

28 Paenga-whāwhā 2020

File Ref: OIA 41260



Tēnā koe [REDACTED]

### **Official Information Act request**

Thank you for your request dated 26 March 2020 to Te Puni Kōkiri for information related to WAI 262 and the Te Pae Tawhiti whole of government response.

On 26 March 2020, you also made a request to the Minister for Māori Development on the same topic. The Minister has transferred that request to Te Puni Kōkiri.

Your requests are being considered in accordance with the Official Information Act 1982 (the Act). This letter is an interim response to both requests. It includes a final response to two sections of your request to Te Puni Kōkiri.

I note you have also made similar requests, relating to points 2(a), 2(d) and 2(i) of your request to Te Puni Kōkiri, to a number of other government agencies. Each agency will respond on its own behalf. Where information related to your request is held by more than one agency, the lead agency will respond.

### **Extension of time**

This letter includes a final response to sections 2(g) and 2(j) of your request to Te Puni Kōkiri. I am extending the timeframe for a final response to all other aspects of both requests in accordance with section 15A(1)(a) and 15A(1)(b) of the Act.

The extension is to **31 August 2020**. We will respond as soon as is practicable, and we may provide further interim responses prior to 31 August 2020. I also expect Te Puni Kōkiri officials will be in contact soon to seek to clarify and refine aspects of your request.

Your request encompasses a very large amount of information and requires extensive searching of information. In addition, the rapid move to a Level 4 lockdown, and the need for Ministers and agencies to focus on the delivery of the immediate Government COVID-19 response, has resulted in some constraints and limitations on our ability to respond to information requests in the usual way. This particularly applies to very broad requests such as yours.

Meeting the original time limit would unreasonably interfere with the operations of the Ministry in the present circumstances. We also require additional time for the consultation necessary to reach a decision on both requests.

### **Interim Response in Respect of Section 2(a) and 2(c) of your request**

Sections 2(a) and 2(c) of your request are as follows:

- *“2(a) Briefings, and any other advice (in any form including emails), to any Minister (including the Minister for Māori Development) and Chief Executive from Te Puni Kōkiri on:
  - (i) the Waitangi Tribunal’s Wai 262 report after 29 August 2019;
  - (ii) the Te Pae Tawhiti whole-of-government approach to responding to Wai 262 after 29 August 2019;
  - (iii) a whole-of-government approach to responding to Wai 262 between 1 January 2018 - 29 August 2019;*
- *2(c) All Cabinet papers that refer to a whole-of-government approach to the Wai 262 report between 1 January 2018 - 29 August 2019”.*

Five documents that fall within the scope of section 2(a) of your request have already been released in response to previous requests made under the Act. I am releasing this information to you with this letter. The documents are attached and summarised in Appendix A. Some personal information (individuals’ contact details) has been withheld under section 9(2)(a) of the Act to protect privacy. The remainder of the information is released in full.

Turning to Section 2(c) of your request, I refer you to the information available on the Te Puni Kōkiri website at [tpk.nz/wai262](http://tpk.nz/wai262). This includes both the Cabinet Paper [“Developing a whole of government strategy for Wai 262”](#) from March 2019, and decisions in respect of this paper in April 2019.

### **Final Response to Section 2(g) of your request**

Section 2(g) of your request is as follows:

- *“2(g) confirmation of engagement led by Te Puni Kōkiri after 29 August 2019 with:
  - (i) external (non-Governmental) parties in relation to Wai 262; and
  - (ii) internal Governmental agencies in relation to Wai 262”.*

Regarding 2(g)(i), the only formal Crown engagement with external (non-Governmental) parties undertaken since 29 August 2019 was the targeted engagement with specific Māori groups and individuals in September and October 2019. This engagement is summarised in the engagement report released via the Te Puni Kōkiri website earlier this year. It includes a list of participants in the targeted engagement. A copy is attached for your information.

Regarding 2(g)(ii), Te Pae Tawhiti - Wai 262 is a whole of government work programme. Te Puni Kōkiri does not undertake formal engagement with other Crown agencies, however the work programme regularly involves discussions with, and between, officials from the following agencies:

- Ministry of Business, Innovation and Employment
- Department of Conservation

- Ministry for Culture and Heritage
- Ministry of Education
- Ministry for the Environment
- Environmental Protection Authority
- Ministry of Foreign Affairs and Trade
- Ministry of Health
- Department of Internal Affairs
- Ministry for Primary Industries
- Office for Māori Crown Relations: Te Arawhiti.

Periodically Te Puni Kōkiri also consults with officials from the State Services Commission and the Department of Prime Minister and Cabinet.

### **Final response in respect of Section 2(j) of your request**

Section 2(j) of your request is as follows:

- *“2 (j) any documentation relating to any group established to assist the Minister or Te Puni Kōkiri in their consideration of Wai 262”.*

No group has been established by the Crown for the purpose of assisting the Minister or Te Puni Kōkiri in their consideration of Wai 262, and so no documentation exists.

### **Final comments**

You have the right to seek an investigation and review by the Ombudsman of my decision to extend the timeframe for these requests, and my final response to sections 2(g) and 2(j) of your request to Te Puni Kōkiri. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that Te Puni Kōkiri publishes some of its OIA responses on its website, after the response is sent to the requester. The responses published are those that are considered to have a high level of public interest. In my view this request meets that criterion. Any material published on the Te Puni Kōkiri website will not include your name, address or contact details.

If you wish to discuss any aspect of your request with us, including this interim reply, please feel free to contact [uia@tpk.govt.nz](mailto:uia@tpk.govt.nz).

Nāku noa, nā



Hiria Pointon  
Deputy Chief Executive (Acting), Policy Partnerships  
Manahautū Tuarua Te Puni Hononga Kaupapa Here

**Appendix A – documents released with 28 April 2020 interim response - OIA 41260 – WAI 262**

Item	Date of document	Document ref	Document description	Decision
1	11 March 2019	38832	Background and information relevant to New Zealand's work on WAI 262 – for your information	Phone number redacted under 9(2)(a) otherwise released in full
2	5 July 2019	39724	Wai 262: Final meeting pack for initial meeting with claimant representatives	Released in full
3	5 July 2019	39618	Briefing Paper: Wai 262 – Initial Launch	Released in full
4	20 August 2019	39960	Briefing Paper- WAI 262: Ministerial Oversight Group Briefing on Targeted Engagement	Release in full
5	16 August 2019	39959	<p>Aide Memoire: Wai 262 Targeted Engagement: Urgent Review of material for Ministerial Oversight Group and media release</p> <ul style="list-style-type: none"> <li>Attachment A – draft Briefing Paper BP WAI 262: Ministerial Oversight Group briefing on Targeted Engagement</li> <li>Attachment B: draft media statement</li> </ul>	<p>Aide memoire – phone number redacted otherwise release in full</p> <p>Attachments A &amp; B – released in full</p>





11 Poutūterangi 2019

Te Minita Whanaketanga Māori

## **HE PĀRONGO | AIDE MEMOIRE**

### **Background and information relevant to New Zealand's work on Wai 262 – for your information**

Te Puni Kōkiri contact: Crete Haami, Senior Analyst

Phone: [REDACTED]

TPK tracking no: 38832

#### **Purpose**

1. To provide you with information you requested in your 13 February meeting with Ian Goss.

#### **Context**

2. On 13 February you met with Ian Goss, the Chair of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC). The IGC is a negotiating committee of the World Intellectual Property Organization, which is one of the specialised agencies of the United Nations. It was established in the year 2000 to consider how the international intellectual property system can better protect the intellectual property of indigenous peoples.
3. At the meeting, Mr Goss discussed various activities taking place in Australia that may be relevant to New Zealand's work on Wai 262. You requested information on those activities. The Ministry of Business, Innovation and Employment (MBIE) has provided us with the attached reports in response to your request.

#### **Protection of Indigenous Knowledge in the Intellectual Property System**

4. The first document, released by IP Australia, is entitled "Protection of Indigenous Knowledge in the Intellectual Property System". It is a relatively short document and we recommend that you read most or all of it. The paper sets out many of the issues faced by Aboriginal and Torres Strait Islander people with respect to Western intellectual property laws. Many are the same or similar to the intellectual property issues faced by Māori and indigenous peoples more widely.
5. The paper is split into two parts:
  - a. Part A highlights the issues that affect indigenous people in relation to the protections and management of indigenous knowledge.
  - b. Part B seeks the Australian public's views on specific options that may help address some of the issues raised that relate to the IP responsibilities of IP Australia.

6. The issues in Part A include: misappropriation of indigenous arts and crafts; misuse of indigenous languages, words and clan names; recording and digitisation of indigenous knowledge; misappropriation and misuse of traditional knowledge; use of indigenous genetic resources and associated traditional knowledge; and misuse and derogatory treatment of secret or sacred knowledge.
7. The proposed initiatives in Part B include:
- a. supporting the issue of IP rights to support indigenous products.
  - b. standardising research protocols and guidelines.
  - c. developing and promoting standard research and commercialisation agreements to vest traditional knowledge rights with traditional owners.
  - d. including free and prior informed consent as a requirement for Australian-government funded research programmes.
  - e. developing a national database of traditional knowledge and genetic resources.
  - f. imposing a disclosure of source requirement for genetic resources in patent applications.
  - g. providing training and legal support to indigenous communities.
  - h. preventing the registration of offensive trade marks and designs.
  - i. creating a database of culturally significant words and images.
  - j. requiring trade mark applicants to say whether they have obtained the consent of an indigenous community before using indigenous words or images.
  - k. creating an indigenous advisory panel.
  - l. improving education and awareness.
8. We have highlighted aspects of the paper that we consider resonate in the New Zealand context or that will otherwise be of interest to you.
9. We also have the following specific comments:
- a. the two mechanisms the paper outlines to support **the issue of IP rights to support indigenous products** are certification trade marks and geographical indications. Ordinary trade marks are brands like Coca Cola, Wattie's or Xero. They associate products or services with the business that provides them. Certification trade marks are used to certify that each business using the trade mark has met some sort of standard (e.g., organic food business trading under a 'certified organic' brand). Certification trade marks have already been used by Māori to promote Māori products. The Toi Iho certification trademark was launched by the government in February 2002 as a "first step to protect the cultural and intellectual property of artists in New Zealand."<sup>11</sup> It is now run independently of government. There has been some talk in New Zealand about using geographical indications to protect the products of certain taonga species – most

<sup>11</sup> Minister Tizard press statement on 8 February 2002 (<https://www.beehive.govt.nz/speech/launch-toi-iho-maori-made-mark>).



notably mānuka honey. However, the government needs to be cautious in this area in the short term, given that the European Union will seek significant changes to our geographical indications regime as part of the NZ / EU FTA. There is also currently a Waitangi Tribunal claim on the name 'mānuka' and the use of mānuka and mānuka honey.

- b. developing a voluntarily database to enable kaitiaki to record their mātauranga and the taonga species they have an interest in was one of the recommendations of the Wai 262 report.
- c. imposing a disclosure of origin requirement on patent applicants (the Australian document calls this 'disclosure of source') is an issue that MBIE released a discussion document on alongside the discussion document in released on the Plant Variety Rights Act review. The proposal (in both Australia and New Zealand) is that patent applicants would have declare not only the origin of any genetic resources that they used in developing their claimed invention but also any traditional knowledge used. This would act as a 'flag' for indigenous people to check whether the traditional knowledge and genetic resources had been accessed with the free, prior and informed consent of the relevant indigenous peoples and whether a benefit-sharing agreement had been entered into with them. We note that New Zealand does not have a bioprospecting regime and is not a party to the Nagoya Protocol. There is therefore no requirement for domestic or overseas researchers to enter into access and benefit-sharing agreements with Māori before using genetic resources or mātauranga Māori.
- d. Australia's consideration of measures to prevent the registration of offensive trade marks and designs is inspired by our Trade Marks Act, section 17(1)(c) of which states that a trade mark cannot be registered if the use or registration of the trade mark would, "in the opinion of the Commissioner, be likely to offend a significant section of the community, including Māori". This provision has been operating in New Zealand since 2002. A Māori Advisory Committee advises the Commissioner of Trade Marks whether a trade mark or any aspect of it would be likely to be offensive to Māori. The Canadians were also looking closely at this mechanism when they were considering how they could implement UNDRIP in the area of intellectual property. This underlines one of the opportunities for New Zealand in this area – to lead the development of cutting-edge regulatory regimes, which are then imported by other countries. This is an area where New Zealand is recognised internationally for having considerable expertise. Doing further work in Wai 262 policy areas is therefore a way of building New Zealand's international reputation.
- e. the proposal to create a database of culturally significant words and images is also a recommendation in the Wai 262 report – that a voluntary database of taonga works and their kaitiaki be established.
- f. one of the proposals is that people applying for trade marks be required to state whether consent had been obtained for the use of a word or image as a trade mark. One of the recommendations of the Wai 262 report was that consent from the relevant kaitiaki be required for the commercial use of taonga works. The Australian proposal would not require consent to be obtained for all commercial use or even where somebody is applying for a trade mark. It would instead require the applicant to state whether consent had been obtained.
- g. the Australian consultation document expressly cites our Māori advisory committees under the Trade Marks and Patents regimes when discussing the proposal to create an indigenous advisory panel. Again, this is an example of how New Zealand's law can be



adopted elsewhere. If Australia or Canada were to set up a body similar to the Māori advisory committee to advise their government decision-makers about offensive or derogatory treatment, this would provide a significant opportunity for us. It would then become possible to enter into reciprocal arrangements with them to protect indigenous people in both countries. For example, our Commissioner of Trade Marks could seek the advice of an Australian or Canadian body when considering whether a trade mark were offensive or derogatory to indigenous peoples from Australia or Canada. The Australian and Canadian decision-makers would also then be required to seek the advice of our Māori advisory committees on applications in those countries for trade marks that would be offensive or derogatory to Māori.

### **Report on the impact of inauthentic art and craft in the style of First nations peoples**

10. The second attached document is a much longer document, which we do not recommend you read in full. We have highlighted parts of the paper that may be of interest to you, which we hope enables you to quickly identify the key parts of the paper.
11. The paper was prepared by the Australian House of Representatives' Standing Committee on Indigenous Affairs. The terms of reference were to inquire into and report on the growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia, including:
  - a. the definition of authentic art and craft products and merchandise
  - b. current laws and licensing arrangements for the production, distribution, selling and reselling of authentic Aboriginal and Torres Strait Islander art and craft products and merchandise
  - c. an examination of the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market
  - d. options to promote the authentic products for the benefit of artists and consumers
  - e. options to restrict the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market.
12. The committee makes a number of recommendations, including that:
  - a. the Productivity Commission conducting a comprehensive inquiry into the value and structure of the current market for first Nations arts and crafts.
  - b. IP Australia develop a certification trade mark scheme for authentic First Nations art and craft (see our comments on this above).
  - c. the Australian Government begin a consultation process to develop stand-alone legislation protecting indigenous cultural intellectual property, including traditional knowledge and cultural expressions.
13. The last recommendation is the most striking recommendation. It is similar to the Wai 262 recommendation that the Crown create a stand-alone regime for the protection of taonga works and mātauranga Māori. MBIE's discussion document on the Copyright Act review proposes that the government launch a taonga works work stream to consider whether a stand-alone regime should be developed to provide this protection.

14. We have highlighted some of the quotes from indigenous Australians. This is because they are similar to the accounts many Māori gave in the Wai 262 report. There are other similarities to the Wai 262 report as well. For example, paragraph 4.83 states "Neither the [Australian Consumer Law], nor copyright law were designed to protect First Nations cultural expressions, and therefore each is inadequate to do so". This is almost identical to the Waitangi Tribunal finding in paragraph 2.9.3 of the Wai 262 report: "The current law does not protect the kaitiaki interest in taonga species and mātauranga Māori. As we have said, it was not designed to do so."


#### Attachments

1. Australian Government, IP Australia: Protection of Indigenous Knowledge in the Intellectual Property System – Consultation Paper September 2018.
2. The Parliament of the Commonwealth of Australia: Report on the impact of inauthentic art and craft in the style of First Nations peoples, House of Representatives Standing Committee on Indigenous Affairs – December 2018, Canberra.



Erin Keenan

Tumu Whakahaere, Karauna-Iwi, Hapū, Whānau Māori | Manager, Crown-Iwi, Hapū, Whānau Māori Relations

<b>NOTED</b>

Hon Nanaia Mahuta Te Minita Whanaketanga Māori
Date: 1/4/2019





21 Pipiri 2019

Te Minita Whanaketanga Māori

## **Wai 262 - Initial Launch: Further information on initial hui with claimant representatives**

### **Purpose**

1. This briefing provides you with draft material for your initial hui with representatives of the original Wai 262 claimants on 5 Hōngongoi 2019. It also alerts you to other upcoming topics in this kaupapa.

### **Background**

2. On 8 Paengawhāwhā 2019 Cabinet approved you leading work to develop a whole of Government approach to Wai 262 issues [CAB 19-MIN-0138.01 refers]. This minute also establishes a Ministerial Oversight Group to support you in this work. You have subsequently received a briefing on the overall approach to this mahi on 22 Haratua 2019 (TPK 39508).
3. In brief, the initial launch phase involves you communicating the Government's intention to begin this work to claimant representatives, wider Māori interests and the public in Pipiri 2019. This is followed by three to four months of targeted engagement with iwi leaders, the Māori Council, the Federation of Māori Authorities, relevant statutory Māori advisory boards and Māori technical experts as well as the Wai 262 claimant groups. Targeted engagement will focus on how the Crown proposes to organise itself and the matters which might be considered as part of an ongoing programme of work.
4. The first step is a hui with representatives of the initial claimants on 5 Hōngongoi at Parliament from 12.30-3.00pm. This *pre-announcement* hui is intended as a mark of courtesy and respect to the original claimants rather than a formal part of the targeted engagement process. Claimant representatives will also participate in targeted engagement if they choose to do so.
5. You have approved the following high level talking points from the 22 Haratua briefing:
  - a. recognise the *whakapapa* of the process:
    - i. from the original claimants who had the vision to lodge this contemporary claim in 1991
    - ii. those who supported the claim during the Tribunal process
    - iii. the 2011 report, *Ko Aotearoa Tēnei*, which embodies a lot of thinking on key issues which must not be lost and whose very name signifies the broad importance of the issues
    - iv. to the present day where the broad issue of the *kaitiaki* role of Māori arises in many contexts across government.
  - b. acknowledge the foresight, wisdom and resolve of the original claimants and the long period between the claim being lodged in 1991, the Tribunal's report in 2011, and the present day

- c. thank those present and others for the commitment with which they have kept the claim alive
- d. explain the current Government's desire to pick up the wero laid down by the claim and the Tribunal report and emphasise Government's desire to start well and be inclusive
- e. note that Wai 262 (the claim) and Ko Aotearoa Tēnei (the report) addressed issues which have wide relevance to Māori beyond just this group so it is time for the Crown to engage with Māori in a way that recognises this
- f. affirm and acknowledge the claimants' ongoing interest in the work at hand, and the Crown's desire to continue to involve them in discussions
- g. note that contemporary claims require contemporary solutions, and so the work will focus on the issues in today's Aotearoa. This includes the kaitiaki role of iwi and hapū in making decisions about taonga and a strengthened Crown-Māori partnership
- h. note that settlement of historical claims will continue as at present, and that the process for contemporary claims is different and does not involve negotiations with a claimant group about redress
- i. note the Crown will continue to work on specific issues with Māori as it develops its overall approach to this mahi
- j. explain the Crown's intended next steps as set out in the Cabinet paper
- k. encourage claimants to participate in targeted engagement alongside other groups and interests set out above
- l. invite them to share any initial reflections on what they have heard from you, while also offering them the opportunity to consider what you have said and inviting them to respond through the targeted engagement
- m. hear any initial response and allow claimants to express to you their frustrations with the approach of the Crown up to now, and
- n. provide them with an advanced copy of the media release and associated papers, including the Cabinet Paper, at the hui.

### **Further details on the initial hui and draft briefing pack**

#### **Key considerations for the hui**

- 6. Officials consider the hui needs to address four elements:
  - a. creating a welcoming and respectful structure for the claimant representatives
  - b. ensuring that claimant representatives are well-informed about the Crown's intentions and its approach, including next steps after this hui
  - c. enabling you to explain the Crown's approach and respond to any questions that may arise, and
  - d. respecting the time constraints that exist on the use of the venue.

7. Two specific points have arisen in conversation with claimant representatives. These are:
  - a. creating an opportunity for whakawhanaungatanga and kōrero prior to the meeting. A room, with food and drink provided, will be available at Te Puni Kōkiri from 10am on the day of the hui to support this.
  - b. creating both an opportunity for people to share initial responses and an opportunity for people to reflect, at least briefly, on what they have been told before being expected to respond. This is reflected in the proposed structure.
8. Matua Piri Sciascia is available to support you at this hui.

#### **Desired outcomes of the hui**

9. As noted above, this hui is a mark of courtesy and respect rather than a part of the targeted engagement. The hui is the start of a process that may run for some years and involve many people, and so is a moment to honour the claimant tupuna, rather than negotiate. The desired outcomes for this hui flow from this purpose, namely that claimant representatives:
  - feel welcome, respected and heard
  - are informed of the Government's intentions and initial proposals and understand how to seek further information
  - understand that they are welcome to participate in the targeted engagement process, and that the Government will continue to discuss with them how this participation may occur.
10. The talking points at Tab 2 of Attachment 1 aim to support these outcomes.

