriti party might usefully begin working through the above processes first.</p> <p>c. Parallel uses of land by Te Tiriti parties will be possible - for example, farming and forestry alongside <i>mahinga kai</i> or <i>mahinga ika</i>.</p>	<p>3.04</p> <p>In keeping with Iwi definitions of their <i>tino rangatiratanga</i> and <i>mana whenua</i> roles, and as <i>kaitiaki</i> of both natural environments and resources, <b>the tangata whenua logically shall re-assert primary responsibility and decision-making control over all natural resources and environments<sup>5</sup>.</b></p>
<p>2.05</p> <p>a. Provisions of <i>kaitiakitanga</i> funding might be organised in much the same way as governments of our past have resourced themselves to govern</p> <p>b. Alternatively, re-structured and resourced in ways directed by the tangata whenua, the Waitangi Tribunal might provide a suitable body to facilitate systems for resourcing <i>kaitiakitanga</i> (see 2.02)</p>	<p>3.05</p> <p>Systems shall be urgently put in place by the kawatanga to provide any material resources hapu/iwi identify to be essential to their fulfilment of <i>kaitiakitanga</i> responsibilities.</p>
<p>2.06</p> <p>a. During transition to hapu/iwi rangatiratanga and mana whenua controls, and while continuing to provide former services and functions, former Crown agencies - including local government organisations - will explore their new kawatanga role and responsibilities, <b>taking particular care to avoid assuming any legitimate maintenance of earlier status.</b></p> <p>b. Paakeha/Tauiwi be encouraged to actively participate in clarifying kawatanga responsibilities within frameworks established by hapu/iwi definition of <i>tino rangatiratanga</i>.</p> <p>c. Kawatanga shall provide community education facilities with which Paakeha/Tauiwi generally may explore their amended rights as members of the kawatanga Te Tiriti party.</p> <p>d. Customary Paakeha/Tauiwi 'right of ownership' as applies to monies, possessions, property, lands - and other environmental or natural resources treated as forms of wealth in Paakeha/Tauiwi systems - shall be reviewed and modified.</p> <p>e. In the case of 'landed property', 'conditional right of continuing use' for the duration of life may be a fitting alternative to 'ownership' (title).</p> <p>f. In some circumstances, the last-mentioned rights shall be adjusted to establish reasonable harmony between the living circumstances of the 'leasee' and those of neighbouring resident groups.</p> <p>g. Upon the death of former kawatanga owner/leasee(s), such rights revert to the appropriate hapu/iwi</p> <p>h. The above proposals remain <b>absolutely conditional upon hapu/iwi approval.</b></p>	<p>3.06</p> <p>As hapu/iwi exercise their respective <i>tino rangatiratanga</i>, <i>mana whenua</i> and <i>kaitiakitanga</i> roles, the former Crown's amended kawatanga responsibilities will become more visible. <b>Meanwhile the kawatanga (and its statutory agents) shall continue to provide government's former functions and services until alternative kawatanga arrangements are negotiated between both parties. The constructive 'shift' with minimal delay to an evolving constitutional relationship, shall remain a 'top priority' until achieved.</b></p>

<sup>4</sup> The achievement of such objectives within Aotearoa can be expected to require the re-construction of national paradigms. Discourses under-pinning future social, economic and political directions, will reflect radically different visions from those to which Paakeha/Tauiwi have become accustomed. The process is suggested to involve exploration of bilaterally-acceptable 'ideals' for national productivity, for resource-sustainability, conservation, protection of natural environments and species - together with the development of practical systems for the equitable accessing, sharing, and distribution of production, and for consensual decision-making and kawatanga. These issues are believed *already opened to significant change* by our need to finally respond positively to Te Tiriti. Indeed, demand for a Te Tiriti-based relationship, is effectively *demand for Paakeha structural change*

<sup>5</sup> This Principle has major implications for customary Paakeha law and expectation in terms of 'ownership' and 'property'. Some possible implications are clarified in subsequent Principles.