#### **Proposed structure for the hui**

11. The main venue for the hui is Matangireia. Food is not permitted in this room. To address the matters noted above, officials propose the following structure for the hui :
  - a. Welcome, in Matangireia
  - b. Move to adjacent room for kai and informal kōrero
  - c. Return to Matangireia for Minister's kōrero about the Government's intentions
  - d. Offer claimants a break / time alone, Minister and officials retire to adjacent room (if required), distribute advance copies of media pack (including cabinet paper)
  - e. Reconvene (if required)
  - f. Invite initial questions or comments
  - g. Farewell



## Attendees

12. A table of those currently expected to attend is included in Attachment 1 at Tab 1. There are three matters officials wish to draw to your attention about attendees:

- a. There is one confirmed additional attendee: Ben Waitai of Ngati Kuri, who is the eldest son of Haana (Saana) Murray. His attendance is in keeping with the approach taken to select those you invited by letter.
- b. Ngātiwai Chair Haydn Edmonds has proposed bringing Aperahama Edwards as another iwi representative in addition to Hori Porata. Officials are currently discussing this with Haydn.
- c. There is some tension between the two whānau representatives of Del Wihongi. Both Rachel Witana and Hema Wihongi referred officials to Haami Piripi, Chair of Te Rarawa. At this point in time matters remain unresolved. We will discuss this with you further in person.

## Materials to support your participation in the hui

13. The attached draft meeting pack (Attachment 1) sets out the materials officials will provide for you in time for the 5 Hōngongoi hui. Where materials are complete, drafts are included. The contents are as follows:

- h. Claimant Representatives, summary and brief bios (Tab 1 in Attachment 1)
- i. Annotated agenda for hui (Tab 2)
- j. Details of Crown proposals for structure and targeted engagement (Tab 3)
- k. Whakapapa or background on Wai 262 process from 1991 to the present (Tab 4)
- l. Copy of materials to be presented to claimant representatives (Tab 5)

## Risks associated with the hui

14. The two key risks to manage are

- The possible expectation of some claimant representatives that they will "at last" enter into "settlement negotiations" about Wai 262
- Discussions getting drawn into details about the original claims, the divergence between Ko Aotearoa Tēnei and claimants final submissions and/or other matters pertaining to the whakapapa of the process before now

15. The mitigation strategy is the same in both cases:

- affirm that the issues raised by Wai 262 and Ko Aotearoa Tēnei are about the Māori-Crown partnership, and the Government is focussed on ensuring improving practice in the future
- note that the Crown arguably could not consider the range of issues associated with Wai 262 without engaging widely with Māori, as all Māori are potentially affected
- acknowledge the views expressed, reiterate that the purpose of the hui is recognise the courage and resolve that has been demonstrated up to now and share the government's proposed approach
- emphasise that you welcome feedback during the targeted engagement discussions.

#### **Other matters pertaining to this hui**

16. One or two individuals have suggested to officials that the Crown ought to fund an initial hui of the claimant representatives prior to the 5 Hōngongoi hui with you. A number of other individual claimant representatives have noted in conversation with officials that Wai 262 issues are iwi katoa issues, and discussions need to involve more than just the claimants.
17. The Crown is funding travel and associated costs for people to attend this initial hui with you. Beyond this, officials have declined to engage with discussions about funding for claimants. This is on the basis that, in practice, this is an iwi katoa contemporary claim rather than historical settlement negotiations with a claimant group.
18. Claimant representatives will however have an ongoing role in the discussions; the Crown will need to hear and consider any formal requests from them for funding. This consideration will also need to be informed by the fact that discussions around resolution necessarily involve a wider conversation with the Crown's Treaty partner.

#### **Preparing for activities beyond the initial hui**

19. Officials propose that at the same time as the claimant representative hui occurs, a brief courtesy advisory is provided to Māori groups and interests identified in the Cabinet Minute, giving them a "heads-up" about plans for targeted engagement. Such a message serves as a mark of respect, and provides an alternative to simply learning about the Government's approach through the media. The message will inform them about the Government's intentions and hence allow them to prepare to take part in targeted engagement.
20. Te Puni Kōkiri and other agencies will be responsible for the bulk of these messages. However we recommend the Chair of the Iwi Leaders group receives this "head up" via a letter from you. A draft will be provided for your consideration next week.
21. Officials also propose that the public release occurs shortly after the claimant hui, on the afternoon of 5 Hōngongoi. While not ideal timing from a mainstream media perspective, release shortly after the claimant hui will ensure that ad-hoc dissemination of information is limited. Māori media are likely to have a high degree of interest in this information irrespective of the time of release.

22. The Cabinet Minute authorises you to approve the approach to the targeted engagement described in paragraph 3. This approval is to be exercised in consultation with the Ministerial Oversight Group. Officials will provide you with a briefing about this topic on 28 Pipiri. This will include an initial draft of the material to support the targeted engagement. We hope to discuss this material with you on 1 Hōngongoi.

### **Engagement with the Ministry of Primary Industries**

23. The Ministry of Primary Industries (MPI) had limited engagement with the Cabinet Paper process. The reasons for this rest with MPI. MPI officials at a senior level are now engaged with work on a whole of government approach to Wai 262 issues. This is a positive development.
24. Mirroring the situation with MPI, the Ministers of Agriculture, Fisheries and Biosecurity are not represented in any of the Focus Groups named in the Cabinet Minute. MPI is now briefing its Ministers that it is engaging with the Wai 262 work. Te Puni Kōkiri officials are noting this for you here as a "heads up" that your colleagues may approach you to discuss this matter. Any formal adjustments to the composition of the Focus Groups can be made in the November Cabinet Paper.

### **Next Steps**

25. We propose the following next steps:

- a. officials discuss the structure and content of material in this briefing with you on 24 Pipiri
- b. you will receive further briefings concerning the targeted engagement phase of this work in the near future
- c. you note that the Ministers of Agriculture, Fisheries and/or Biosecurity may contact you concerning their participation in this kaupapa
- d. officials will provide you with a final version of the meeting pack on 2 Hōngongoi, following finalisation of the media materials and release timeline.



**Recommended Action**

26. I recommend that you:

- a. note the attached draft briefing pack for your hui with wai 262 claimant representatives
- b. discuss the matters set out in this briefing and the attached draft briefing pack with officials on 24 Pipiri.

**Yes / No**

  
Rahera Ohia  
Deputy Chief Executive, Policy Partnerships

Hon Nanaia Mahuta Te Minita Whanaketanga Māori	<b>Noted by</b>  <b>MINISTER</b>
Date: ____ / ____ / 2019	

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Initial Hui with representatives of original Wai 262 claimants  
 12:30pm-3:00pm, 5 Hōngongi 2019  
 Matangireia (former Māori Affairs Committee Room), Parliament Buildings  
 Wellington

## Contents

	Topic	Subtopic
1	Claimant representatives	Table of Attendees and associations Brief Biographical details for attendees
2	Annotated Agenda	
3	Summary of Proposed Crown Approach	Framework for Organising Crown Work Targeted Engagement Approach
4	Whakapapa / Background: Wai 262 - 1991 to present	Brief overview of whakapapa of the process from 1991 to the present Brief information on initial aspects of claims for each claimant tupuna/iwi Summary of final submissions to Wai 262 inquiry Summary of each chapter of Ko Aotearoa Tēnei Information on treatment of historical dimensions of Wai 262 in Treaty settlement process to date Copy of "The Background to the Wai 262 Claim" by Oliver Sutherland, Murray Parsons and Moana Jackson
5	Copies of material to be presented to claimant representatives	Embargoed Media Release and supporting documents Proactive release version of Cabinet Minute Proactive release version of Cabinet Paper

## Claimant Representatives

Summary table of claimant representatives

Original Claimant / Tupuna	First Name	Last Name	Iwi	Relationship
Del Wihongi	Rachel	Witana	Te Rarawa	Sister
Del Wihongi	Hema	Wihongi	Te Rarawa	Daughter
	Haami	Piripi	Te Rarawa	Chair
Haana Murray	Sheridan	Waitai	Ngāti Kuri	Granddaughter
Haana Murray	Ben	Waitai	Ngāti Kuri	Son
	Walter	Wells	Ngāti Kuri	Deputy Chair
Te Witi McMath	Hori	Parata	Ngātiwai	Iwi Representative
	Haydn	Edmonds	Ngātiwai	Chair
Tama Poata	Prue	Poata	Ngati Porou	Daughter
Tama Poata	Meipara	Poata	Ngati Porou	Daughter
Tama Poata	Polly	Poata	Ngati Porou	Daughter
	Selwyn	Parata	Ngati Porou	Chair
John Hippolite	Rahui	Katene	Ngāti Koata	Daughter
	Joanie	Wilson	Ngāti Koata	Chair
Kataraina Rimene	Ngahiwi	Tomoana	Ngāti Kahungunu	Chair

**Brief Bios of claimant representatives**

*[to come from TPK, dependent on sufficient information being available]*

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



## Annotated Agenda

### Claimant Representative Hui

Time	Event
12:30	Arrivals
12:40	Karakia/Whakatau (Piri Sciasia)
12:50	Kai and informal korero
1:20	<b>Introducing Crown approach</b> <ul style="list-style-type: none"><li>• I acknowledge the whakapapa of Wai 262</li><li>• The original claimants were visionaries when they lodged this contemporary claim in 1991. They brought to light (and at times, to close scrutiny), matters of an incredible personal nature, matters that relate to the core of their identities, and which resonate with Māori across the motu.</li><li>• The journey was long and arduous. I recognise the strength of those who supported the claim during the Tribunal process over many years.</li><li>• The Waitangi Tribunal's 2011 report, Ko Aotearoa Tēnei, embodied a lot of thinking on these key issues, a meeting place between the views of those claimants and the views of the Crown. That thinking must not be lost. The name Ko Aotearoa Tēnei signifies the broad importance of the issues traversed.</li><li>• And these are issues that remain important to the present day. The broad issue of the kaitiaki role of Māori arises in many contexts across government.</li><li>• I recognise the mana of the people in this room.</li><li>• I am privileged to acknowledge the foresight, wisdom and resolve of the original claimants and the long period between the claim being lodged in 1991, the Tribunal's report in 2011, and the present day.</li><li>• I wish to express my sincere thanks to you present today, because you and others have worked hard to keep the claim alive.</li><li>• In September last year, I attended the Ngā Taonga Tuku Iho Conference on Māori Intellectual Property in Nelson. At the conference, I explained that Wai 262 was an issue that I could easily side step, but that was not something I wanted to do. I saw a need for the government to do more, and committed to use the tools at my disposal to start a conversation.</li><li>• In December last year, I made my first step in this direction. I tabled my annual report under section 8i of the Treaty of Waitangi Act 1975, including an assessment of the progress of government in addressing Ko Aotearoa Tēnei findings and recommendations up to that point.</li><li>• I found that while there was much that could be reported on, there was still much more that needed to happen.</li></ul>



- This Government has now decided to pick up the wero laid down by the claim and the Tribunal report. In doing this, we need to start well and start as we intend to continue.
- Today, the Wai 262 claim and Ko Aotearoa Tēnei (the report) cover issues that have wide relevance to Māori beyond just this group. It is time for the Crown to engage with Māori in a way that recognises this.
- I recognise that you will have an ongoing interest in this work as it continues, and it is our desire to continue to involve you in discussions.
- Many others also have a very strong interest in this work and are vitally affected by any decisions the Crown may make; indeed all Māori have an interest in the kaupapa
- A new approach is needed.
- The Wai 262 claim was a unique claim in its time because it was a contemporary claim that requires contemporary solutions.
- To address it, we need to answer questions like:
  - what will work in today's Aotearoa? This includes the kaitiaki role of iwi and hapū in making decisions about taonga and a strengthened Crown-Māori partnership.
- The settlement of historical claims will continue as at present, and the process for contemporary claims is different. This means that it does not involve negotiations with a claimant group about redress.
- As we continue, however, the Crown will continue to work on specific issues with Māori as it develops its overall approach.
- I will lead this new approach
- In April, I took a paper to Cabinet setting out proposals for a whole of government approach to addressing Wai 262 issues.
- The high level of inter-connectedness of the Wai 262 issues, and the significant cross-cutting themes, mean that we need a whole-of-government approach if we're going to address Wai 262 in a coherent, consistent and comprehensive manner.
- I intend to work with relevant portfolio Ministers to:
  - explore how the government might better organise ourselves on the key Wai 262 issues
  - engage and partner with Māori on those issues, and
  - ultimately seek to address those issues together with Māori.
- I also proposed that Government should develop a programme of action to address Wai 262 and mātauranga Māori issues against the backdrop of current policy settings. This includes things like the progressive trade agenda, accelerating Māori development and implementing the Living Standards Framework.
- To do this, I sought in-principle agreement to establish three Ministerial groups that work in three focus areas based on the three major Wai 262 report themes.
- These are:
  - **Kete kotahi** – taonga works and mātauranga Māori
  - **Kete e rua** – taonga species and mātauranga Māori
  - **Kete e toru** – international indigenous matters

	<ul style="list-style-type: none"> <li>• A Ministerial Oversight Group, that I will coordinate, was also established to provide strategic oversight of the government response to Wai 262, and to manage high level Māori Crown relationships.</li> <li>• To explore these structural proposals further, I intend to undertake targeted engagement with a range of Māori groups with an interest in machinery of government. This will seek views on: <ul style="list-style-type: none"> <li>◦ Government's high level organising framework (ie, the proposed Ministerial focus groups and oversight group)</li> <li>◦ potential programmes of work for each kete, and what should be included</li> <li>◦ how Māori might engage with the proposed Government organising framework, and more widely organise themselves in relation to Wai 262 issues.</li> </ul> </li> <li>• I encourage you to participate in targeted engagement alongside other groups and interests. I look forward to hearing your views over the coming months.</li> <li>• I intend to report back to Cabinet in November 2019 with a proposed approach based on the targeted engagement.</li> <li>• This will confirm that Crown's approach to the partnership conversation that will then ensue. Wai 262 raised complex and important issues and so I expect these conversations will occur over a number of years. The important thing, after 28 years, is that they get underway in earnest.</li> </ul>
1:50	<p><b>Propose 30 minute break</b></p> <ul style="list-style-type: none"> <li>• note room booking time limited, but happy to offer 30 minute break if want to discuss amongst themselves.</li> <li>• provide attendees with an advanced copy of the media release and associated papers, including the Cabinet Paper and Cabinet Minute under embargo.</li> <li>• Minister and officials retire to adjoining room</li> </ul>
2:20	<b>Reconvene</b>
2:25	<p><b>Invite questions or comments</b></p> <ol style="list-style-type: none"> <li>invite attendees to share any initial reflections on what they have heard from you, while also offering them the opportunity to consider what you have said and inviting them to respond through the targeted engagement</li> <li>hear and reflect any initial response without commitment. Comments may include: <ol style="list-style-type: none"> <li>details of the whakapapa of the claim, details of the original claim and the distinctions between the claim and Ko Aotearoa Tēnei;</li> <li>expression of frustration to you about the approach of the Crown, such as: <ol style="list-style-type: none"> <li>1. the approach of the Crown up to now, and</li> </ol> </li> </ol> </li> </ol>

		<ul style="list-style-type: none"> <li>2. absence of "settlement negotiations" between the Crown and claimants</li> <li>3. other elements of the Crown's proposed approach.</li> </ul>
2:45	Karakia Whakamutunga (Piri Sciascia)	

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



## Summary of Proposed Crown Approach

### Framework for organising Crown work

The proposed approach will include:

- a high-level organising framework that enables the Crown to organise and coordinate its response across the numerous portfolio issues raised in the Wai 262 claim (see below);
- a Proposed Plan of Action for each focus area that details:
  - i. the key Crown objectives for the focus area;
  - ii. the overarching principles that will guide the Crown's work in the focus area, including how the partnership principles recently considered by Cabinet [MCR-19-MIN-0003; CAB-19-MIN-0077 refer] might be applied;
  - iii. a proposed approach for prioritising, sequencing and coordinating key focus area work streams; and
  - iv. a proposed operating and governance model for each Ministerial focus group;
- the proposed functions of the Ministerial oversight group (see below); and
- more detail on how the Crown will engage with Māori and the wider public on each focus area's Proposed Plan of Action and on the higher-level issues the Ministerial oversight group is considering.

### Ministerial focus groups

There are a number of Ministers with a portfolio interest in Wai 262. I propose that Cabinet make in-principle decisions to establish three Ministerial focus groups as follows:

Focus Area	Portfolios	Ministers	Wai 262 Chapters
Focus Area 1: Taonga works and mātauranga Māori	Minister for Arts, Culture and Heritage	Rt Hon Jacinda Ardern	Chapter 1 (Taonga Works and Intellectual Property)
	Associate Minister of Education (Māori Education)	Hon Kelvin Davis	Chapter 5 (Te Reo Māori)
	Associate Minister for Arts, Culture and Heritage	Hon Grant Robertson	Chapter 6 (When the Crown Controls Mātauranga Māori)
	Minister for Māori Development; Minister of Local Government	Hon Nanaia Mahuta	
	Minister of Internal Affairs	Hon Tracey Martin	
	Minister of Commerce and Consumer Affairs; Minister of Broadcasting, Communications and Digital Media	Hon Kris Faafoi	
	Minister of Statistics	Hon James Shaw	

<b>Focus Area 2:</b> Taonga species and mātauranga Māori	Minister of Energy and Resources; Minister of Research, Science and Innovation	Hon Dr Megan Woods	Chapter 2 (Genetic and Biological Resources of Taonga Species)
	Minister of Health	Hon Dr David Clark	Chapter 3 (Relationship with the Environment)
	Minister for the Environment	Hon David Parker	Chapter 4 (Taonga and the Conservation Estate)
	Minister for Māori Development; Minister of Local Government; Associate Minister for the Environment	Hon Nanaia Mahuta	Chapter 7 (Rongoā Māori)
	Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	
	Minister for Climate Change	Hon James Shaw	
	Minister of Conservation	Hon Eugenie Sage	
<b>Focus Area 3:</b> International indigenous matters	Minister of Foreign Affairs	Rt Hon Winston Peters	Chapter 8 (The Making of International Instruments)
	Minister for Trade and Export Growth	Hon David Parker	
	Minister for Māori Development	Hon Nanaia Mahuta	
	Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	
	Minister for Climate Change	Hon James Shaw	

Each Ministerial focus group will ultimately be responsible for monitoring the an integrated work programme on Wai-262 issues within their focus area, and across focus areas where appropriate. Although my thinking may change after the targeted engagement, at this stage I anticipate that the proposed Plan of Action for each Ministerial focus group would constitute the Crown's contribution to a potential Māori/Crown integrated work programme that specifies (among other things) what Māori and the Crown will each do to implement the programme in partnership.

#### Ministerial oversight group

Cabinet has also established a Ministerial oversight group to:

- oversee the government's high-level response across Wai 262;
- assist Ministers coordinate within and across the focus areas;
- determine the Crown's approach to high-level and cross-cutting issues; and
- determine the high-level approach to Māori-Crown relationships across Wai 262.

The following Ministers are included in this group:

Ministerial Oversight Group		
Portfolios	Ministers	Wai 262 chapters
Prime Minister	Rt Hon Jacinda Ardern	Chapter 9 (Conclusions, summary of recommendations and how to 'perfect' the Treaty partnership)
Deputy Prime Minister	Rt Hon Winston Peters	
Minister for Māori Crown Relations: Te Arawhiti	Hon Kelvin Davis	
Minister of Energy and Resources; Minister of Research, Science and Innovation	Hon Dr Megan Woods	
Minister of State Services	Hon Chris Hipkins	
Minister for Treaty of Waitangi Negotiations	Hon Andrew Little	
Attorney-General	Hon David Parker	
Minister for Māori Development	Hon Nanaia Mahuta	
Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## Targeted Engagement Approach

*[To come from TPK, adapted from Cabinet Paper]*

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

Brief overview of whakapapa of the process from 1991 to the present

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



**Brief information on initial aspects of claims for each claimant tupuna/iwi**

*[To come from TPK, drawn from Ko Aotearoa Tēnei and other sources]*

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

**Summary of final submissions to Wai 262 inquiry**

*[To come from TPK, from Chapter 9 of Ko Aotearoa Tēnei]*

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## Summary of each chapter of Ko Aotearoa Tēnei

### Summary of the findings and recommendations of Ko Aotearoa Tēnei 2011

As taken from the Te Puni Kōkiri *Section 8i Report 2018*

The purpose of this document is to give you a brief overview of the recommendations of the Waitangi Tribunal in relation to the Wai 262 claim, in order to inform and assist your discussions with whānau and iwi rangatira of the original claimants.

#### Chapter 1: Taonga Works and Intellectual Property

##### Findings:

- Taonga works as the expression of Māori artistic and cultural traditions, founded in mātauranga Māori; and
- Kaitiaki have a particular relationship to these works in terms of safeguarding them, whether or not they were the original creator.

##### Recommendations:

- Prohibition of the derogatory or offensive use of taonga works, taonga-derived works (works that identifiably use mātauranga or taonga works as inspiration, but do not have mauri or living kaitiaki in accordance with tikanga) and mātauranga Māori;
- Creation of a mechanism by which kaitiaki could prevent any commercial use of taonga works or mātauranga Māori (but not taonga-derived works) unless there had been consultation, and kaitiaki consent if appropriate;
- Establishment of an expert commission with adjudicative, facilitative and administrative functions; and
- Establishment and administration of a taonga works register by the above expert commission.

## Chapter 2: The Genetic and Biological Resources of Taonga Species

### Findings:

- Where there is a risk that bioprospecting, genetic modification or intellectual property rights could affect kaitiaki relationships with taonga species, these relationships are entitled to a reasonable degree of protection;
- What constitutes 'reasonable' is a matter for case-by-case analysis; and
- Not appropriate to view the kaitiaki relationship with taonga species as one of exclusive ownership except in rare cases (e.g. Ngāti Koata and tuatara).

### Recommendations:

#### Bioprospecting

- Requirement that the Department of Conservation (DOC) lead the development of a bioprospecting regime that is applicable within the conservation estate; and
- Expansion of DOC's pātaka kōmiti (Māori committees that have been used by DOC on an ad hoc basis for discussions on access to cultural materials for iwi/hapū) from an advisory role to one of joint decision-making with the regional conservator.

#### Genetic modification

- Amendment of the Hazardous Substances and New Organisms (Methodology) Order 1998 so that no automatic privilege is given to physical risks;
- Amendments to the Hazardous Substances and New Organisms Act to:
  - recognise kaitiaki relationships with taonga species;
  - empower Ngā Kaihautū Tikanga Taiao to appoint at least two members of the Environmental Protection Agency; and
  - empower Ngā Kaihautū Tikanga Taiao to give proactive advice.

#### Intellectual property

- Ensuring that mātauranga Māori is a key factor in decisions about patentability;
- Establishment of a Māori advisory committee to advise the Commissioner of Patents;
- Empowerment of the Commissioner of Patents to refuse patents that are contrary to *order public* as well as morality;
- Empowerment of the Māori advisory committee to act proactively;
- Establishment of a voluntary register of taonga species;
- Imposition of a disclosure of origin requirement on patent applications;
- Prohibition of the Commissioner of Plant Variety Rights from approving a name for a plant variety if it would likely be offensive to Māori;
- Clarification that plant varieties must be specifically bred to qualify for a plant variety right;
- Empowerment of the Commissioner of Plant Variety Rights to refuse to grant a plant variety right if the grant would affect kaitiaki relationships with taonga species; and
- Empowerment of the patents Māori advisory committee to advise the Commissioner of Plant Variety Rights on whether to refuse an application on the basis that it would affect kaitiaki relationships with taonga species.

### Chapter 3: Relationship with the Environment

#### *Findings:*

- The Treaty requires the Crown to actively protect the continuing obligations of kaitiaki towards the environment as one of the key components of te ao Māori, and this obligation cannot be absolved by statutory devolution of the Crown's environmental management powers and functions to local government
- The degree of control exercised by Māori and their influence in decision-making needs to be resolved in a principled way using the concept of kaitiakitanga
  - The exact degree of control accorded to Māori as kaitiaki is likely to differ widely in different circumstances, and cannot be determined in a generic way

#### *Recommendations:*

- Reformation of the Resource Management Act (RMA) 1991 so that decision-makers under the Act have to engage with kaitiaki to deliver control, partnership and influence where each of these is justified
- Amendment of the RMA to provide for the development of enhanced iwi resource management plans in consultation with local authorities
- Amendment of the RMA's mechanisms for delegation, transfer of powers and joint management to remove unnecessary barriers to their use
- Building of Māori capacity to participate in RMA processes and the management of their taonga
- Development of national policy statements on Māori participation in resource management plans and arrangements for kaitiaki control, partnership and influence on environmental decision-making



## Chapter 4: Taonga and the Conservation Estate

### Findings:

- The Crown estate contains most of the surviving examples of the environment that greeted the first people to arrive in this country, and was the environment in which mātauranga Māori evolved.
- The conservation estate is a significant factor for iwi, hapū and whānau seeking to exercise kaitiakitanga responsibilities and relationships with flora and fauna
- Māori communities' relationships with the natural environment should be given expression in the context of the conservation estate that DOC administers
- Partnership between the Crown and Māori in this space should be based on two imperatives:
  - The survival and recovery of the environment is paramount
  - Iwi have a right to exercise kaitiakitanga and maintain their culture
- Shared decision-making between the Crown and kaitiaki must be the default approach to conservation management
- The Crown should govern, as far as practicable, in a manner consistent with the tino rangatiratanga of iwi and hapū
- There may be some cases in which the kaitiaki interest is of overwhelming significance, such that a transfer of ownership or control is appropriate

### Recommendations:

- Requirement that DOC achieve its conservation mission in a manner consistent with the tino rangatiratanga of iwi and hapū
- Providing for full statutory co-management of customary use by DOC and pātaka komiti to make joint decisions
- Amendment of DOC policies and practices to give tangata whenua interests in taonga a reasonable degree of preference when making decisions about commercial activities in the conservation estate
- Formalisation of DOC policies for consultation with tangata whenua about concessions within their rohe
- Establishment of various entities to facilitate formal partnerships with Māori
- Review of conservation legislation to reconcile the mātauranga Māori and te ao Pākehā approaches to conservation management
- Making of partnership into a 'will' obligation under the Conservation-General Policy (CGP) and the General Policy for National Parks
  - Amendment of the CGP, General Policy for National Parks and Crown-Māori Relationship Instruments to better reflect Treaty principles
  - Amendment of the CGP and the General Policy for National Parks to make customary harvest and access a 'will' responsibility in certain situations, and to remove the 'established tradition of customary use' requirement
- Amendment of the Wildlife Act so that no one owns protected wildlife, and the Act instead provides for shared management of wildlife in partnership, and so that taonga works derived from protected wildlife are held by tangata whenua

## Chapter 5: Te Reo Māori

### Findings:

- Te reo Māori is a taonga guaranteed to Māori under Article 2 of the Treaty
- The survival of te reo Māori is of paramount importance, and there is a proportionate obligation on the Crown as a Treaty partner to protect it
  - This obligation must be met through the development of a modern, Treaty-compliant regime to ensure the survival of the Māori language
- The Crown must transfer enough control to enable a Māori sense of ownership of the vision of the language's survival, while at the same time ensuring that its own expertise and resources remain central to the effort
- The Government's Māori language sector must be highly functioning and infused with common vision and purpose
  - The Crown owes Māori policies and services that are not undermined by structural issues, competing priorities and intermittent focus
  - The Crown must recognise that the Māori interest in the language is not the same as any minority group in Aotearoa
  - Te reo Māori is entitled to a reasonable degree of preference and must receive a level of funding that accords with this
  - Māori also have an obligation to foster the growth of te reo Māori, and must be prepared to work with the Crown on reviving it

### Recommendations:

- That Te Taura Whiri be granted authority to require and approve Māori language plans of:
  - all central government agencies
  - all local authorities, district health boards, and regional branches of central government in local body districts where the census shows a sufficient number or percentage of te reo speakers in the population
  - all state-funded schools (other than kura kaupapa and other immersion schools) with at least 75 students, of whom at least 25% are Māori
  - all state broadcasters and other broadcasters drawing on Te Māngai Pāho funds
- That Te Taura Whiri be granted authority to:
  - approve all early childhood, primary and secondary curricula involving te reo, as well as all level 1 – 3 tertiary te reo courses
  - set targets for the training of Māori language and Māori-medium teachers, and require and approve plans from teacher training institutions showing how they will meet the targets

## Chapter 6: When the Crown Controls Mātauranga Māori

### Findings:

- The Crown are often in the seat of kaitiaki in a practical sense, and they are thus obligated to protect both the mātauranga itself as well as the interests of kaitiaki in it
- The Crown's obligations to protect mātauranga can only be achieved through partnership with Māori, as neither the Crown nor Māori can succeed in the protection or transmission of mātauranga without the help of the other

### Recommendations:

#### Culture and heritage

- That Te Puni Kōkiri and the Ministry for Culture and Heritage (MCH) take leadership roles to improve coordination and collaboration between themselves over mātauranga Māori and forming a Crown-Māori partnership entity for the culture and heritage sector

#### Taonga tūturu

- Te Papa exploring evolving indigenous-settler partnership approach to cultural heritage and making a number of amendments to the Protected Objects regime in relation to taonga tūturu

#### Arts, culture and broadcasting

- Use of 'The Health of Māori Heritage Arts' research project (2009) to identify future funding priorities and criteria
- Use of Te Puni Kōkiri's comprehensive marae survey to clarify national priorities for marae improvements, indicating what funding is needed to support them and what criteria should operate in assisting funding applications
- More work done by TVNZ to fulfil its aim of being Aotearoa's 'Māori content leader'
- Cooperation between TVNZ and Māori Television in relation to te reo and mātauranga Māori programming and scheduling

#### Archives and libraries

- Imposition of constraints on the commercial use of the mātauranga in documents and images the Crown holds
  - This includes an objection-based approach, enabling kaitiaki to seek to prevent the commercial use of their mātauranga unless they have given consent or been consulted
- TVNZ consulting with Māori to produce staff guidelines on handling requests for the use of mātauranga-laden footage from its film and television archive
- Preparation of general guidelines by Archives New Zealand and the National library about when it might be appropriate to consult kaitiaki, or seek kaitiaki consent for private archives and libraries willing to offer them to users

#### Education

- Establishment of a Crown-Māori partnership entity in the education sector
- Development of specific indicators around mātauranga Māori to properly gauge its Māori-focused activities

#### Research, science and technology



- Boosting of research capacity and funding of the preservation of mātauranga Māori, and research that explores the interface between mātauranga and modern applications by creating a Māori purchase agent that would distribute money to researchers
  - Appointees to the board of the purchase agency with a mix of expertise in mātauranga Māori and science
- Requirement that science sector agencies give greater prominence to Vision Mātauranga, or make mātauranga Māori a strategic priority in its own right

Te Puni Kōkiri

- Protection and retention of the Māori Potential Fund, with its investments to be evaluated by both Māori and the Crown
  - Funds to be allocated in partnership with Māori
  - Establishment of a board to allocate the fund comprised equally of Te Puni Kōkiri staff and representatives of the Māori community

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## **Chapter 7: Rongoā Māori**

### *Findings:*

- Need for the Crown to:
  - recognise that rongoā Māori has significant potential as a weapon in the fight to improve Māori health
  - see the philosophical importance of holism in Māori health
  - work in genuine partnership with Māori to identify and implement ways of encouraging the health system to expand rongoā services

### *Recommendations:*

- Incentivising the health system to expand rongoā services
- Adequate support of Te Paepae Matua to play the role of quality control instead of the Crown
- Gathering of data about the current and potential demand for rongoā services
- Coordination between the Ministry of Health and DOC on rongoā policy

## **Chapter 8: The Making of International Instruments**

### *Findings:*

- The Treaty of Waitangi requires Māori interests to be protected to the extent that it is reasonable and practicable in the international circumstances
- The degree of protection will depend on the nature and importance of the interest when balanced alongside the interests of other New Zealanders
- The Crown must properly inform itself of the scale of any Māori interests, their importance to Māori, and the nature and extent of likely impacts on it, in order to determine the degree of priority to be accorded to them
- To help determine the answers to these questions, the Crown and Māori must be talking constantly, whether through consultation or something more regular and fixed

### *Recommendations:*

- Amendment of the 2001 Strategy for Engagement with Māori on International Treaties to include non-binding instruments
- Consultation with Te Puni Kōkiri to determine the existence, nature and strength of any Māori interests, and the requisite degree of engagement
- Use of existing and new bodies to serve as partnership forums to discuss international instruments
- Adoption of a policy for funding independent Māori engagement in international forums
- Adoption of Crown accountability mechanisms, including regular reporting to Māori organisations and Parliament
- Inclusion in each National Interest Analysis consideration of whether the instrument has any effect on Treaty rights and interests
- Consideration of whether statutory requirements for enforcement are appropriate
- Consideration of reporting on Crown engagement with Māori to relevant

**information on treatment of historical dimensions of Wai 262 in Treaty settlement process to date**

*[To come from TPK, information supplied by Te Arawhiti]*

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

Copy of *"The Background to the Wai 262 Claim"* by Oliver Sutherland, Murray Parsons and Moana Jackson

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



# The Background to WAI 262

*Prepared by Oliver Sutherland and the late Murray Parsons in conjunction with Moana Jackson and the whanau of claimants, June 2011*

## **He Poroporoaki**

**John Hippolite**

**Witi McMath**

**Tama Poata**

**Del Wihongi**

**Saana Murray**

**Murray Parsons**

**Gina Rudland**

**Martin Dawson**

The Native Flora and Fauna Claim, WAI 262, had its origins in the ideals and visions of a group of land rights activists of the 1970s and before – Saana Murray (Ngāti Kuri), Del Wihongi (Te Rarawa), John Hippolite (Ngāti Kōata), Tama Poata (Te-Whanau-o-Ruataupare), and Witi McMath (Ngāti Wai). Acting as individuals, and with the assistance of lawyer Moana Jackson (Ngāti Kahungunu), they lodged the Native Flora and Fauna Claim – WAI 262 - in October 1991. Of these, the two women of the Far North, Saana Murray of Te Hapua, Te Rerenga Wairua, and Del Wihongi of Otarihau, Orira, Hokianga, were to become the unshakeable champions for the claim.

For many years Saana had challenged the actions of the Crown in depriving her people of access to their lands and coastlines. Besides the loss of ancestral land, the denial of access to the native plant and animal life threatened the survival of the skills and knowledge of the traditional arts and crafts and medicinal remedies based on those species. The story of Saana's personal and inspirational crusade to retain and regain the ancestral lands of Ngāti Kuri can be found in *Te Karanga o te Kotuku*, published by her long-time friend Tama Poata, for the Māori Organization On Human Rights, in 1974.

*Te Karanga o te Kotuku* documented, through her correspondence, Saana's struggle to have the issues she raised acknowledged by the Crown, by the authorities and, at times, by her own people. The publication of this work helped to raise awareness about – and to provide documented evidence for – the genuine issues Māori faced, and also the difficulty they had in the late 1960s and early 1970s in having these issues heard and considered. The book provided a major impetus for the 1975 Māori Land March, and one of the reasons that the Land March began in the Far North. The core subject-matter of the book eventually proved to be one of the bases for the development of the WAI 262 claim.

Del Wihongi drew her impetus and vision from the tohunga Toki Pangari who held one of the last whare wananga at Utakura on 26 November 1949. Toki was Del's grandfather, and he passed down a considerable body of matauranga to Del who lived with him as a child – she later received his extensive writings from her uncle Joe Toki, and re-recorded them. These writings are significant to the claim in that the connection to Kupe Nuku is established

Meanwhile, Witi, Tama, Saana and John were all active participants in the 1975 Land March, led by Whina Cooper, and in the fight for Māori land rights which led up to it.

#### 1980

*The Social Responsibility of DSIR at Mt Albert* was published by Oliver Sutherland and others, arguing for greater responsiveness of government science agencies, particularly DSIR, to the needs of Māori. It was the first challenge to the monocultural policies of the department.

#### 1983

Botany Division of DSIR established a relationship with weaver Cath Brown (Ngai Tahu, Taumutu Marae, Te Wai Pounamu) and the 'Aotearoa Moananui-a-Kiwa Weavers' (including Saana, Emily Schuster, Digger Te Kanawa and Te Aue Davis) particularly to ensure conservation of harakeke, pingao and kiekie and to protect and promote traditional knowledge regarding the arts and crafts which utilized these plants. A year later, in 1984, DSIR botanists attended a weavers' hui at Te Teko which focused on the availability of plants traditionally used for weaving, and on access to those plants.

#### 1985

Māori leaders from the north, including Saana Murray, Carmen Kirkwood, Nganeko Minhinnick, Titewhai Harawira, Hon. Matiu Rata, Jim Nichols, Sir Hugh Kawharu, Rev. Māori Marsden, Dr Ranginui Walker, Neville Baker, Sir Norman Perry and Pita Rikys, met for the first time ever with Director General and other senior leaders of DSIR at Mt Albert, at a hui jointly organised by Sir Graham Latimer and Oliver Sutherland. The hui aimed at bridging the gulf between Māori and the scientific community and focused on ways in which government science agencies, particularly DSIR, might direct some of their efforts towards issues of importance to Māori, especially the utilization of land to provide work and income for some impoverished rural communities. For the first time, DSIR acknowledged that its functions and activities should be based on the principles of The Treaty of Waitangi.

#### 1987

Plant Variety Rights Act passed, opening the way for commercial plant breeders to gain proprietary rights to 'new' varieties of native species

#### 1988

**22-28 February:** Commonwealth Science Council Hui on Ethnobotany, *Nga Mahi Māori o te Wao Nui-a-Tāne*, was held at Rehua Marae, Christchurch. The five-day, landmark, *International Workshop on the Traditional Uses of Plants* brought Saana Murray (of Te Hāpua Traditional Arts and Crafts Trust), Del Wihongi (of the Pu Hao Rangi Trust) and John Hippolite all together for the first time, along with two hundred other Māori, Pacifica and Commonwealth kaumatua and leaders. It was organized by Warwick Harris, Murray Parsons, Geoff Walls and Oliver Sutherland, all of DSIR, and Promila Kapoor, of the Commonwealth Science Council. The hui showcased Barry Barclay's film *The Neglected Miracle*, which exposed the commercial exploitation by multi-national seed and horticultural companies of traditional plant varieties, particularly those from South America. The hui also revealed publicly the fate of ancient kumara, especially DSIR's sale of the large collection of kumara varieties assembled by Dr Douglas Yen, to a research institution in Tsukuba, Japan. Both Saana and Del voiced their concerns at the risks to traditional knowledge and at the commercial exploitation of native plants. The hui recommended:

most, cases their own iwi were sceptical over the claim, as were other iwi, even though it was a claim which would benefit nga iwi katoa.

#### 1990

Del Wihongi and the Pu Hao Rangi Trust established *Te Wao Nui A Tane National Ethnobotanical Garden* at Mangere. Del was successful in gaining government science funding for a research programme to propagate and study the pre-European kumara she had retrieved from Japan, and she established a mara at Mangere. Tubers of the different varieties grown by Del were given to those who wanted to help safeguard and grow them. Del's supporters at the time in Pu Hao Rangi, a community-based Trust, were Jerry Moana (Chairman), Te Pere Curtis, Solomon Tipene, Arthur Toki, Adelaide Cherrington and Brownie Williams.

DSIR 'Māori Responsiveness Committee' established, including Del Wihongi, John Hippolite, Murray Parsons and Oliver Sutherland. The Committee advised the Crown regarding the roll-over of DSIR's Māori-focused initiatives during the disestablishment of DSIR and the creation of ten new Crown Research Institutes (in July 1992).

Work continued on drafting of WAI 262 claim. Moana Jackson and Del Wihongi attended Indigenous Intellectual Property Conference in New York, to discuss international implications of claim and broader issues of intellectual property it raised. Del continued to highlight the issue outside New Zealand, e.g. as keynote speaker at the World Indigenous People's Peace Conference in Oregon USA, accompanied by her daughter Hema Broad and Te Pere Curtis.

At the same time, Tama Poata and John Hippolite (who had both been arrested earlier when demonstrating for the return of the Raglan golf course [Whaingaroa]) joined forces with Eva Rickard and, again with the assistance of Moana Jackson, drafted and lodged a claim for the 'Queen's Chain' (WAI 172) in October 1990. The claim asserted that the Crown had no authority to establish the Queen's Chain, as it had not approached the various iwi, hapu and whanau in their tribal areas. The claim is in abeyance. As with WAI 262, Tama, Eva and John were acting as individuals in a claim which was not iwi-based but which would ultimately benefit all iwi.

#### 1991

**October:** Native Flora and Fauna Claim (WAI 262) lodged with the Waitangi Tribunal. Saana and Del, particularly, explained the basis of WAI 262 at hui around the motu but gained very little support for the kaupapa. National Māori organisations, such as the New Zealand Māori Council and the Māori Congress were largely unsupportive of the claim.

#### The Original Claim

A CLAIM relating to the Protection, Conservation, Management, Treatment, Propagation, Sale, Dispersal, Utilisation and Restriction on the use of and transmission of the knowledge of New Zealand Indigenous Flora and Fauna and the genetic resource contained therein.

The claimants argue that they have been and are prejudicially affected by the actions and omissions of the Crown and its representatives in denying the tino rangatiratanga o te Iwi Māori, and particularly seventeen points relating to tino rangatiratanga and breaches of the Treaty of Waitangi.



- (i) The **acceptance** by the Crown of **te tino rangatiratanga** as adumbrated [or represented] in Māori law, as reaffirmed in the 1835 Declaration of Independence, and as recognised in the Treaty of Waitangi/ Te Tiriti o Waitangi
- (ii) **Compensation**, the extent and degree of which shall be negotiated between Iwi and the Crown
- (iii) **Control of indigenous flora and fauna** in a manner which recognises te tino rangatiratanga o te Iwi Māori.

#### **1993**

The nine tribes of Mataatua convened the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples (12-18 June 1993) in Whakatane, which led to the *The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples (1993)*.