<p>2.07</p> <p>a. While the assumption is made here of a 'universal Human Rights Code' being generally applicable to a future Aotearoa (3.07), that assumption shall be subjected to Tangata Whenua endorsement. Appropriate processes and opportunities shall be sought to either confirm that assumption with the tangata whenua, or to negotiate an alternative code.</p> <p>b. In the event of Paakeha/Tauwiwi experiencing difficulty in coming to terms with the exclusivity of <i>tangata whenua status-based</i> rights, the kawanatanga shall fulfil its responsibilities by providing appropriate leadership.</p>	<p>3.07</p> <p>All Paakeha/Tauwiwi shall have full access to all rights that are intended to promote equity<sup>6</sup> within and between both TeTiriti parties, <b>but not including any additional rights accruing to the tangata whenua of Aotearoa by virtue of <i>tangata whenua status</i></b>. The former rights include:</p> <ul style="list-style-type: none"> <li>- the right to share fully in Paakeha/Tauwiwi systems and structures<sup>7</sup>.</li> <li>- the right to participate actively in open government</li> <li>- the right to freedoms of speech and association</li> <li>- the right of equitable access to health, social services, educational services, to freedom of worship, and to employment</li> <li>- right-of-access to food, shelter, safety and security - all at levels in keeping with those enjoyed by other citizens<sup>8</sup>.</li> </ul>
<p>2.08</p> <p>a. Provision shall be made for negotiation of additional rights with Te Tiriti parties, if and when additional need becomes apparent.</p>	<p>3.08</p> <p>Subject to specified priorities and qualifications, access to the above conditions of equity shall not prohibit any additional rights as may subsequently emerge from Tangata Whenua systems.</p>
<p>2.09</p> <p>a. In keeping with Constitutional plans to change Paakeha/Tauwiwi practise, expectation, and law as it relates to privatised and individual property-ownership, all housing and accommodation shall return to hapu/iwi <i>rangatiratanga</i> and <i>mana whenua</i> control.</p> <p>b. Existing occupancy of 'satisfactory' accommodation shall be protected by the right to <i>rent or lease for life</i>, this right being subject to adjustment where unjustifiable inequity is apparent.</p> <p>c. Mechanisms be negotiated to take responsibility for the provision and administration of all housing and accommodation needed to satisfy community need <b>OR</b></p> <p>d. Alternatively, hapu/iwi may see such responsibilities to be part of kawanatanga's 'governing' role (that is, the over-arching responsibility to provide for the needs of citizens - in this instance, housing and accommodation). In either event, new policy and systems will be negotiated - in keeping with available resources - with the objective of providing adequately for diverse rather than standardised needs.</p> <p>e. Personal and familial possessions valued primarily for historical, spiritual or emotional reasons, shall remain within the control and care of existing owner(s).</p>	<p>3.09</p> <p>Mutually acceptable processes shall be developed to facilitate and encourage communal re-evaluation of Paakeha/Tauwiwi expectations and practices regarding <i>ownership</i> and <i>possession</i>, with particular reference to Western <i>individualised</i> and <i>privatised</i> traditions.</p>

<sup>6</sup> Practical formulations of equity are established within the constitution, and reflect the specificity of each TeTiriti party's roles, status and responsibilities.

<sup>7</sup> The degree to which Paakeha/Tauwiwi rights include *a right to participate in Tangata Whenua systems, decision-making, and social interaction*, is thought a matter for hapu/iwi alone to decide. In any event, perhaps Paakeha/Tauwiwi participation is better seen as a matter of *privilege* rather than *right*.

<sup>8</sup> Those wishing to consider the basic human rights (3.07) listed above in the light of United Nations thinking, may refer to Appendices A-E (p. 27) in *Mana Tangata*, Ministry of Maori Development 1994

<p>2.10</p> <p>a. Should Paakeha/Tauwi experience need of guided debate to assist acceptance of <i>tangata whenua status-based rights</i>, suitable provisions shall be initiated by the kawatanga.</p>	<p>3.10</p> <p>Processes shall be developed to encourage Paakeha/Tauwi to play significant and active roles in the development of social, political and economic policy at community and national levels. While for practical reasons it may not always be fully achieved, <b>consensual government and decision-making at all levels shall be made a major commitment, both in inter-Paakeha/Tauwi dealings and in relating to Tangata Whenua.</b></p>
<p>2.11</p>	<p>3.11</p> <p>Safeguards to protect the adopted Constitution from mischievous modification shall be bilaterally negotiated and shall include the tangata whenua's ultimate <i>right of veto</i><sup>9</sup>.</p>
<p>2.12</p>	<p>3.12</p> <p>Provision shall be made to ensure the Constitution adopted by both Treaty parties <b>is enacted to each party's realistic satisfaction.</b></p>
<p>2.13</p>	<p>3.13</p> <p>Immigration policy shall be determined by the tangata whenua. It is to be implemented for both treaty parties by that party with kawatanga responsibilities (Paakeha/Tauwi).</p>
<p>2.14</p> <p>a. Both parties to Te Tiriti shall be entitled to independent representation on all United Nations organisations with which Aotearoa becomes involved, with the exception of indigenous peoples' organisations where Paakeha/Tauwi have no place.</p> <p>b. This constitution shall recognise and uphold the United Nations Draft Indigenous Peoples Rights.</p>	<p>3.14</p> <p>Constructive relationships between Aotearoa and the United Nations and its works - particularly the concerns of the world's indigenous peoples - shall be prescribed as necessary and provided for constitutionally (N.B: See 2.14).</p>
<p>2.15</p> <p>a. The kawatanga shall require a specific mandate from majorities of both Te Tiriti parties to commit this country to membership of APEC or similar global trade agreements, regardless of any commitments made without such a specific mandate. Steps be taken by the kawatanga to advise appropriate international bodies of this retrospective requirement</p>	<p>3.15</p> <p>The implementing of Te Tiriti guarantees, coupled with a shared determination on the part of one Te Tiriti party to exercise <i>tinu rangatiratanga</i> and a wish to better-maintain nationhood and sovereignty amongst the other, make advisable consideration of <b>re-nationalising foreign investment and ownership</b> within Aotearoa.</p>

<sup>9</sup> Suitable 'protection' might have meant requiring a simple referendum-majority (say 90%) to justify changes to the constitution. However, such a strategy is unacceptable while either party remains numerically smaller. The objective here is to prevent *corruption* of constitutional intention, and not the automatic blocking of possible development. And since any protective mechanism negotiated will surely enact the *tinu rangatiratanga* rights of Tangata Whenua, perhaps a final hapu/iwi *right of veto* will be a sufficient safeguard.