John Hippolite died in Nelson, 17 November 1993.

First Amendment to WAI 262 elaborated on the information about the species of the original claim and added International Law - Gatt:Trips Agreement, Intellectual Property Rights Law Reform Bill, a list of other Legislation and International Agreements, International recognition of Indigenous Peoples Rights and associated protocols.

#### **1995**

The claim WAI 262 was given urgency.

#### **1997**

The first hearing occurred in the Far North on 15 September 1997.

#### **1998**

Witi McMath died on 26 August 1998.

Second Amendment to WAI 262 - Concerning Ngāti Porou.

#### **2000**

May: Third Amendment to WAI 262 - Concerning Ngāti Kahungunu.

#### **2003**

By early 2003 all the claimant evidence had been heard and the Waitangi Tribunal was expected to develop a Draft Statement of Issues by mid-2003.

#### **2004**

The Tribunal intended to put out a draft Statement of Issues for consultation with claimants and the Crown, after which a final definition of the issues would be made.

#### **2005**

Tama Poata died 9 November 2005.

#### **2006**

**July** The Tribunal released the final version of the *Statement of Issues*. Hearings in the inquiry subsequently resumed, with claimants' refresher evidence having been heard in



## He Maumahara

The whanau and iwi of the claimants also acknowledge the following people for their kaitiakitanga of the claim, many of whom gave evidence to the Tribunal.

Te Rarawa	Ngāti Wai	Ngāti Kuri	Kahungunu	Te-Whanau-o-Ruataupare / Ngāti Porou	Ngāti Kōata
<ul style="list-style-type: none"> <li>- Haana Murray</li> <li>- Te Hema Nui a Tawhaki Witana</li> <li>- Bruce Gregory</li> <li>- Ross Stirling Gregory</li> <li>- Houpeke Piripi</li> <li>- Catherine Davis</li> <li>- Pā Henare Tate</li> </ul>	<ul style="list-style-type: none"> <li>- Witi McMath</li> <li>- Laly Paraone Haddon</li> <li>- Whetu Marama McGregor</li> <li>- Raukura Robinson</li> <li>- Hori Te Moanaroa Parata</li> <li>- Richard Wisker</li> <li>- Wiremu McMath</li> <li>- Te Warihi Hetaraka</li> <li>- Himiona Peter Munroe</li> </ul>	<ul style="list-style-type: none"> <li>- Dell Wihongi</li> <li>- Ropata Romana</li> <li>- Rapine (Robin) Murray</li> <li>- Mata Ra-Murray</li> <li>- Merereina Uruamo</li> </ul>	<ul style="list-style-type: none"> <li>- Kataraina Rimene</li> <li>- Aperahama Clark</li> <li>- Murray Hemopo</li> <li>- Pita Hukinga Walker-Robinson</li> <li>- Sue Maude Wolff</li> <li>- Sandy Adsett</li> <li>- Takirangi Smith</li> <li>- Wally Kupa</li> <li>- Te Atarangi Matuakore Allen</li> <li>- Koea Pene</li> <li>- Kate Parahi</li> <li>- Aggie Nuku</li> <li>- Ngaire Culshaw</li> <li>- Ross Young Scott</li> <li>- Rerekohu Ahiahi Robertson</li> <li>- Alice Hopa</li> <li>- Frederick Roy Maadi Reti</li> <li>- William David Blake</li> <li>- Wero Karena</li> </ul>	<ul style="list-style-type: none"> <li>- Te Kapunga Matemoana (Koro) Dewes</li> <li>- Tama Te Kapua Poata</li> <li>- Meipara Te Ao Kapurangi Poata</li> <li>- Wayne James Ngata</li> <li>- Iranui Ada Haig</li> <li>- Piripi Rairi Aspinall</li> <li>- Maggie Ryland</li> <li>- Dr Apirana Tuahae Mahuika</li> <li>- Rapata Rauna Kaa</li> <li>- Laura Takukino Awatere Thompson</li> <li>- Reverend Eru Potaka Dewes</li> <li>- Hone Meihana Taumaunu</li> <li>- Matehuatahi Kaiwai</li> <li>- Joseph McClutchie</li> <li>- Hirini Te Aroha Pani (Syd) Clarke</li> </ul>	<ul style="list-style-type: none"> <li>- John Hippolite</li> <li>- Alfred Madsen Elkington</li> <li>- Terewai Grace</li> <li>- Puhanga Patricia Tupaea</li> <li>- Benjamin Turi Hippolite</li> <li>- Priscilla Paul</li> <li>- Huia Elkington</li> <li>- Kathleen Hemi</li> <li>- Ruruku Joe Hippolite</li> <li>- James Hemi Elkington</li> <li>- Rosemary Sutherland Hippolite</li> <li>- Hori Turi Elkington</li> <li>- Angeline Greensill</li> <li>- Maraea Teariki</li> <li>- Piripi Walker</li> <li>- Frank Hippolite</li> <li>- Benjamin Hippolite</li> <li>- Oliver Sutherland</li> <li>- Te Ariki Kawhe Wineera</li> <li>- Martin</li> </ul>

Te Rarawa	Ngāti Wai	Ngāti Kuri	Kahungunu	Te-Whanau-o-Ruataupare / Ngāti Porou	Ngāti Kōata
			<ul style="list-style-type: none"> <li>- Nellie Norman</li> <li>- Himiona Munroe</li> <li>- Ngahiwi Tomoana</li> <li>- Ngatai Huata</li> <li>- Tamati Mangu Clarke</li> <li>- Maurice Wayne Black</li> <li>- Mark Ross</li> <li>- Philip Lewis Rasmussen</li> <li>- Jacob Manu Scott</li> <li>- Piri Sciascia</li> <li>- Moana Jackson</li> </ul>		
<p>On behalf of all claimant iwi</p> <p>Ani Mikaere</p> <p>David Williams</p> <p>David Stephenson</p> <p>Darrell Posey</p> <p>Henrietta Lillian Marrie</p> <p>Alejandro Agumedo</p> <p>Stephan Schnierer</p> <p>Peter Rowland Wills</p> <p>Tracey Whare</p> <p>Claire Charters</p>					

**Copy of Presentation Pack for Claimants**

*[To come from TPK, pending finalisation of media materials]*

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

Initial Hui with representatives of original Wai 262 claimants  
 12:30pm-3:00pm, 5 Hōngongi 2019  
 Matangireia (former Māori Affairs Committee Room), Parliament Buildings,  
 Wellington

## Contents

	Topic	Subtopic
1	Claimant representatives	a) Table of Attendees and associations b) Brief Biographical details for attendees
2	Annotated Agenda	
3	Summary of Proposed Crown Approach	a) Framework for Organising Crown Work b) Targeted Engagement Approach
4	Generic Q&A for claimant representatives	
5	Whakapapa / Background: Wai 262 - 1991 to present	a) Brief overview of whakapapa of the process from 1991 to the present b) Brief information on initial aspects of claims for each claimant tupuna/iwi c) Summary of final submissions to Wai 262 inquiry d) Summary of each chapter of Ko Aotearoa Tēnei e) Information on treatment of historical dimensions of Wai 262 in Treaty settlement process to date f) Copy of "The Background to the Wai 262 Claim" by Oliver Sutherland, Murray Parsons and Moana Jackson



## Claimant Representatives

Summary table of claimant representatives

Original Claimant / Tupuna	First Name	Last Name	Iwi	Relationship
Del Wihongi	Rachel	Witana	Te Rarawa	Sister
Del Wihongi	Hema	Wihongi	Te Rarawa	Daughter
	Haami	Piripi	Te Rarawa	Chair
Haana Murray	Sheridan	Waitai	Ngāti Kuri	Granddaughter
Haana Murray	Ben	Waitai	Ngāti Kuri	Son
	Walter	Wells	Ngāti Kuri	Deputy Chair
Te Witi McMath	Hori	Parata	Ngātiwai	Iwi Representative
	Bonita	Bigham	Ngātiwai	Iwi Representative
	Haydn	Edmonds	Ngātiwai	Chair
	Aperahama	Edwards	Ngātiwai	Trustee
Tama Poata	Prue	Poata	Ngati Porou	Daughter
Tama Poata	Meipara	Poata	Ngati Porou	Daughter
Tama Poata	Polly	Poata	Ngati Porou	Daughter
	Selwyn	Parata	Ngati Porou	Chair
Kataraina Rimene	Ngahiwi	Tomoana	Ngāti Kahungunu	Chair
John Hippolite	Rāhui	Katene	Ngāti Koata	Daughter
	Joanie	Wilson	Ngāti Koata	Chair

## Brief bios of claimant representatives

### Te Rarawa

#### ***Rachel Witana – Del Wihongi's sister***



Rachel has always been a strong advocate for the interests of her iwi, especially in the realm of the Wai 262 claim and report. She lives in Hokianga, is a trustee of Ōmāpere Rangihamama Trust Farm and has an interest in permaculture.

#### ***Hema Wihongi – Del Wihongi's daughter***



Hema has contributed a lot of work over the years to follow on from her mother's work on Wai 262 and in other areas. She lives in Auckland and works as a Māori science liaison and research assistant at Unitec.

#### ***Haami Piripi – Chair, Te Rūnanga o Te Rarawa***



Haami was raised in Ahipara, Northland, and has spent a lot of time working in the public sector in Wellington. He had a stint as the Chief Executive of Te Taura Whiri before returning home to become the Chair of his Rūnanga.



## Ngāti Kuri

### **Sheridan Waitai – Haana Murray's granddaughter**



Sheridan's tribal affiliations are Ngāti Kuri, Te Rarawa, Ngai Takoto and Tainui. She grew up in Te Hiku o te Ika, and has contributed to a range of social and health projects and initiatives throughout her life. Sheridan has participated in a number of boards, and has experience in the management of forums and governance strategy groups. Her and her whānau have a particular interest in rongoā.

### **Ben Waitai – Haana Murray's son**

Ben owns his own oyster farm in Parengarenga Harbour, and has been oyster farming for 25 years. He also runs the Anglican Church in Kaitaia.

### **Walter Wells – Deputy Chair, Ngāti Kuri Trust Board**



Walter's tribal affiliations are Ngāti Kuri, Te Rarawa, Ngāpuhi and Ngatiwai. He was born in Auckland and raised and educated in Whangārei, and holds a Bachelor of Applied Information Systems. Walter has an extensive background in Māori development, having worked for Te Tira Ahu Iwi, Te Tumu Paeroa, the Ministry of Education and at Te Puni Kōkiri where he is the current regional director of the Tai Tokerau office.

## Ngātiwai

### ***Hori Parata – Iwi representative***



Hori Parata is the Chair of the Ngā Parirau Mātauranga Trust. He has studied at Te Wānanga o Aotearoa, and has a Masters in Indigenous Studies from Te Whare Wānanga o Awanuiarangi. He has worked with MPI on kauri dieback, and is a tohunga in whale recovery and flensing.

### ***Bonita Bigham – Iwi representative***



Bonita is part of the Ngātiwai hapū who have a special agreement in place when they have whale strandings. She is a councillor on the South Taranaki District Council, and serves on Te Maruata, Local Government New Zealand's national council of Māori elected members.

### ***Haydn Edmonds – Chair, Ngātiwai Trust Board***



Haydn is an organisational and management specialist, and has strong knowledge in the area of Māori economic development.

### ***Aperahama Edwards – Trustee, Ngātiwai Trust Board***



Aperahama is the Māori Relationships Manager at the Whangārei District Council. He lives at Matapouri, and was a strong voice in the placing of a rāhui over Matapouri's Mermaid Pools.



## Ngati Porou

### ***Prue Poata – Tama Poata's daughter***



Prue has a Bachelor of Arts in Anthropology and Māori Studies, and a Masters in Library and Information Studies from Victoria University of Wellington. She has had an extensive career in the public sector, with roles at Land Information New Zealand, New Zealand Transport Authority and the Ministry of Education, where she currently works as a project coordinator. She and her sisters grew up in Makara, Wellington, and she and her sister Meipara continue to reside there.

### ***Meipara Poata – Tama Poata's daughter***

Meipara is a long-standing public servant, with an 8 year role as the operational manager of Select Committees at the Office of the Clerk of the House of Representatives.

### ***Polly Poata – Tama Poata's daughter***



Polly lives in Otaki, where she currently works as a business analyst. Like her sisters, she has a history in the public service, with a role at the Ministry of Justice, as well as having worked at Te Hokioi Film.

### ***Selwyn Parata – Chair, Te Runanganui o Ngati Porou***



Selwyn is of Ngati Porou, Ngāi Tahu and Scottish descent. He is from Waipara Bay, and worked for Te Puni Kōkiri for many years, most recently as a pou whakahaere. He is also the chair of Te Matatini.

## Ngāti Kahungunu

**Ngahiwi Tomoana – Chair, Ngāti Kahungunu Iwi Incorporated**



Ngahiwi is of Ngāti Kahungunu, Ngati Porou and Samoan descent, and grew up in Waipatu. As well as leading Ngāti Kahungunu since 1996, Ngahiwi has chaired Te Ohu Kai Moana Trust, the Māori Economic Development Advisory Board, among many others. He is the current director of Hawkes Bay Seafoods and the Hawkes Bay District Health Board.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## Ngāti Koata

### ***Rahui Katene – John Hippolite's daughter***



Rahui is of Ngāti Koata, Ngāti Kuia, Ngāti Toa and Ngāi Tahu descent. She grew up in Nelson, and was managing solicitor at Te Ratonga Ture/Māori Legal Services for 6 years. She was also an MP for the Māori Party in the Te Tai Tonga electorate from 2008-11.

### ***Joanie Wilson – Chair, Ngāti Koata Trust***



Joanie was appointed as Chair of Ngāti Koata Trust in late 2018, after serving as Deputy Chair for a number of years. She has worked as a strategic advisor for Māori at the Ministry of Education, and she resides in Nelson.



## Annotated Agenda

### Claimant Representative Hui

Time	Event
12:30	Arrivals
12:40	Karakia/Whakatau (Piri Sciascia)
12:50	Kai and informal korero
1:20	<p><b>Introducing Crown approach</b></p> <ul style="list-style-type: none"> <li>• I acknowledge the whakapapa of Wai 262</li> <li>• The original claimants were visionaries when they lodged this contemporary claim in 1991. They brought to light (and at times, to close scrutiny), matters of an incredible personal nature, matters that relate to the core of their identities, and which resonate with Māori across the motu.</li> <li>• The journey was long and arduous. I recognise the strength of those who supported the claim during the Tribunal process over many years.</li> <li>• The Waitangi Tribunal's 2011 report, Ko Aotearoa Tēnei, embodied a lot of thinking on these key issues, a meeting place between the views of those claimants and the views of the Crown. That thinking must not be lost. The name Ko Aotearoa Tēnei signifies the broad importance of the issues traversed.</li> <li>• And these are issues that remain important to the present day. The broad issue of the kaitiaki role of Māori arises in many contexts across government.</li> <li>• I recognise the mana of the people in this room.</li> <li>• I am privileged to acknowledge the foresight, wisdom and resolve of the original claimants and the long period between the claim being lodged in 1991, the Tribunal's report in 2011, and the present day.</li> <li>• I wish to express my sincere thanks to you today, because you and others have worked hard to keep the claim alive.</li> <li>• In September last year, I attended the Ngā Taonga Tuku Iho Conference on Māori Intellectual Property in Nelson. At the conference, I explained that Wai 262 was an issue that I could easily side step, but that was not something I wanted to do. I saw a need for the government to do more, and committed to use the tools at my disposal to start a conversation.</li> <li>• In December last year, I made my first step in this direction. I tabled my annual report under section 8i of the Treaty of Waitangi Act 1975, including an assessment of the progress of government in addressing Ko Aotearoa Tēnei findings and recommendations up to that point.</li> <li>• I found that while there was much that could be reported on, there was still much more that needed to happen.</li> </ul>



- This Government has now decided to pick up the wero laid down by the claim and the Tribunal report. In my view, this can't wait any longer. In doing this, we need to start well and start as we intend to continue.
- Today, the Wai 262 claim and Ko Aotearoa Tēnei (the report) cover issues that have wide relevance to Māori beyond just this group. It is time for the Crown to engage with Māori in a way that recognises this.
- I recognise that you will have an ongoing interest in this work as it continues, and it is our desire to continue to involve you in discussions.
- Many others also have a very strong interest in this work and are vitally affected by any decisions the Crown may make; indeed all Māori have an interest in the kaupapa.
- A new approach is needed.
- The Wai 262 claim was a unique claim in its time because it was a contemporary claim that requires contemporary solutions.
- To address it, we need to answer questions like:
  - what will work in today's Aotearoa? This includes the kaitiaki role of iwi and hapū in making decisions about taonga and a strengthened Crown-Māori partnership.
- The settlement of historical claims will continue as at present, and the process for contemporary claims is different. This means that it does not involve negotiations with a claimant group about redress.
- As we continue, however, the Crown will continue to work on specific issues with Māori as it develops its overall approach.
- I will lead this new approach.
- In April, I took a paper to Cabinet setting out proposals for a whole of government approach to addressing Wai 262 issues.
- The high level of inter-connectedness of the Wai 262 issues, and the significant cross-cutting themes, mean that we need a whole-of-government approach if we're going to address Wai 262 in a coherent, consistent and comprehensive manner.
- I intend to work with relevant portfolio Ministers to:
  - explore how the government might better organise ourselves on the key Wai 262 issues;
  - engage and partner with Māori on those issues; and
  - ultimately seek to address those issues together with Māori.
- I also proposed that Government should develop a programme of action to address Wai 262 and mātauranga Māori issues against the backdrop of current policy settings. This includes things like the progressive trade agenda, accelerating Māori development and implementing the Living Standards Framework.
- To do this, I sought in-principle agreement to establish three Ministerial groups that work in three focus areas based on the three major Wai 262 report themes.
- These are:
  - **Kete kotahi** – taonga works and mātauranga Māori
  - **Kete e rua** – taonga species and mātauranga Māori
  - **Kete e toru** – international indigenous matters

	<ul style="list-style-type: none"> <li>• A Ministerial Oversight Group, that I will coordinate, was also established to provide strategic oversight of the government response to Wai 262, and to manage high level Māori Crown relationships.</li> <li>• To explore these structural proposals further, I intend to undertake targeted engagement with a range of Māori groups with an interest in machinery of government. This will seek views on: <ul style="list-style-type: none"> <li>○ Government's high level organising framework (ie, the proposed Ministerial focus groups and oversight group);</li> <li>○ potential programmes of work for each kete, and what should be included; and</li> <li>○ how Māori might engage with the proposed Government organising framework, and more widely organise themselves in relation to Wai 262 issues.</li> </ul> </li> <li>• I encourage you to participate in targeted engagement alongside other groups and interests. I look forward to hearing your views over the coming months.</li> <li>• I intend to report back to Cabinet in November 2019 with a proposed approach based on the targeted engagement.</li> <li>• This will confirm the Crown's approach to the partnership conversation that will then ensue. Wai 262 raised complex and important issues and so I expect these conversations will occur over a number of years. The important thing, after 28 years, is that they get underway in earnest.</li> </ul>
1:50	<p><b>Propose 30 minute break</b></p> <ul style="list-style-type: none"> <li>• note room booking time limited, but happy to offer 30 minute break if want to discuss amongst themselves.</li> <li>• provide attendees with an advanced copy of the media release and associated papers, including the Cabinet Paper and Cabinet Minute under embargo.</li> <li>• Minister and officials retire to adjoining room.</li> </ul>
2:20	<p><b>Reconvene</b></p>
2:25	<p><b>Invite questions or comments</b></p> <ol style="list-style-type: none"> <li>a. invite attendees to share any initial reflections on what they have heard from you, while also offering them the opportunity to consider what you have said and inviting them to respond through the targeted engagement</li> <li>b. hear and reflect any initial response without commitment. Comments may include: <ol style="list-style-type: none"> <li>i. details of the whakapapa of the claim, details of the original claim and the distinctions between the claim and Ko Aotearoa Tēnei;</li> <li>ii. expression of frustration to you about the approach of the Crown, such as:</li> </ol> </li> </ol>

1. the approach of the Crown up to now;
2. absence of "settlement negotiations" between the Crown and claimants; and
3. other elements of the Crown's proposed approach.

**Invite questions for claimant representatives to consider for the targeted discussions**

- What should the role of claimant representatives and your iwi be:
  - As stewards of the original claim?
  - As participants in an 'iwi katoa' conversation as we transition into the next phase of the work?
- How should we transition this kaupapa to an 'iwi katoa' conversation?
- Have we correctly described the background to Wai 262?

2:45

Karakia Whakamutunga (Piri Sciascia)

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## Summary of Proposed Crown Approach

### Framework for organising Crown work

The proposed approach will include:

- a high-level organising framework that enables the Crown to organise and coordinate its response across the numerous portfolio issues raised in the Wai 262 claim (see below);
- a Proposed Plan of Action for each focus area that details:
  - i. the key Crown objectives for the focus area;
  - ii. the overarching principles that will guide the Crown's work in the focus area, including how the partnership principles recently considered by Cabinet [MCR-19-MIN-0003; CAB-19-MIN-0077 refer] might be applied;
  - iii. a proposed approach for prioritising, sequencing and coordinating key focus area work streams;
  - iv. a proposed operating and governance model for each Ministerial focus group;
- the proposed functions of the Ministerial oversight group (see below); and
- more detail on how the Crown will engage with Māori and the wider public on each focus area's Proposed Plan of Action and on the higher-level issues the Ministerial oversight group is considering.

### Ministerial focus groups

There are a number of Ministers with a portfolio interest in Wai 262. I propose that Cabinet make in-principle decisions to establish three Ministerial focus groups as follows:

Focus Area	Portfolios	Ministers	Wai 262 Chapters
Focus Area 1: Taonga works and mātauranga Māori	Minister for Arts, Culture and Heritage	Rt Hon Jacinda Ardern	Chapter 1 (Taonga Works and Intellectual Property)
	Associate Minister of Education (Māori Education)	Hon Kelvin Davis	Chapter 5 (Te Reo Māori)
	Associate Minister for Arts, Culture and Heritage	Hon Grant Robertson	Chapter 6 (When the Crown Controls Mātauranga Māori)
	Minister for Māori Development; Minister of Local Government	Hon Nanaia Mahuta	
	Minister of Internal Affairs	Hon Tracey Martin	
	Minister of Commerce and Consumer Affairs; Minister of Broadcasting, Communications and Digital Media	Hon Kris Faafoi	
	Minister of Statistics	Hon James Shaw	



<b>Focus Area 2:</b> Taonga species and mātauranga Māori	Minister of Energy and Resources; Minister of Research, Science and Innovation	Hon Dr Megan Woods	Chapter 2 (Genetic and Biological Resources of Taonga Species)
	Minister of Health	Hon Dr David Clark	Chapter 3 (Relationship with the Environment)
	Minister for the Environment	Hon David Parker	Chapter 4 (Taonga and the Conservation Estate)
	Minister for Māori Development; Minister of Local Government; Associate Minister for the Environment	Hon Nanaia Mahuta	Chapter 7 (Rongoā Māori)
	Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	
	Minister for Climate Change	Hon James Shaw	
	Minister of Conservation	Hon Eugenie Sage	
<b>Focus Area 3:</b> International indigenous matters	Minister of Foreign Affairs	Rt Hon Winston Peters	Chapter 8 (The Making of International Instruments)
	Minister for Trade and Export Growth	Hon David Parker	
	Minister for Māori Development	Hon Nanaia Mahuta	
	Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	
	Minister for Climate Change	Hon James Shaw	

Each Ministerial focus group will ultimately be responsible for monitoring the an integrated work programme on Wai 262 issues within their focus area, and across focus areas where appropriate. Although my thinking may change after the targeted engagement, at this stage I anticipate that the proposed Plan of Action for each Ministerial focus group would constitute the Crown's contribution to a potential Māori/Crown integrated work programme that specifies (among other things) what Māori and the Crown will each do to implement the programme in partnership.

### Ministerial oversight group

Cabinet has also established a Ministerial oversight group to:

- oversee the government's high-level response across Wai 262;
- assist Ministers coordinate within and across the focus areas;
- determine the Crown's approach to high-level and cross-cutting issues; and
- determine the high-level approach to Māori-Crown relationships across Wai 262.

The following Ministers are included in this group:

Ministerial Oversight Group		
Portfolios	Ministers	Wai 262 chapters
Prime Minister	Rt Hon Jacinda Ardern	Chapter 9 (Conclusions, summary of recommendations and how to 'perfect' the Treaty partnership)
Deputy Prime Minister	Rt Hon Winston Peters	
Minister for Māori Crown Relations: Te Arawhiti	Hon Kelvin Davis	
Minister of Energy and Resources; Minister of Research, Science and Innovation	Hon Dr Megan Woods	
Minister of State Services	Hon Chris Hipkins	
Minister for Treaty of Waitangi Negotiations	Hon Andrew Little	
Attorney-General	Hon David Parker	
Minister for Māori Development	Hon Nanaia Mahuta	
Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## Targeted Engagement Approach

On 8 Paengawhāwhā 2019, Cabinet agreed that:

*"Te Puni Kōkiri officials, with assistance from other agencies, undertake targeted engagement with key Māori groups and individuals with interests in Wai 262, including Wai 262 claimant groups, Māori technical experts, relevant statutory Māori advisory boards, iwi leaders, the Federation of Māori Authorities, the Māori Council and subject specialists."*

The claimant representatives will therefore be included in targeted engagement.

The Cabinet paper said that targeted engagement will seek views from Māori on:

- how the Crown proposes to organise itself (i.e. the proposed Ministerial Oversight Group and Ministerial Focus Groups);
- the sorts of matters that should be considered by the Ministerial Focus Groups and the Ministerial Oversight Group;
- matters that might be included in a potential programme of work (referred to in the Cabinet paper as proposed Plans of Action for each focus group); and
- how Māori might engage with the Crown's proposed organisational structure and organise themselves in relation to Wai 262 issues.

We propose engaging with the groups listed below. There will also be engagement with a number of sectoral groups and experts through the agencies relevant to their sector.

Group name	Kaupapa
Te Kaunihera Māori o Aotearoa – New Zealand Māori Council	Statutory body to represent the interests of all Māori at the national level
FOMA – Federation of Māori Authorities	To represent Māori economic interests at the national level
Iwi Chairs Forum	A platform for regional iwi to come together to discuss and enable Māori aspirations
Te Rōpu Wahine Māori Toko I te Ora - Māori Women's Welfare League Inc.	An organisation of Māori women who aspire to improve Māori wealth and wellbeing
Te Hunga Rōia Māori o Aotearoa – The Māori Law Society	To provide for the legal needs of te ao Māori
NUMA – National Urban Māori Authority	To influence and advance the social and economic development of urban Māori – made up of a range of regional urban Māori authorities

Te Ohu Kai Moana – Māori Fisheries Trust	To advance Māori interests in the marine environment
Wairoa-Waikaremoana Trust Board	Māori Trust Board
Te Tumu Paeroa	National organisation supporting Māori landowners

**Consultation with the Ministerial Oversight Group:** we will provide you with a briefing including a final version of the targeted engagement material, to circulate to the Ministerial Oversight Group. Current planning is for this to occur shortly after the hui on 5 Hōngongoi.

**Release of final targeted engagement materials:** we will revise the engagement materials in light of any feedback from your Ministerial colleagues. We will then provide the engagement materials to targeted engagement groups and seek an opportunity to discuss the proposed government approach with them. The earliest this release might occur is late Hōngongoi.

**Targeted engagement:** we engage with targeted engagement groups from late Hōngongoi through to late Mahuru / early Whiringa-ā-nuku with the bulk occurring in the two months Here-turi-kōkā and Mahuru.

**Report on targeted engagement:** we will discuss with you later in the year the idea of providing you and your Ministerial Oversight Group colleagues with a report on targeted engagement in early-mid Whiringa-ā-nuku.



## **Generic Q&A for hui with claimant representatives**

### **Questions on monetary settlement / traditional settlement process**

- Wai 262 was a contemporary inquiry rather than a historical one.
- This kaupapa affects all Māori so the conversation needs to include all Māori.
- We are not intending to enter into settlement negotiations.
- Our focus will be on the changes we need to make to current laws, policies and practices and the Māori-Crown relationship.

### **Questions about Government money/support for hui between claimant iwi or iwi katoa**

- That *take* is probably better suited for the targeted discussions.
- We'll be discussing in the targeted discussions how we can set up partnership conversations on this kaupapa.
- We expect to hear a lot of ideas about this and we look forward to hearing them.

### **Concerns about not starting engagement solely with claimants / not including them sufficiently in designing the process etc**

- This kaupapa affects all Māori so the conversation needs to include all Māori.
- We're viewing the targeted engagement process as a way of having initial conversations about how to move forward.
- The targeted conversations are just the first step in this process. This kaupapa will involve many conversations over many years. We look forward to your participation in those.

### **Wai 262 report didn't respond to the key aspects of our claim**

- That's a big *take* – probably better suited for the targeted discussions.

### **Why didn't you invite other claimants?**

- I wanted to start at the start with the representatives of original claimants.
- The two other organisational claimants will be included as part of the targeted engagement discussion.

*[Wairoa-Waikaremoana Māori Trust Board and Te Waka Kai Ora were the two other claimant groups that joined the proceedings.]*

**Concerns about Crown going too slow (delay in Crown response / Crown going too slowly in future)**

- I agree that the Crown has done too little in this area.
- I intend to change that through this work I am leading.
- One of the difficulties in this process will be getting the balance right between making overdue progress on this kaupapa and taking a partnership approach, listening and understanding before we act.
- How we strike that balance is something we want to talk about in the targeted discussions.

**Concerns about Crown going too fast (timeline / what a whole-of-government approach/strategy means / three months too short for final decisions)**

- This is the start of a new chapter on this kaupapa.
- The new process is going to take a number of years. We are right at the start of it.
- We want to build into this process a series of ongoing conversations between Māori and the Crown on this kaupapa.
- Our initial focus is starting the conversation well in the targeted discussions. We will then look to build momentum and broaden the conversation with Māori and the wider public.

**Demands that the Crown recognise iwi/hapū ownership of indigenous species / mātauranga Māori / taonga works**

- That's a big *take* – probably better suited for the targeted discussions.

## Brief overview of whakapapa of the process from 1991 to the present

### The original claim

The Wai 262 claim was lodged in 1991 by six claimants on behalf of themselves and their iwi. The original claimants were:

- Hema Nui a Tawhaki Witana (Te Rarawa, also known as Del Wihongi)
- Saana Murray (Ngāti Kuri)
- Te Witi McMath (Ngāti Wai)
- Tama Poata (Ngāti Porou)
- Kataraina Rimene (Ngāti Kahungunu)
- John Hippolite (Ngāti Koata).

The claimants' initial concerns were driven by, among other things, the granting of intellectual property rights in indigenous plant species, the collection and use of indigenous plants, and Crown control of access to, and commercialisation of indigenous plant species. Over the course of the inquiry, the claim was extended to:

*"te tino rangatiratanga o te Iwi Māori in respect of indigenous flora and fauna me o rātou taonga katoa (and all their treasures) including but not limited to matauranga, whakairo, waahi tapu, biodiversity, genetics, Māori symbols and designs and their use and development and associated indigenous cultural and customary heritage rights in relation to such taonga."*

For the claimants, 'taonga' encompassed all of the elements of a tribal group's estate, 'material and non-material, tangible and intangible'. They argued that tino rangatiratanga incorporated:

- (a) Decision-making authority over the conservation, control of, and proprietary interests in natural resources including indigenous flora and fauna *me o rātou taonga katoa*;
- (b) The right to determine indigenous cultural and customary heritage rights in the knowledge and use of indigenous flora and fauna *me o rātou taonga katoa*;
- (c) The right to participate in, benefit from, and make decisions about the application of existing and future technological advances as they relate to the breeding, genetic manipulation and other processes relevant to the use of indigenous flora and fauna;
- (d) The right to control and make decisions about the propagation, development, transport, study or sale of indigenous flora and fauna;
- (e) The right to protect, enhance and transmit the cultural, medicinal and spiritual knowledge and concepts found in the life cycles of indigenous flora and fauna;
- (f) A right to environmental well-being dependent upon the nurturing and wise use of indigenous flora and fauna;



- (g) The right to participate in, benefit from and make decisions about the application, development, uses and sale of *me o ratou taonga katoa*; and
- (h) The right to protect, enhance and transmit the cultural and spiritual knowledge and concepts found in *me o ratou taonga katoa*.

### Further developments in the claim

Two further claimants were admitted to the proceedings in 2006. One was the Wairoa-Waikaremoana Māori Trust Board, which was concerned about the pollution of New Zealand waterways and its harmful effect on taonga species and Māori. Another claimant was Te Waka Kai Ora, which was concerned about the effects of the proposed Australia-New Zealand Therapeutic Products Agreement on Rongoā Māori.

Many of the issues raised in the claim were novel in 1991 but have since also been raised by Māori in various other contexts, including Treaty settlements and other domestic and international processes.

The inquiry into the claim was one of the largest and most complex in the Waitangi Tribunal's history. It was the Waitangi Tribunal's first 'whole-of-government' inquiry – examining the policy areas of more than 20 government departments and agencies.

The inquiry was a 'contemporary' inquiry. It focused mainly on the Crown's existing laws, policies and practices instead of the Crown's historical actions. Who is entitled to make decisions – or participate in decisions – that affect indigenous flora and fauna, the environment, Māori culture and the products of Māori culture was a key focus.

### *Ko Aotearoa Tēnei*: The Wai 262 Report

The Tribunal released its report, *Ko Aotearoa Tēnei*, in 2011. It is also known as the 'Wai 262 report'. The Waitangi Tribunal's recommendations included changes to the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international instruments.

The Waitangi Tribunal said that the objective of many of the proposed reforms was to establish genuine partnerships – including through the creation of new partnership bodies – in which the interests of Māori and other New Zealanders are fairly and transparently balanced.

The inquiry itself took 20 years from the claim's lodgement to the release of the report *Ko Aotearoa Tēnei*.



The original presiding officer of the claim, Judge Richard Kearney, died in 2005 after a long period of illness. Justice Joseph Williams, who was recently appointed to the Supreme Court, then took over as presiding officer for the remainder of the proceedings.

More details on the background to the Wai 262 claim are set out in a paper entitled 'Background to Wai 262', prepared in June 2011 by Oliver Sutherland and the late Murray Parsons in conjunction with Moana Jackson and the whanau of claimants, at the bottom of this pack.

### **Crown actions following *Ko Aotearoa Tēnei***

In December 2018, Hon Minister Mahuta tabled in Parliament the Section 8I Report,<sup>1</sup> which reported on the Crown's progress implementing Waitangi Tribunal recommendations. The report contained a feature section on *Ko Aotearoa Tēnei*, which sought to:<sup>2</sup>

*"...provide an overview of the findings and recommendations of the Wai 262 report and what the Crown has done since it was released. It is intended to constitute a succinct and frank appraisal of the Crown's progress on Wai 262."*

The feature section (attached as **Appendix 1**) showed that while the Crown has made progress in several areas, there is more work to do. The next section of this paper sets out how the Government intends to drive and coordinate work on the issues raised by the Wai 262 claim and *Ko Aotearoa Tēnei*.

<sup>1</sup> <https://www.tpk.govt.nz/en/a-matou-mohiotanga/crownmaori-relations/the-section-8i-report>.

<sup>2</sup> Page 7 of the 2018 Section 8I report.

## **Brief information on initial aspects of claims for each claimant tupuna/iwi**

### **Issues in common**

All claimants asserted that this claim came about due to breach of tino rangatiratanga over indigenous flora and fauna as well as cultural taonga within their respective rohe.

Issues in common among claimants:

- Crown actions in legislation and policy usurped Māori mana and ability to exercise tino rangatiratanga and kaitiakitanga over the indigenous flora and fauna within their rohe
- Crown introduction of non-indigenous species that threatened indigenous species without adequate consultation with Māori
- Crown's signing of international instruments that are inconsistent with Treaty-guaranteed rights
- Crown permitting and encouraging destruction or substantial modification of the habitats of indigenous flora and fauna
- Crown's alienation of ancestral land, which affects Māori ability to carry out kaitiaki obligations
- where the Crown acted in a way that affects Māori interests, they have not adequately consulted or sought permission from iwi and hapū in relation to indigenous species
- Māori should have decision-making authority over all tangible and intangible taonga, including but not limited to: whakairo, rongoā, wāhi tapu, pa sites, natural resources such as awa and moana, and cultural images, designs and symbols and associated indigenous, cultural and customary heritage rights
- Crown's failure to acknowledge and safeguard cultural taonga such as Te Reo Māori
- Crown's failure to provide for and protect the existing systems of mātauranga held by each iwi.

Each claimant also had particular concerns that they brought to the claim based on their own experiences with the Crown and within their rohe, which are listed below. This is not an exhaustive list.

**Del Wihongi, Saana Murray, Te Witi McMath - Te Tai Tokerau (Te Rarawa, Ngāti Kuri and Ngātiwai)**

Specific issues:



- access to lands and coastlines
- restrictive designations by the Crown within their rohe, such as the designation of scenic reserves, or reserves to conserve certain species such as the pūpū harakeke (of particular consequence to Saana Murray of Ngāti Kuri)
- Crown's designation of 'protected species', which outlawed the claimants' taking of their traditional food, such as the kuaka for Ngāti Kuri and the kererū
- delegation of regulatory powers over native species to bodies such as fish and game councils
- Crown's active destruction of mahinga kai, such as the eel destruction campaigns carried out to introduce trout into Northern rivers, and the drainage of swamps under the Drainage Act 1915
- selling and exportation of indigenous flora and fauna – such as one of the issues that sparked the claim, where Del Wihongi travelled to Japan to retrieve an ancestral species of kumara
- Crown's restrictions on harvesting of crops such as harakeke for weavers in the North.

### **Tama Poata – Ngāti Porou**

#### **Specific issues:**

- although the claim primarily looks at control and ownership of native flora and fauna, Tama saw the core kaupapa of this claim to be the Crown's denial of tino rangatiratanga and failure to honour the Treaty
- lack of Crown consultation with Māori around the treatment, storage etc. of cultural taonga
- lack of legislative protection for possible culturally offensive reproduction of taonga
- rights in copyright law not being held by kaitiaki
- need for collective ownership and administration of intellectual and cultural property by whānau, hapū and iwi within their rohe.

### **Kataraina Rimene – Ngāti Kahungunu**

#### **Specific issues:**

- inability to fulfil kaitiaki responsibilities in relation to indigenous flora and fauna within their rohe due to the Crown's failure to actively protect these species
- loss/scarcity of raw materials (indigenous species) to use/pass on cultural knowledge, particularly in relation to rongoā
- Ngāti Kahungunu consider rongoā a taonga, and legislation and policy such as the Tohunga Suppression Act 1907 and its predecessors violated this, and failed to allow Ngāti Kahungunu a right to develop this taonga, and to transfer knowledge in relation to this
- Crown's failure to adopt a protective legislative regime for intellectual property consistent with the Treaty of Waitangi.

### **John Hippolite - Ngāti Koata**

Specific issues:

- acquisition of Takapourewa as a Crown reserve for the conservation of tuatara and the Crown's assumption of their right to manage the species
- vesting of ownership and control over coastal waters and tidal environments in Harbour Boards
- drainage of swampland as destruction of habitats for indigenous species of flora and fauna
- Crown's signing of the TRIPS international agreement on intellectual property and its inconsistency with rights guaranteed in the Treaty
- Crown's failure to protect Ngāti Koata from the loss and misuse of te reo Māori, and the lack of promotion of mātauranga in education
- concerns over patenting and commercialisation of native species such as koromiko.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## Summary of final submissions to Wai 262 inquiry

In June 2007, Wai 262 claimants or their representatives made closing statements to the Waitangi Tribunal on the kinds of mechanism they believed were needed to deliver overall relief. The Tribunal ultimately opted to take a different approach to the kind that the claimants recommended.

### Te Tai Tokerau

Te Tai Tokerau claimant iwi (Te Rarawa, Ngāti Kuri and Ngātiwai) asked the Tribunal in their closing statements to make some urgent interim findings that the Crown's current protection of mātauranga was defective, and placed mātauranga at risk of misappropriation. On this basis, they advocated a two-stage process for the resolution of the Wai 262 claim, which they collectively called an 'Ethical Framework for Resolution'.

Under this proposal, they sought Tribunal recommendations for, first, a Crown-funded process of communication and consultation amongst other iwi, led by the Wai 262 claimants on the issues raised in the claim, a process they called 'Kanohi Ora'. Following that, they sought a 'Process of Engagement' between representatives of kaitiaki (forming a 'Taumata') and the Crown that would be designed to identify the means of resolving the claim issues. Counsel explained that this approach was needed because 'the issues in the Wai 262 claim are so complex and significant that they cannot be addressed in a piecemeal fashion, nor in a manner which simply seeks to "tinker" with existing Crown legislation and policy'.

### Ngāti Porou

Ngāti Porou also declined to propose specific amendments, arguing that this approach would pre-empt 'a more detailed dialogue with the Crown and those other iwi that are not represented in this inquiry'. But here, Ngāti Porou departed from the other iwi in an important respect. Counsel opposed the idea of establishing a pan-Māori commission (or presumably one of the other collective approaches), which he submitted would 'represent the waste of 16 years of effort and resources'.

Instead, counsel argued for the mana to be returned to 'those who have, by whakapapa and membership of the relevant iwi or hapū, inherited the right to exercise the role of owner and kaitiaki'. Ngāti Porou favoured 'a series of more general findings and recommendations' to inform engagement between the Crown and Ngāti Porou that would identify and provide 'the protections sought by Ngāti Porou' in respect of both its mātauranga and te reo ake o Ngāti Porou. Counsel submitted that 'if a resolution on the issues raised in this claim is not achieved within 12 months, then leave should be reserved for the parties to return to the Tribunal for further directions'.

In response to the recommendations in the Tribunal's pre-publication release of the Te Reo Māori chapter in October 2010, counsel for Ngāti Porou repeated that the discussions leading to measures to protect te reo ake o Ngāti Porou 'must occur between the Crown and Ngāti Porou. Ngāti Porou does not support the establishment



of structures or entities that come between iwi and the Crown. Counsel for Ngāti Koata likewise rejected the Tribunal's prescription for protection of te reo Māori and reiterated that it was 'for Ngāti Koata to design and reach agreement with the Crown on the processes by which decision making authority will be returned to Ngāti Koata.

### **Ngāti Kahungunu**

Ngāti Kahungunu preferred in closing not to seek recommendations for specific legislative changes, viewing these as both premature, since the Tribunal had not determined which statutes breached the Treaty and needed amendment, and inappropriate, since other iwi would have a 'great interest' in the issues and thus 'wider consultation' would be needed. Moreover, counsel argued, the importance of the issues meant that – in keeping with the submission of the Te Tai Tokerau claimants – 'ad hoc amendments to particular legislation would not be a sensible way to proceed'.

Counsel therefore proposed that Māori and other interested parties 'play a central part in the solutions to be developed' through a 'two-tiered' process. Under this proposal, eight Crown-funded 'working groups' would develop solutions to issues ranging across the themes of the Wai 262 inquiry under the supervision of an overall 'coordinating group' comprising 'representatives of the Wai 262 claimants, the Crown, other iwi, Crown Research Institutes, and the public.

### **Ngāti Koata**

Ngāti Koata also felt that it was not for the Tribunal to define the remedies for the prejudice suffered by them. Counsel submitted that it was 'for Ngāti Koata to design and reach agreement with the Crown as Treaty partner' and the Tribunal should be prescriptive where 'obviously clear circumstances' required an immediate Ngāti Koata right of veto (such as over tuatara on Takapourewa).

As part of the broader process of identifying legislative reforms, counsel advocated – like Ngāti Kahungunu – the establishment of a 'coordinating body to take forward and develop proposals for remedial measures'. Counsel thus proposed the enactment of a 'Māori Law Reform Commission' to 'produce, for iwi and the Crown, proposals to reform the law of Aotearoa to provide full and balanced relief' from any Crown Treaty breaches found by the Tribunal. Counsel envisaged the commission establishing working parties of Crown and Māori representatives, who would be 'delegated specific law reform tasks'.

## **Summary of each chapter of Ko Aotearoa Tēnei**

As taken from the Te Puni Kōkiri *Section 8i Report* 2018

### **Chapter 1: Taonga Works and Intellectual Property**

#### **Findings:**

- Taonga works as the expression of Māori artistic and cultural traditions, founded in mātauranga Māori.
- Kaitiaki have a particular relationship to these works in terms of safeguarding them, whether or not they were the original creator.

#### **Recommendations:**

- Prohibition of the derogatory or offensive use of taonga works, taonga-derived works (works that identifiably use mātauranga or taonga works as inspiration, but do not have mauri or living kaitiaki in accordance with tikanga) and mātauranga Māori;
- Creation of a mechanism by which kaitiaki could prevent any commercial use of taonga works or mātauranga Māori (but not taonga-derived works) unless there had been consultation, and kaitiaki consent if appropriate;
- Establishment of an expert commission with adjudicative, facilitative and administrative functions; and
- Establishment and administration of a taonga works register by the above expert commission.

#### **Progress to date**

##### **Domestic policy**

There has been minimal progress on the taonga works recommendations, aside from ad hoc protections, such as for the haka Ka Mate. Lack of domestic policy development in this area has left Māori cultural expressions vulnerable to misuse. While some taonga works receive some level of intellectual property protection, such as under the Copyright Act, this protection is not particularly robust and does not necessarily align with tikanga Māori.

##### **International policy**

The Government is currently working towards helping establish protections for indigenous rights in traditional cultural expressions in the international intellectual property system, however the lack of solidity in Aotearoa's domestic policy limits New Zealand's ability to take an active role in these international conversations. MBIE is also working on a separate work stream alongside their Copyright Act reform to look at developing protection for taonga works and mātauranga Māori.

## Chapter 2: The Genetic and Biological Resources of Taonga Species

### Findings:

- Where there is a risk that bioprospecting, genetic modification or intellectual property rights could affect kaitiaki relationships with taonga species, these relationships are entitled to a reasonable degree of protection;
- What constitutes 'reasonable' is a matter for case-by-case analysis; and
- Not appropriate to view the kaitiaki relationship with taonga species as one of exclusive ownership except in rare cases (e.g. Ngāti Koata and tuatara).

### Recommendations:

#### Bioprospecting

- Requirement that the Department of Conservation (DOC) lead the development of a bioprospecting regime that is applicable within the conservation estate; and
- Expansion of DOC's pātaka kōmiti (Māori committees that have been used by DOC on an ad hoc basis for discussions on access to cultural materials for iwi/hapū) from an advisory role to one of joint decision-making with the regional conservator.

#### Genetic modification

- Amendment of the Hazardous Substances and New Organisms (Methodology) Order 1998 so that no automatic privilege is given to physical risks;
- Amendments to the Hazardous Substances and New Organisms Act to:
  - recognise kaitiaki relationships with taonga species;
  - empower Ngā Kaihautū Tikanga Taiao to appoint at least two members of the Environmental Protection Agency; and
  - empower Ngā Kaihautū Tikanga Taiao to give proactive advice.

#### Intellectual property

- Ensuring that mātauranga Māori is a key factor in decisions about patentability;
- Establishment of a Māori advisory committee to advise the Commissioner of Patents;
- Empowerment of the Commissioner of Patents to refuse patents that are contrary to *order public* as well as morality;
- Empowerment of the Māori advisory committee to act proactively;
- Establishment of a voluntary register of taonga species;
- Imposition of a disclosure of origin requirement on patent applications;
- Prohibition of the Commissioner of Plant Variety Rights from approving a name for a plant variety if it would likely be offensive to Māori;
- Clarification that plant varieties must be specifically bred to quality for a plant variety right;



- Empowerment of the Commissioner of Plant Variety Rights to refuse to grant a plant variety right if the grant would affect kaitiaki relationships with taonga species; and
- Empowerment of the patents Māori advisory committee to advise the Commissioner of Plant Variety Rights on whether to refuse an application on the basis that it would affect kaitiaki relationships with taonga species.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## **Progress to date**

### **Patents**

In 2013, Parliament passed the Patents Act, with the following changes:

- The Act established the Patents Māori Advisory Committee, which exists to advise the Commissioner of Patents on whether an invention is derived from mātauranga Māori or taonga species, and whether its commercial exploitation would be contrary to Māori values
- The Act provides that the Commissioner of Patents can refuse patents that are contrary to public order as well as morality
- Implicit in the above changes is that mātauranga Māori is now a key factor in the patents decision-making process

### **Plant Variety Rights**

MBIE are currently in the process of reviewing the Plant Variety Rights Act 1987, using Wai 262 as the starting point in terms of fulfilling Treaty obligations to Māori. They have gone out for consultation, and released an Issues Paper and Māori engagement plan – their Options Paper has recently been released for consultation, with Cabinet expecting to make policy decisions in November for a new regime.

### **Disclosure of origin requirements**

Alongside the Plant Variety Rights review, MBIE are seeking mandate to enable New Zealand to support the implementation of disclosure of origin requirements for genetic resources and traditional knowledge at the World Intellectual Property Organisation's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

### **Genetic modification**

The EPA has implemented processes under section 6(d) of the Hazardous Substances and New Organisms Act 1996 that require a case-by-case approach to decision-making, including the consideration of kaitiaki relationships. In 2011, statutory requirements and non-statutory practices were established at the EPA to allow the participation of Māori and the consideration of Māori interests by decision-makers, and in implementing section 6(d), the EPA actively seeks and considers the views of tangata whenua.

## **Chapter 3: Relationship with the Environment**

### **Findings:**

- The Treaty requires the Crown to actively protect the continuing obligations of kaitiaki towards the environment as one of the key components of te ao Māori, and this obligation cannot be absolved by statutory devolution of the Crown's environmental management powers and functions to local government
- The degree of control exercised by Māori and their influence in decision-making needs to be resolved in a principled way using the concept of kaitiakitanga
  - The exact degree of control accorded to Māori as kaitiaki is likely to differ widely in different circumstances, and cannot be determined in a generic way

### **Recommendations:**

- Reformation of the Resource Management Act (RMA) 1991 so that decision-makers under the Act have to engage with kaitiaki to deliver control, partnership and influence where each of these is justified
- Amendment of the RMA to provide for the development of enhanced iwi resource management plans in consultation with local authorities
- Amendment of the RMA's mechanisms for delegation, transfer of powers and joint management to remove unnecessary barriers to their use
- Building of Māori capacity to participate in RMA processes and the management of their taonga
- Development of national policy statements on Māori participation in resource management plans and arrangements for kaitiaki control, partnership and influence on environmental decision-making

### **Progress to date**

#### **Resource legislation**

The Resource Legislation Amendment Act 2017 introduced new ways for Māori to have input into council plan-making process, as they are now required to provide their draft regional and district plans to iwi authorities for comment, and must give them sufficient time to respond before going out for public submissions. There are also a range of other requirements around iwi and hapū consultation and representation in these processes.

This Amendment Act also allows any iwi authority to initiate a Mana Whakahono ā Rohe agreement with the relevant authority. This process enables councils and iwi to come together to agree how iwi will participate in resource management planning processes as a tool that is available as of right under resource management legislation, rather than an avenue for Treaty settlement redress.

#### **Freshwater**

The National Policy Statement on Freshwater Management 2014 (NPS-FM) requires local authorities to take reasonable steps to involve Māori in the management of freshwater, and identify and reflect Māori values and interests in management and

decision-making regarding freshwater. This was implemented to embed the concept of Te Mana o te Wai in the Statement, putting the health and wellbeing of water bodies at the forefront of discussions and decisions about freshwater. All councils must consider and recognise Te Mana o te Wai in all aspects of freshwater management, and must provide for the involvement of iwi and hapū in these decisions, as well as ensuring that tangata whenua values are identified and reflected in decision-making, and that mātauranga Māori methods are used when monitoring water quality. An Iwi Advisors Group worked directly with MfE on policy options for freshwater reform, and the current government has formed an advisory group, Kāhui Wai Māori, to assist in co-design of further RMA reforms, including changes to the NPS-FM.

### **Biodiversity**

MfE is in the process of creating a National Policy Statement for Indigenous Biodiversity (NPSIB), with the proposed Statement going out for public consultation later this year. Its aim is to restore indigenous biodiversity under the Resource Management Act 1991, through an integrated and holistic approach. This involves acknowledging kaitiakitanga, taking into account the principles of the Treaty, protecting significant indigenous vegetation and significant habitat of indigenous fauna, and providing for the relationship between Māori, their culture and traditions, and their taonga, as well as ensuring that tangata whenua are involved in regional plans and strategies.



## Chapter 4: Taonga and the Conservation Estate

### Findings:

- The Crown estate contains most of the surviving examples of the environment that greeted the first people to arrive in this country, and was the environment in which mātauranga Māori evolved
- The conservation estate is a significant factor for iwi, hapū and whānau seeking to exercise kaitiakitanga responsibilities and relationships with flora and fauna
- Māori communities' relationships with the natural environment should be given expression in the context of the conservation estate that DOC administers
- Partnership between the Crown and Māori in this space should be based on two imperatives:
  - The survival and recovery of the environment is paramount
  - Iwi have a right to exercise kaitiakitanga and maintain their culture
- Shared decision-making between the Crown and kaitiaki must be the default approach to conservation management
- The Crown should govern, as far as practicable, in a manner consistent with the tino rangatiratanga of iwi and hapū
- There may be some cases in which the kaitiaki interest is of overwhelming significance, such that a transfer of ownership or control is appropriate

### Recommendations:

- Requirement that DOC achieve its conservation mission in a manner consistent with the tino rangatiratanga of iwi and hapū
- Providing for full statutory co-management of customary use by DOC and pātaka komiti to make joint decisions
- Amendment of DOC policies and practices to give tangata whenua interests in taonga a reasonable degree of preference when making decisions about commercial activities in the conservation estate
- Formalisation of DOC policies for consultation with tangata whenua about concessions within their rohe
- Establishment of various entities to facilitate formal partnerships with Māori
- Review of conservation legislation to reconcile the mātauranga Māori and te ao Pākehā approaches to conservation management
- Making of partnership into a 'will' obligation under the Conservation General Policy (CGP) and the General Policy for National Parks
  - Amendment of the CGP, General Policy for National Parks and Crown-Māori Relationship Instruments to better reflect Treaty principles

- Amendment of the CGP and the General Policy for National Parks to make customary harvest and access a 'will' responsibility in certain situations, and to remove the 'established tradition of customary use' requirement
- Amendment of the Wildlife Act so that no one owns protected wildlife, and the Act instead provides for shared management of wildlife in partnership, and so that taonga works derived from protected wildlife are held by tangata whenua

### **Progress to date**

For obvious reasons, DOC is the leading agency in relation to this chapter. They are currently undertaking a range of work to support partnership with Māori in conservation governance and the exercise of kaitiakitanga, including work to reconcile and integrate mātauranga into how the conservation estate is managed.

DOC are committing to partnership with tangata whenua through the Department's future goal-setting and accountability processes, such as including a goal in their 2015-19 Statement of Intent that 'Whānau, hapū and iwi are able to practice their responsibilities as kaitiaki of natural and cultural resources on public Conservation lands and waters'. They have developed 'Treaty Principles Guidelines' and delivered 'Te Pukenga Atawhai', a staff development programme to give staff and conservation board members confidence in more effectively engaging with te ao Māori. Over 200 staff completed this training in 2017/8.

DOC place the Pou Tairangahou network at the core of their business, especially after the release of *Ko Aotearoa Tēnei*, using it to test their national strategies and commitments to partnership, and to bring regional learnings from iwi and hapū into national strategies and plans.

### **Biodiversity strategy**

The current biodiversity strategy expires in 2020, so DOC held around 25 hui around the country for Māori to weigh in on what they'd like to see in a revised strategy in 2018. DOC have developed a discussion document and more hui will be held in late 2019. Wai 262 recommendations are a key concern in this refresh.

A Te Ao Māori reference group was established for this mahi, as well as the Biodiversity Collaborative Group, that Māori are actively involved in.

### **Ngāi Tai ki Tāmaki decision**

In the wake of the recent Supreme Court decision in the case of *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation*, DOC is undergoing some wide-ranging structural changes, including a partial review of their Conservation General Policy and General Policy for National Parks, with a focus on more robustly reflecting Treaty partnership obligations in legislation.

### **Treaty settlement agreements**

As a result of Treaty settlement negotiations, many iwi have relationship agreements with DOC built into their settlement packages. Settlements have included, for example, provisions about improved access to cultural materials, allowing iwi to obtain cultural materials for non-commercial purposes under multi-site and multi-take permits. Some settlements provide for a transfer of decision-making to iwi for access of iwi members to plant materials and dead protected fauna for cultural purposes.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



## Chapter 5: Te Reo Māori

### Findings:

- Te reo Māori is a taonga guaranteed to Māori under Article 2 of the Treaty
- The survival of te reo Māori is of paramount importance, and there is a proportionate obligation on the Crown as a Treaty partner to protect it
  - This obligation must be met through the development of a modern, Treaty-compliant regime to ensure the survival of the Māori language
- The Crown must transfer enough control to enable a Māori sense of ownership of the vision of the language's survival, while at the same time ensuring that its own expertise and resources remain central to the effort
- The Government's Māori language sector must be highly functioning and infused with common vision and purpose
  - The Crown owes Māori policies and services that are not undermined by structural issues, competing priorities and intermittent focus
  - The Crown must recognise that the Māori interest in the language is not the same as any minority group in Aotearoa
  - Te reo Māori is entitled to a reasonable degree of preference and must receive a level of funding that accords with this
  - Māori also have an obligation to foster the growth of te reo Māori, and must be prepared to work with the Crown on reviving it

### Recommendations:

- That Te Taura Whiri be granted authority to require and approve Māori language plans of:
  - all central government agencies
  - all local authorities, district health boards, and regional branches of central government in local body districts where the census shows a sufficient number or percentage of te reo speakers in the population
  - all state-funded schools (other than kura kaupapa and other immersion schools) with at least 75 students, of whom at least 25% are Māori
  - all state broadcasters and other broadcasters drawing on Te Māngai Pāho funds
- That Te Taura Whiri be granted authority to:
  - approve all early childhood, primary and secondary curricula involving te reo, as well as all level 1 – 3 tertiary te reo courses
  - set targets for the training of Māori language and Māori-medium teachers, and require and approve plans from teacher training institutions showing how they will meet the targets

### Progress to date

#### Te Ture mō Te Reo Māori Act 2016

This Act affirms the status of te reo Māori as the indigenous language of Aotearoa, a taonga of iwi and Māori, a language valued by the nation and an official language of New Zealand. It also provides means to support and revitalise te reo Māori. Section 6 of the Act provides that the Crown must work in partnership with iwi and Māori to continue to actively protect and promote te reo Māori for future generations.



The Act also established an independent statutory entity, Te Mātāwai, to represent iwi and Māori interests in language revitalisation, and provide leadership on behalf of iwi and Māori in their role as kaitiaki of the Māori language. Te Mātāwai created a grassroots level strategy for reo revitalisation called te Maihi Māori in 2017, which is aimed at increasing language in the homes and communities of speakers.

#### **Te Maihi Karauna**

This strategy, led by Te Puni Kōkiri, is the Crown's official reo revitalisation strategy, meant to exist in concert with the above legislation and policy. It is based around ambitious goals to have 85% of New Zealanders valuing te reo Māori as a key part of national identity, one million New Zealanders speaking at least basic te reo Māori, and 150,000 Māori aged 15 and over using te reo Māori as much as English. It focuses particularly on rangatahi, fluent speakers and public servants. This mahi is based on an active, planned partnership between the Crown and Māori.

#### **Te Taura Whiri**

The Act also confirmed the ongoing role of Te Taura Whiri, including functions that are the same as its role under the Māori Language Act 1987. This includes work to give effect to the status of the Act, promoting the language, providing language services and leading the coordination of the Maihi Karauna strategy. Te Taura Whiri will also be responsible for monitoring the progress of te reo Māori.

## **Chapter 6: When the Crown Controls Mātauranga Māori**

### **Findings:**

- The Crown are often in the seat of kaitiaki in a practical sense, and they are thus obligated to protect both the mātauranga itself as well as the interests of kaitiaki in it
- The Crown's obligations to protect mātauranga can only be achieved through partnership with Māori, as neither the Crown nor Māori can succeed in the protection or transmission of mātauranga without the help of the other

### **Recommendations:**

#### **Culture and heritage**

- That Te Puni Kōkiri and the Ministry for Culture and Heritage (MCH) take leadership roles to improve coordination and collaboration between themselves over mātauranga Māori and forming a Crown-Māori partnership entity for the culture and heritage sector

#### **Taonga tūturu**

- Te Papa exploring evolving indigenous-settler partnership approach to cultural heritage and making a number of amendments to the Protected Objects regime in relation to taonga tūturu

#### **Arts, culture and broadcasting**

- Use of 'The Health of Māori Heritage Arts' research project (2009) to identify future funding priorities and criteria
- Use of Te Puni Kōkiri's comprehensive marae survey to clarify national priorities for marae improvements, indicating what funding is needed to support them and what criteria should operate in assisting funding applications
- More work done by TVNZ to fulfil its aim of being Aotearoa's 'Māori content leader'
- Cooperation between TVNZ and Māori Television in relation to te reo and mātauranga Māori programming and scheduling

#### **Archives and libraries**

- Imposition of constraints on the commercial use of the mātauranga in documents and images the Crown holds
  - This includes an objection-based approach, enabling kaitiaki to seek to prevent the commercial use of their mātauranga unless they have given consent or been consulted
- TVNZ consulting with Māori to produce staff guidelines on handling requests for the use of mātauranga-laden footage from its film and television archive

- Preparation of general guidelines by Archives New Zealand and the National library about when it might be appropriate to consult kaitiaki, or seek kaitiaki consent for private archives and libraries willing to offer them to users

#### **Education**

- Establishment of a Crown-Māori partnership entity in the education sector
- Development of specific indicators around mātauranga Māori to properly gauge its Māori-focused activities

#### **Research, science and technology**

- Boosting of research capacity and funding of the preservation of mātauranga Māori, and research that explores the interface between mātauranga and modern applications by creating a Māori purchase agent that would distribute money to researchers
  - Appointees to the board of the purchase agency with a mix of expertise in mātauranga Māori and science
- Requirement that science sector agencies give greater prominence to Vision Mātauranga, or make mātauranga Māori a strategic priority in its own right

#### **Te Puni Kōkiri**

- Protection and retention of the Māori Potential Fund, with its investments to be evaluated by both Māori and the Crown
  - Funds to be allocated in partnership with Māori
  - Establishment of a board to allocate the fund comprised equally of Te Puni Kōkiri staff and representatives of the Māori community

#### **Progress to date**

The Crown provides a range of funding aimed at the protection, promotion and preservation of mātauranga Māori. Examples include: The Māori Development Fund (TPK), Oranga Marae (TPK), Te Pūtake o Te Riri (TPK), and Te Pūnaha Hihiko Vision Mātauranga Capability Fund (MBIE).

#### **The Māori Development Fund**

This fund exists in order to support communities to identify and achieve their aspirations, with a much broader focus than just mātauranga given the range of aspirations the fund has to be responsive to, however mātauranga and te ao Māori remain inherent to it.

In this process, investment proposals are developed by Māori entities, and regional Te Puni Kōkiri offices plan their investment priorities in response to the priorities identified by their Māori communities. Through this, Māori directly influence where investments are targeted at a grassroots level. Māori also directly inform evaluations of how effective investments are by providing feedback and reports on the outcomes achieved, challenges faced, and the difference the funding has made. This allows investments to be appropriately targeted to where they will make the biggest difference across diverse communities.

### **The Ministry for Culture and Heritage (MCH)**

MCH are involved in a range of initiatives that relate to mātauranga Māori, including:

- *Te Ara Taonga*: a collaborative approach between MCH, DIA, Te Papa, Heritage NZ and Ngā Taonga Sound and Vision to work with iwi involved in the Treaty settlement process to help achieve iwi objectives
- *Protected Objects Act 1975*: under this Act, there is a process to facilitate iwi ownership of newfound taonga tūturu
- *Public websites*: MCH provides a wide range of high quality Māori language content to the public through websites, with sites like the 28<sup>th</sup> Māori Battalion and Landmarks working with iwi to allow Māori to tell their stories their way
- *Te Tai Whakaea Treaty Settlement Stories*: a national project to collect, preserve and share the broad and multi-faceted history of Treaty settlements
- *Tuia 250*: the marking of 250 years since the first meetings between Māori and Europeans
- *Whakaaetanga Tiaki Taonga relationship agreement*: allows claimant groups access to mātauranga Māori held within Archives New Zealand and the National Library, and for them to use and re-use that information however they see fit
- *Te Mauri o te Mātauranga*: a set of principles for care and preservation of Māori materials with regard to access and use of mātauranga Māori across the galleries, libraries, archives and museums sector

There are a range of organisations funded through Vote Arts, Culture and Heritage which have strong relationships with Māori and strategies or programmes to support their cultural objectives, such as Creative NZ, Te Matatini, Te Papa Tongarewa, Heritage New Zealand and Ngā Taonga Sound and Vision.



## Chapter 7: Rongoā Māori

### Findings:

- Need for the Crown to:
  - recognise that rongoā Māori has significant potential as a weapon in the fight to improve Māori health
  - see the philosophical importance of holism in Māori health
  - work in genuine partnership with Māori to identify and implement ways of encouraging the health system to expand rongoā services

### Recommendations:

- Incentivising the health system to expand rongoā services
- Adequate support of Te Paepae Matua to play the role of quality control instead of the Crown
- Gathering of data about the current and potential demand for rongoā services
- Coordination between the Ministry of Health and DOC on rongoā policy

### Progress to date

The Crown has undertaken various initiatives relating to supporting rongoā, including:

- *Te Kāhui Rongoā*: In 2017, the Ministry of Health consolidated two groups into Te Kāhui Rongoā, which exists to share, nurture and protect traditional healing systems, and the Ministry of Health continues to engage with them.
- *Advisor to Minister of Conservation on management of rongoā*: The Ngā Rauru governance entity has been appointed as advisor to the Minister of Conservation on rongoā.
- *He Korowai Oranga (the Māori Health Strategy)*: In 2014 the Ministry of Health refreshed He Korowai Oranga (the Māori Health Strategy). Rongoā remains a key element of the strategy. Te Ara Tuatahi – on of the pathways for achieving the strategy – specifically mentions the need to develop programmes and interventions that incorporate Māori models of health and wellbeing, rongoā and innovation.
- *Tikanga ā-Rongoā (Rongoā Tikanga Standards)*: These standards provide a benchmark of excellence to deliver safe and quality rongoā services. All rongoā providers funded by the MOH are required to adhere to the standards.
- *Government contracting of rongoā providers*: MOH manages 18 rongoā providers with three-year contracts running until 31 March 2021. Before these contracts expire, MOH must conduct an open and transparent tender process through the Government Electronic Tender Service, and all 18 providers will be eligible to submit proposals.

## **Chapter 8: The Making of International Instruments**

### **Findings:**

- The Treaty of Waitangi requires Māori interests to be protected to the extent that it is reasonable and practicable in the international circumstances
- The degree of protection will depend on the nature and importance of the interest when balanced alongside the interests of other New Zealanders
- The Crown must properly inform itself of the scale of any Māori interests, their importance to Māori, and the nature and extent of likely impacts on it, in order to determine the degree of priority to be accorded to them
- To help determine the answers to these questions, the Crown and Māori must be talking constantly, whether through consultation or something more regular and fixed

### **Recommendations:**

- Amendment of the 2001 Strategy for Engagement with Māori on International Treaties to include non-binding instruments
- Consultation with Te Puni Kōkiri to determine the existence, nature and strength of any Māori interests, and the requisite degree of engagement
- Use of existing and new bodies to serve as partnership forums to discuss international instruments
- Adoption of a policy for funding independent Māori engagement in international forums
- Adoption of Crown accountability mechanisms, including regular reporting to Māori organisations and Parliament
- Inclusion in each National Interest Analysis consideration of whether the instrument has any effect on Treaty rights and interests
- Consideration of whether statutory requirements for enforcement are appropriate
- Consideration of reporting on Crown engagement with Māori to relevant

### **Progress to date**

The 2001 Cabinet-mandated Strategy for Engagement with Māori on International Treaties has a specific focus on binding international instruments and places an onus on the lead agency to identify at an early stage whether there is need for consultation with Māori. MFAT has strengthened this with its Māori Engagement Strategy approved in 2017, and it is developing its tools to improve its engagement with Māori. MFAT provides regular opportunities for Māori to discuss trade policy and other issues of interest through dedicated hui, smaller meetings, or in writing.

Every six months, MFAT sends iwi and other Māori organisations a report on treaties currently under negotiation or consideration to ensure that Māori are, wherever

possible, kept informed of developments in the government's participation in the international legal framework.

The Crown also reports to various international bodies as part of its obligations under various international instruments, such as the Universal Periodic review and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) under UNDRIP, in relation to which Te Puni Kōkiri is currently embarking on a work programme to create a national plan of action.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## Information on treatment of historical dimensions of Wai 262 in Treaty settlement process to date

### Historical Settlements and Wai 262

#### *What is the treatment of Historical Elements of Wai 262 in Settlement Legislation?*

1. To the extent that the Wai 262 claim itself related to historical (pre-1992) Treaty claims, it has been partially settled by several settlements. It is explicitly included in settlement legislation as a claim relating in part to:
  - Affiliate Te Arawa iwi and hapū
  - Te Rarawa
  - Ngāti Koata
  - Ngāti Kuri; and
  - Ngāti Kahu ki Whangaroa
2. There is no specific mention of Wai 262 in the claim definitions for Ngāti Porou or the various settlements with parts of Ngāti Kahungunu. However the list of claims in the legislation is not exhaustive as it is often not possible to identify all the specific Wai claims that relate to a particular group. The key part of the legislation, for the purposes of defining the claims, is the claimant definition which defines the group whose claims are settled. On that basis the Ngāti Porou and various Ngāti Kahungunu settlements also settle historical elements of Wai 262 insofar as they relate to those groups.

#### *Have historical settlements delivered positive benefits to claimant groups that address Wai 262 issues?*

3. The answer to this is a very qualified yes.
4. Some settlements have delivered limited redress that provides some partial response to the issues raised in the conservation and environmental chapters of Ko Aotearoa Tēnei. These are summarised in the Table below.

**Table 1 Positive contributions in the realm of environment and conservation**

Settlement	Element	262 reference
Ngāti Porou	<b>Waiapu River</b> Ngāti Porou, Ministry for Primary Industries, Gisborne District Council  A group established to coordinate a response to the erosion affecting the Waiapu River	Ch3, recs 1, 3
	<b>Ngati Porou Place in the Wellington Hawkes Bay Conservation Management Strategy (CMS):</b> Crown and Ngati Porou co-author the pre-notification version of the Ngati Porou chapter in the East Coast/Hawkes Bay CMS. Ngati Porou and Crown hear public submissions.	Ch4



Ngāti Kuri	<b><i>Te Oneroa-a-Tōhē Statutory Board</i></b> Ngāi Takoto, Te Rarawa, Ngāti Kuri, Te Aupōuri, Northland Regional Council	Ch3
	The purpose of the Board is to provide governance and direction to all those who have a role in, or responsibility for, the Te Oneroa-a-Tōhē management area, in order to protect and enhance environmental, economic, social, cultural, and spiritual well-being within that area for the benefit of present and future generations.	
	<b>Te Hiku Conservation Board:</b> A new 50/50 conservation board over half the former Northland conservancy area (covers northern Northland) to create a separate conservation management strategy over the area.	Ch4
Te Rarawa	<b>Cultural weighting of decision making in Far North (Te Hiku):</b> settlement legislation requires iwi to identify their key cultural values relating to the site or process. The Department must in written form explain how they reflected and responded to the iwi values in DOC decision-making process.	Ch4
	<b><i>Te Oneroa-a-Tōhē Statutory Board</i></b> Ngāi Takoto, Te Rarawa, Ngāti Kuri, Te Aupōuri, Northland Regional Council	Ch3
	The purpose of the Board is to provide governance and direction to all those who have a role in, or responsibility for, the Te Oneroa-a-Tōhē management area, in order to protect and enhance environmental, economic, social, cultural, and spiritual well-being within that area for the benefit of present and future generations.	
Ngāti Koata	<b>Te Hiku Conservation Board:</b> A new 50/50 conservation board over half the former Northland conservancy area (covers northern Northland) to create a separate conservation management strategy over the area.	Ch4
	<b>Cultural weighting of decision making in Far North (Te Hiku):</b> settlement legislation requires iwi to identify their key cultural values relating to the site or process. The Department must in written form explain how they reflected and responded to the iwi values in DOC decision-making process.	Ch4
	<b><i>Te Tau Ihu Rivers and Freshwater Advisory Board</i></b> Ngāti Rarua, Ngāti Koata, Te Ātiawa o te Waka a Māui, Ngāti Tama, Ngāti Apa, Ngāti Kuia Te Whakatau, Rangitāne o Wairau, Ngāti Toa Rangatira	Ch3
Ngāti Pahauwera (Ngāti Kahungunu)	The advisory board will provide advice to local authorities on matters relating to freshwater within the Te Tau Ihu area.	
	<b><i>Mohaka River Water Conservation Order and Hāngi Stones</i></b> Ngāti Pahauwera	Ch3

	<p>Where a panel is appointed to hear an application for a water conservation order over the Mōhaka River, Ngāti Pahauwera is entitled to appoint one member.</p> <p>Ngāti Pahauwera is the consent authority for the collection of hāngi stones from the Mōhaka River</p>	
Ahuriri Hapū (Ngāti Kahungunu)	<p><b><i>Te Komiti Muriwai o Te Whanga-a-Orotu (Ahuriri Estuary)</i></b></p> <p>Mana Ahuriri, Hawke's Bay Regional Council, Napier City Council, Hastings District Council, Department of Conservation</p> <p>The independent statutory body will promote the integrated management of the Ahuriri Estuary.</p>	Ch3
Ngāti Kahungunu ki Wairarapa	<p><b><i>Wairarapa Moana Statutory Body</i></b></p> <p>Ngāti Kahungunu ki Wairarapa, Rangitāne o Tamaki Nui a Rua, Greater Wellington Regional Council, South Wairarapa District Council, Department of Conservation</p> <p>The proposed statutory body will manage the reserves within the Wairarapa Moana under the Reserves Act and will produce a strategy document which will influence RMA planning.</p>	Ch3
	<p><b><i>Te Upoko Taiao</i></b></p> <p>The settlement legislation will provide that the existing Te Upoko Taiao Natural Resources Plan Committee is a permanent committee of the Wellington Regional Council.</p>	Ch3
	<p><b><i>Manawatu River Advisory Board</i></b></p> <p>The settlement legislation provides for the PSGE to appoint a member to the Manawatu River Advisory Board (established through Rangitāne o Manawatu Claims Settlement Act 2016) , to provide advice to the Horizons Regional Council.</p>	Ch3
Ngāti Kahungunu	<p><b><i>Hawke's Bay Regional Planning Committee</i></b></p> <p>Hawke's Bay Regional Council, Maungaharuru-Tangitū, Tūhoe, Te Tira Whakaemi o te Wairoa, Heretaunga Tamatea, Mana Ahuriri, Ngāti Hineuru, Ngāti Tūwharetoa, Ngāti Pahauwera, Ngāti Ruapani</p> <p>The permanent joint committee oversees the development of RMA plans and policies within the Hawke's Bay region.</p>	Ch3



16 Here-turi-kōkā 2019

Te Minita Whanaketanga Māori

## HE PĀRONGO | AIDE MEMOIRE

### Wai 262 Targeted Engagement: Urgent Review of material for Ministerial Oversight Group and media release

Te Puni Kōkiri contact: Erin Keenan, Manager Crown-Iwi, Hapū, Whānau Relations  
Phone: [REDACTED] 9(2)(a)  
TPK tracking no: 39959

#### Background

1. You are attending the National Iwi Chairs Forum (NICF) on 28 Here-turi-kōkā 2019. The agenda currently includes you discussing the Government's Wai 262 proposals agreed in Paengawhāwhā with NICF.
2. Your attendance at NICF marks the start of the targeted engagement phase for the Wai 262 kaupapa. Targeted engagement involves discussions in person with specific Māori groups (including NICF) and individuals about the Crown's proposals to organise itself. This will inform a Cabinet Paper in Whiringa-ā-rangi 2019 which will propose a final structure for the Crown to organise itself, as well as next steps in this kaupapa.
3. As a discussion at the NICF is effectively a public announcement, you are also scheduled to issue a media release about the Government's proposals, including the start of targeted engagement, on 28 Here-turi-kōkā. At the same time you will proactively release the Paengawhāwhā Cabinet decisions.
4. Cabinet in Paengawhāwhā delegated you approval to undertake targeted engagement *after* consulting with the Ministerial Oversight Group, which Cabinet also established in Paengawhāwhā. This consultation **must** occur in the week of 19-23 Here-turi-kōkā if targeted engagement is to proceed as planned.

#### Consultation Process with Ministerial Oversight Group

5. The Ministerial Oversight Group comprises yourself, along with the Prime Minister, Deputy Prime Minister, Minister for Māori-Crown Relations: Te Arawhiti, Minister of Energy and Resources, Minister for Research, Science and Innovation, Minister of State Services, Minister for Treaty of Waitangi Negotiations, Attorney General, and the Minister of Commerce and Consumer Affairs.
6. In order for you to begin targeted engagement at the NICF, officials propose that you consult with the Ministerial Oversight Group by:



- sending them the attached briefing (after your review), which includes a copy of the proposed engagement document, early on **Tuesday 20<sup>th</sup> Here-turi-kōkā**, and
  - seeking feedback from them on the approach set out in the briefing, and on the engagement document, by the close of business on **Thursday 22 Here-turi-kōkā**.
7. **Attachment A** is a draft briefing for the Ministerial Oversight Group for your review over the weekend. This includes a draft of the engagement document.
  8. Officials ask that you review the briefing on the basis of your specific knowledge of how to best address issues for your colleagues on the Ministerial Oversight Group.
  9. You will also need to review your draft Preface in the engagement document (labelled Attachment 2 to the draft Ministerial Oversight Group briefing). You have seen an earlier version of the engagement document itself. The document has been reviewed from the perspective of the communications strategy and reflects the wording used in the document you sent to the claimant representatives. The draft Ministerial Preface builds on your letter to claimant representatives, using the approach from the communications strategy.
  10. The role of this engagement document is to support kanohi ki te kanohi discussions rather than inform any formal written submissions process.
  11. To meet the proposed schedule, officials will need to receive your feedback by Monday 19 Here-turi-kōkā and have recommended this be discussed in the officials' meeting.

### **Review of Draft Media Release**

12. **Attachment B** is a draft media release for your public announcement for your review over the weekend. Your feedback is needed by Monday 19 Here-turi-kōkā so the release can be finalised and shared with relevant agencies and Ministers' offices prior to your attendance at NCIF on 27 Here-turi-kōkā.
13. Once you have reviewed the media release, the tone and language you adopt will also be used to finalise the framing of website material. This is currently under development and will come to you for review next week (see Next Steps below).

### **Next Steps**

14. The next steps in this process are as follows:

#### **a. Targeted Engagement Review by Ministerial Oversight Group**

- i. you review the attached draft briefing, and draft preface to the engagement document, and provide feedback to officials by Monday 19 Here-turi-kōkā
- ii. officials revise material overnight and provide to your office for circulation to the Ministerial Oversight Group on the morning of 20 Here-turi-kōkā
- iii. your office secures feedback from Oversight Group Ministers by 22 Here-turi-kōkā and provides it to officials as it is received
- iv. officials revise engagement document overnight and provide you with a final version for approval on 23 Here-turi-kōkā



**b. Media Release and Web content**

- i. you review the attached draft media release and provide feedback to officials by Monday 19 Here-turi-kōkā
- ii. final media release is provided to your office and partner agencies 20 Here-turi-kōkā
- iii. officials provide you with draft website content for review on 21 Here-turi-kōkā
- iv. you provide feedback on draft website content on 23 Here-turi-kōkā


**c. Final Steps**

- i. officials finalise engagement document and website 26 Here-turi-kōkā
- ii. Your NICF discussions and media release occur 28 Here-turi-kōkā

**Attachments**

- A Draft Ministerial Oversight Group briefing, including draft engagement document.
- B Draft Wai 262 Media Release.

  
Erin Keenan  
Acting Manager, Crown-Iwi, Hapū, Whānau Māori Relations

NOTED

Hon Nanaia Mahuta Te Minita Whanaketanga Māori
Date: 19 / 08 / 2019



20 Here-turi-kōkā (20 August) 2019

Members of the Wai 262 Ministerial Oversight Group:

Prime Minister  
Deputy Prime Minister  
Minister for Māori Crown relations: Te Arawhiti  
Minister of Energy and Resources  
Minister of Research, Science and Information  
Minister of State Services  
Minister for Treaty of Waitangi Negotiations  
Attorney-General  
Te Minita Whanaketanga Māori  
Minister of Commerce and Consumer Affairs

## **WAI 262: Ministerial Oversight Group briefing on Targeted Engagement**

### **WHY AM I RECEIVING THIS NOW?**

1. On 8 Paengawhāwhā (8 April) 2019 Cabinet approved the Minister of Māori Development leading work to develop an all of Government approach to Wai 262 issues [CAB 19-MIN-0138.01 refers]. As part of this work, the Government agreed to:
  - engage with specific Māori groups and individuals about the Crown's initial proposals for organising itself (referred to as "targeted engagement"), and
  - establish a Ministerial Oversight Group to provide high level oversight of Wai 262 work.
2. The Minister for Māori Development has delegation from Cabinet to approve the approach to targeted engagement after consulting with the Ministerial Oversight Group. You are a member of this group.
3. The Minister proposes to begin targeted engagement on 28 Here-turi-kōkā (28 August) at a meeting with the National Iwi Chairs Forum.
4. This briefing invites you, as a member of the Wai 262 Ministerial Oversight Group, to provide such feedback as you wish by **22 Here-turi-kōkā (22 August)** on:
  - a. the proposed approach to engagement as set out in paragraphs 18-30 of this briefing, and
  - b. the attached engagement document (**Attachment 2**)

## EXECUTIVE SUMMARY

- In Paengawhāwhā (April) 2019, Cabinet agreed to develop an all of Government approach to Wai 262 issues. "Wai 262 issues" is shorthand for a complex set of issues identified by the 1991 Wai 262 claim and subsequent 2011 Waitangi Tribunal report *Ko Aotearoa Tēnei*. Wai 262 shared many characteristics with what are now called 'contemporary' claims. *Ko Aotearoa Tēnei* was the Waitangi Tribunal's first all of government inquiry.
- A central theme linking Wai 262 issues is how our nation should make decisions – and who should participate in decisions – that affect taonga Māori. Wai 262 issues encompass the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international agreements.
- As part of its Paengawhāwhā (April) decisions Cabinet agreed to establish a Ministerial Oversight Group and agreed in principle to establish three focus groups or kete to coordinate work within government. Cabinet also agreed to undertake engagement with specific Māori groups and individuals about these proposals for how the Crown organises itself, before making final decisions on this.
- Cabinet invited the Minister for Māori Development to consult with the Ministerial Oversight Group before approving the approach to engagement.
- Engagement is planned to begin on 28 Here-turi-kōkā (28 August) with the National Iwi Chairs Forum and run through Mahuru me Whiringa-ā-nuku (September and October). The focus will be on:
  - Te Puni Kōkiri-led discussions with a number of national Māori organisations (refer **Attachment 1** for a complete list)
  - discussion, in partnership with relevant Government agencies, with sectoral Māori reference groups established by many agencies.
  - discussion, through a series of hui, with Māori academics and technical experts.
- Engagement will be primarily through discussions in person, supported by an engagement document (**Attachment 2** is a draft).
- The results of this engagement will inform a report to Cabinet before the end of 2019 on any changes needed to the Ministerial Oversight Group and kete.
- This end of year report will also address next steps in developing a coordinated and consistent approach across Wai 262 issues, and next steps in furthering a partnership conversation between the Crown and Māori.
- The key risks associated with targeted engagement relate to the limited time and scope of the engagement, and variation in the interpretation of what a partnership approach requires across existing work streams.
- Any feedback you wish to provide is needed by **22 Here-turi-kōkā (22 August) 2019**.



## BACKGROUND

### What is the Wai 262 claim?

5. The Wai 262 claim was filed in the Waitangi Tribunal in 1991. The claimants sought to establish who, if anyone, owns or controls mātauranga Māori (Māori traditional knowledge), traditional artistic and cultural expressions, the unique characteristics of indigenous flora and fauna, and New Zealand's natural environment more generally. While it had historical dimensions, Wai 262 shared many characteristics with what are now called 'contemporary' claims.
6. In 2011, the Waitangi Tribunal released its report *Ko Aotearoa Tēnei* ("This is New Zealand"), which recommended changes to the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international treaties and other instruments. This was the Tribunal's first all of government inquiry.

### How does Wai 262 affect the Government's agenda?

7. *Ko Aotearoa Tēnei* frames Wai 262 as being "...fundamentally a claim about how the future should look" and notes that addressing Wai 262 issues can help "...shift our view of the Treaty from that of a breached contract, which can be repaired in the moment, to that of an exchange of solemn promises about our ongoing relationships".
8. This forward-looking perspective places work on Wai 262 within the project of nation-building through strengthening the Māori-Crown partnership. *Ko Aotearoa Tēnei* notes that this work has the potential to fuel innovation, strengthen national identity, and enhance our international reputation, as well as deliver direct benefits to Māori.
9. The Crown has not made any formal response to the Wai 262 report. The passage of time means a Crown response needs to do more than simply respond to the detailed recommendations in *Ko Aotearoa Tēnei*. The issues it addresses however, have grown in importance and relevance since 2011. The lack of a Crown response is an ongoing factor in Crown-Māori relations. A considered Crown response is an essential part of strengthening the Māori-Crown partnership.

### How is this Government approaching Wai 262 issues?

10. Cabinet's agreement to develop an all of government approach will:
  - enable a more consistent and considered approach to Wai 262 issues within existing and upcoming work programmes, and
  - prepare for Māori-Crown dialogue on substantive and over-arching Wai 262 issues over the next few years.



11. Wai 262 issues arise in many areas of government work. The Crown has begun to address some issues raised by Wai 262 and *Ko Aotearoa Tēnei* within specific government work programmes<sup>1</sup>. Individual work programmes under this Government (eg the Plant Variety Rights Act review, the biodiversity work programme) address some substantive Wai 262 issues. These work programmes include engagement with Māori in line with the Government's engagement framework.
12. There is significant variation in the way agencies and portfolio Ministers are approaching Wai 262 issues at present. As noted in the Cabinet paper supporting Paengawhāwhā (April) decisions, this variation creates ongoing risks and means opportunities may be missed.
13. A genuine partnership approach, underpinned by co-ordinated and consistent government action in response to Wai 262 issues, requires governance structures within the Crown. To help the Government do this, Cabinet agreed in Paengawhāwhā (April) to establish the Ministerial Oversight Group to provide high level oversight and strategic direction, given the breadth and significance of the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*.
14. At that time, Cabinet also agreed in principle to establish three Ministerial focus groups. Each consists of Ministers with strong portfolio links to one of the following three broad kete of issues:
- a. Kete 1: Taonga works<sup>2</sup> me te mātauranga Māori
  - b. Kete 2: Taonga species<sup>3</sup> me te mātauranga Māori
  - c. Kete 3: Kawenata Aorere / Kaupapa Aorere (broadly, international issues).
15. Officials have already begun to "road-test" this Kete framework both to assess whether it can drive a more integrated approach to Wai 262 issues and to trial how the Kete approach can work in practice within the Crown. The approach appears promising and has already facilitated the identification of some common issues and possible future work on cross-cutting issues within the Kete.
16. At present, coordination is occurring through the trial of the Kete structure, and through direct liaison between the offices of Ministers involved in particular work streams. As part of the work within the Kete, officials are exploring ways to proactively engage with Māori on a range of Wai 262 issues that affect economic, trade, development, research and innovation opportunities.
17. The proposed framework of a Ministerial Oversight Group and three Kete, as well as the work programmes they encompass, is the focus for targeted engagement.

<sup>1</sup> A summary of work to date was provided by the Minister for Māori Development in her November 2018 report to the House of Representatives under Section 81 of the Treaty of Waitangi Act 1975.

<sup>2</sup> The Waitangi Tribunal defined 'taonga works' as tangible and intangible expressions of mātauranga Māori that relate to or invoke ancestral connections, contain or reflect traditional narratives or stories, possess mauri and have living kaitiaki in accordance with tikanga Māori.

<sup>3</sup> The Waitangi Tribunal defined 'taonga species' as the species over which whānau, hapū or iwi claim kaitiakitanga (guardianship) obligations, and whose basis, history and content are set out in mātauranga Māori.

## TARGETED ENGAGEMENT

### How will this Government engage with Māori about its proposed all of government approach?

#### 18. Cabinet agreed to:

- publicly announce its Paengawhāwhā (April) decisions after an initial meeting with Wai 262 claimant representatives, and
- discuss the Crown's proposed approach to organising itself with specific Māori groups and interests before reaching a final decision on how the Crown organises itself (called "targeted engagement" in the Cabinet decision).

#### 19. Discussions during this phase will inform the Cabinet report on an all of government approach to Wai 262 due by the end of 2019.

#### 20. The Minister for Māori Development hosted an initial hui with claimant representatives on 5 Hōngongoi (5 July), and this has led to further constructive conversations. Meeting with those who represent the original claimants, prior to a public statement of the Government's intentions, enabled the Government to acknowledge the claimants' early leadership, wisdom and resolve. It has enabled constructive dialogue about the role of this group away from the pressure of media inquiries as well as providing a positive foundation for further conversations with the claimant representatives and wider Māori interests.

#### 21. A public announcement of the Government's 8 Paenga-whāwhā (8 April) decisions will occur on 28 Here-turi-kōkā (28 August). This will coincide with the Minister for Māori Development's meeting with Iwi Chairs. Under current plans, this will also mark the formal start of targeted engagement.

#### 22. Cabinet agreed targeted engagement will involve Iwi Chairs, various other national Māori bodies, relevant Māori advisory groups and Māori technical experts as well as Wai 262 claimant representatives. This engagement will focus on how the Crown proposes to organise itself and the matters which might be considered in an ongoing programme of work.

#### 23. Cabinet delegated the Minister for Maori Development authority to approve the approach to the targeted engagement, after consultation with the Ministerial Oversight Group.

### How will targeted engagement occur?

#### 24. Targeted engagement will start with a discussion between the Minister of Māori Development and Iwi Chairs at their Here-turi-kōkā (August) meeting. Officials propose that the targeted engagement then run from Mahuru (September) through to Whiringa-ā-nuku (October).

#### 25. Targeted engagement over this period will occur in at least three ways:

- a. Te Puni Kōkiri-led discussions with a number of national Māori organisations (refer **Attachment 1** for a complete list)



- b. discussion, in partnership with relevant agencies, with sectoral Māori reference groups which have been established by a number of agencies
  - c. discussion, through a series of hui, with Māori academics and technical experts.
26. This planned scope reflects the range of interests identified in the Cabinet Paper. In addition, existing relationships between the Crown and individual iwi will be supported as follows:
- a. Te Puni Kōkiri and Te Arawhiti will communicate with all Post-Settlement Governance Entities (PSGEs) to make them aware of the nature and scope of targeted engagement, and
  - b. individual agencies will share information, as appropriate, with iwi with whom they have relationships arising from historical Treaty settlements.
27. Officials will also engage with any other Māori groups that wish to participate. We are likely to see an initial broad interest. The level of interest may reduce once it is clear that this conversation is more about machinery of government rather than the detail and substance of Wai 262 issues.
28. Engagement will largely occur through oral discussion facilitated by a discussion document (**Attachment 2**). Engagement will reflect established good practice and will be informed by Te Puni Kōkiri's knowledge of, and experience with, engagement.
29. The passage of time, and previous stop-start approaches to Wai 262 mean that there is likely to be a low level of trust around the Government's intentions amongst Māori. Targeted engagement is an opportunity for the Crown to demonstrate a transparent, good faith approach at the start of this work. This may help create a stronger foundation for future conversations.
30. Equally, the issues encompassed by a Wai 262 work programme potentially touch many areas of New Zealand life, and there is likely to be limited awareness of Wai 262 in the wider public. While engagement is focussed on Māori groups, communication will also include the wider public. This will emphasise that there will continue to be opportunities for wider public input on substantive issues, as is the case at present. During targeted engagement substantive issues will continue to be managed by portfolio Ministers, with officials coordinating through the trial of the Kete structure.

### **What are the Crown's communications objectives?**

31. The communications objectives for targeted engagement include:
- a. explaining why the time is right, linking the aspirations of original claimants to the aspirations of Māori seeking to innovate and develop what is unique to Māori enterprise
  - b. highlighting the links between Wai 262 and the Governments priorities, in particular ensuring transparency and accountability, more effective public service for Māori, a post-settlement environment of renewed partnership,

genuine collaboration to solve tough problems, and the value of innovation/solutions that arise for the nation, and internationally

- c. recognising the whakapapa of the process. We have included summary information about the claim, the inquiry, the report *Ko Aotearoa Tēnei*, and what the Crown has done since *Ko Aotearoa Tēnei* was released<sup>4</sup>
  - d. ensuring people understand that:
    - i. we are at the very beginning of a new chapter in this process, and
    - ii. the overall work programme is likely to involve various government Ministers and agencies working alongside each other, Māori and the wider public for a number of years
  - e. being open about our considerations in designing the proposed structure. For example, paragraphs 26-29 in Attachment 2 discuss the balance we are trying to strike between making progress on detailed work streams and facilitating a partnership conversation on important issues, and
  - f. conveying that, while we considered how we might structure a conversation between Māori and the Crown on this kaupapa, we do not have rigid views on exactly what should be discussed or how work should be prioritised and sequenced. This includes thinking laterally about what might best suit Māori and the Crown in the future.
32. To reflect these objectives and signal the forward looking nature of this work, the Minister for Māori Development has chosen the name *Wai 262 – Te Pae Tawhiti* ("Wai 262 – The Far Horizon") for this work.

#### **What material is being produced to support these objectives?**

- 33. These communications objectives will shape the initial announcement and supporting media resources as well as officials and agencies communications during targeted engagement. They also inform the collateral prepared to support targeted engagement.
- 34. **Attachment 2** is a draft of the main engagement collateral for your review. Once confirmed this will shape other material, such as presentations, that will be used during targeted engagement.
- 35. After consultation with Ministerial Oversight Group Ministers is complete, officials will revise and finalise the targeted engagement material in line with feedback from Ministers. The Minister for Māori Development will then approve the final version for release. Barring unforeseen issues, officials expect to have a final version of the material ready for the Iwi Leaders Forum on 28 Here-turi-kōkā (28 August).

<sup>4</sup> This summary reflects the material tabled in Parliament in November 2018 by the Minister for Māori Development in her Section 8I report under the Treaty of Waitangi Act 1975.



## How will Ministers hear about the results of targeted engagement?

36. The Cabinet Paper envisages a briefing for Ministers on the outcomes of targeted engagement. Targeted engagement will run into Whiringa-ā-nuku (October). Officials will discuss with the Minister for Māori Development later in the year whether to proceed with a separate briefing or whether to incorporate the results into the end of year Cabinet Paper.

## What are the risks with targeted engagement?

### *Immediately post-announcement*

37. The public announcement will generate significant interest and discussion amongst Māori; the direction of the narrative is difficult to predict beyond general criticisms of the 28 year gap between the claim being lodged and these announcements.
38. Mitigation involves acknowledging concerns about the Crown's approach until now and re-emphasising the current Government's intention to act. The Crown is now discussing with Māori the way the Crown organises itself; this is part of the Government's overall commitment to the Māori-Crown partnership. The Government will also be able to point to specific work streams in which Wai 262 issues are now being openly considered.

### *Medium-term issues*

39. Timelines: There are a number of issues related to managing expectations and timeframes. While the Cabinet paper proposes a Whiringa-ā-Rangi (November) report back, there are factors that could delay this:
- If the Ministerial Oversight Group consultation leads to significant delays in the release of the targeted engagement material, then targeted engagement will be delayed. This would make it unlikely that proposals for Crown organisational structures could be finalised by the Whiringa-ā-Rangi (November) Cabinet deadline.
  - While we can have expectations around targeted engagement, we cannot predict with complete certainty the scope and type of issues that may be raised and need consideration, nor can we control how those outside government will react to the start of this mahi.
40. Managing expectations: We anticipate that many people will want to see quick, concrete progress on Wai 262 issues as part of this process, including in response to the recommendations in *Ko Aotearoa Tēnei*. Other people may be concerned that the Government will merely take a 'tick the box' approach to whether or not the recommendations of *Ko Aotearoa Tēnei* should be adopted, without considering the wider or underlying issues, how they are relevant today and what they mean for the Māori-Crown relationship. Still others may be concerned that the Government ensures that it takes any action in this area in partnership with Māori.
41. The Crown proposal has been framed with these in mind. Emphasising that Wai 262 – Te Pae Tawhiti is a significant kaupapa with implications and opportunities for all Māori, and that it goes to the heart of the Māori-Crown partnership, will help manage expectations.

42. **Impact of Government decisions:** The Government is progressing a number of initiatives relevant to Wai 262 issues during the time of this engagement. Many of these were underway well before the decision to develop an all of government approach to Wai 262 was made. There is variation between existing work streams around what a partnership approach requires in each case. There is a risk that the approach already taken – or likely to be taken – in one or more kete work streams may give rise to concerns about whether the Government intends to take a partnership approach in these other work streams.
43. These concerns are likely to arise whether or not the Wai 262 targeted engagement is underway; their main effect on the targeted engagement will be to generate questions about the Government's sincerity in "walking the talk".
44. While the proposals for a Ministerial Oversight Group and associated three Kete will support greater consistency in the medium term, they are not fully operational as yet. In the interim, officials have limited capacity to address any perceived inconsistencies arising from decisions other than to alert Ministers to their existence. We encourage Ministers to actively consider the extent to which proposals take into account the recommendations of Ko Aotearoa Tēnei, including its findings on the Māori-Crown partnership. This will help to ensure that the Government is well-informed of likely potential issues in a timely manner.
45. **Public discourse:** Significant media debate around the Government's proposals is likely, in Māori media and possibly in mainstream media, over the medium term. While Māori interests are generally supportive of progress even as they debate details, there is a risk that the government's proposals could lead to a polarised and counter-productive reaction from some other interests.
46. The key mitigation approach is around regular and open communication. Agencies will proactively engage with wider sectoral interests about the Crown's plans. This will include clarification about the purpose of targeted engagement and the fact that there will be opportunities for wide participation in substantive discussions in the future, just as is the case now for specific work streams.

## **CONSULTATION**

47. All agencies that are engaged with the Wai 262 Kete have had an opportunity to comment on this briefing and on the draft material in Attachment 2.
48. These include the Ministries of Business Innovation and Enterprise, Culture and Heritage, Education, Environment, Foreign Affairs and Trade, Health and Primary Industries as well as the Environmental Protection Agency, Te Arawhiti and StatsNZ along with the Departments of Conservation and Internal Affairs. Discussions with Internal Affairs have included representatives of the National Library and Archives New Zealand.
49. The approach to the targeted engagement with sectoral groups has been developed in discussion with all these agencies.



## NEXT STEPS

50. Following feedback from the Ministerial Oversight Group, the Minister for Māori Development will approve a final approach to targeted engagement.
51. A public announcement of the Government's Paengawhāwhā (April) decisions will be made by the Minister for Māori Development on 28 I Here-turi-kōkā (28 August).
52. Targeted engagement will occur during September and October.
53. A Cabinet Paper proposing next steps for the all of Government approach to Wai 262 issues will be lodged in November 2019. This will incorporate the results of targeted engagement.

## Recommended Action

54. I recommend that you:

- a. **note** that the Minister for Māori Development is about to commence engagement with specific Māori groups and individuals over the Government's Paengawhāwhā (April) 2019 decisions in relation to Wai 262
- b. **note** that the Paengawhāwhā (April) 2019 Cabinet decisions require the Minister to consult with members of the Ministerial Oversight Group before commencing engagement
- c. **note** the risks and mitigation approaches set out in paragraphs 37 to 46 of this briefing
- d. **provide** any feedback to the Minister for Māori Development on the proposed engagement approach in paragraphs 18-30 of this briefing and the draft engagement document (Attachment 2) by 6pm on 22 Here-turi-kōkā (22 August) 2019.



Rahera Ohia  
Deputy Chief Executive, Policy Partnerships  
Te Puni Kōkiri

## ATTACHMENT 1

**National Māori organisations that will be contacted as part of targeted engagement**

<b>Group name</b>	<b>Kaupapa (from organisation websites)</b>
Iwi Chairs Forum	A platform for regional iwi to share knowledge and information, and to come together to discuss and enable Māori aspirations in the spheres of cultural, social, economic, environmental and political development
Te Kaunihera Māori o Aotearoa – New Zealand Māori Council	Statutory body to consider and discuss such matters as appear relevant to the social and economic advancement of all Māori, and to promote, encourage and assist Māori in their endeavours
FOMA – Federation of Māori Authorities	Established in 1987 to advance the economic interests of Māori authorities
Te Rōpu Wahine Māori Toko I te Ora - Māori Women's Welfare League Inc.	An organisation that adheres to Māori traditional values and concept to be a voice for Māori across New Zealand and worldwide
Te Hunga Rōia Māori o Aotearoa – The Māori Law Society	A grouping that aims to identify and respond to the legal needs of te ao Māori
NUMA – National Urban Māori Authority	A proactive collective that influences and advances the social and economic development of urban Māori – made up of a range of regional urban Māori authorities
Te Ohu Kai Moana – Māori Fisheries Trust	A trust body that exists to advance Māori interests in the marine environment
Wairoa-Waikaremoana Trust Board	Māori trust board – became part of the Wai 262 claim in 2006
Te Tumu Paeroa	An independent organisation led by the Māori trustee that supports Māori landowners in protecting and enhancing their land



IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

**ATTACHMENT 2**

**Wai 262- Te Pae Tawhiti:**

**The role of the Crown and Māori in making decisions  
about taonga and mātauranga Māori**

**Preliminary proposals for Crown organisation**

Version 0.9.1

Ministerial Oversight Group Review Version 19 August 2019

Draft for Discussion only. This document does not represent Government policy

## CONTENTS

PREFACE.....	3
PURPOSE .....	5
THE WAI 262 INQUIRY AND KO AOTEAROA TĒNEI.....	7
A brief summary of the Wai 262 Inquiry.....	7
Ko Aotearoa Tēnei.....	8
Crown actions following <i>Ko Aotearoa Tēnei</i> .....	9
PROPOSED GOVERNMENT ORGANISATIONAL STRUCTURE .....	10
Some of the Government's considerations in deciding how to move forward .....	10
High-level overview of the Government's proposed organisational structure .....	11
Ministerial groups for the three kete of issues.....	12
Ministerial Oversight Group.....	14
Intended benefits of the proposed Government organisational structure .....	15
POTENTIAL WORK PROGRAMME .....	16
Kete 1: Taonga works me te Mātauranga Māori.....	16
Kete 2: Taonga species me te Mātauranga Māori .....	17
Kete 3: Kawenata Aorere / Kaupapa Aorere .....	19
YOUR VIEWS ON THE PROPOSED APPROACH.....	21
TIMEFRAMES .....	21
APPENDIX A – Diagram on proposed Government Organisational Structure.....	22
APPENDIX B – Brief summary of existing and upcoming work streams in Kete 1.....	23
APPENDIX C – Brief summary of existing and upcoming work streams in Kete 2.....	26
APPENDIX D – Brief summary of some of the international instruments and related kaupapa on which the Crown is engaging with Māori .....	33

IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

## PREFACE

Tēnā koutou

*Whāia te pae tawhiti kia tata  
Whakamaua te pae tata kia tīna  
Ko tōna hononga – he whore me hanga ngā tahi  
Engā iwi Māori me te Karauna*

The time is right to discuss the issues raised by Wai 262 and *Ko Aotearoa Tēnei*.

Firstly I would like to acknowledge the original claimants who had the foresight to lodge the Wai 262 claim in 1991 for the benefit of te iwi Māori. They were visionary in their intent and they recognised how important mātauranga, kaitiakitanga and whānautanga are to Te Ao Māori and our relationship to our culture, language, identity and taiao. These kaupapa live in the Māori language, whakapapa, waiata, haka art and stories, thereby providing a unique view of the world.

In 2011, the Waitangi Tribunal released its report *Ko Aotearoa Tēnei* ("This is New Zealand"), *Ko Aotearoa Tēnei* frames Wai 262 as being "...fundamentally a claim about how the future should look" and notes that addressing Wai 262 issues can help "...shift our view of the Treaty from that of a breached contract, which can be repaired in the moment, to that of an exchange of solemn promises about our ongoing relationships".

This forward-looking perspective places work on Wai 262 within the project of nation-building through strengthening the Māori-Crown partnership. *Ko Aotearoa Tēnei* notes that this work has the potential to fuel innovation, strengthen national identity, and enhance our international reputation, as well as deliver direct benefits to Māori.

Never before has our nation been so ready for this mahi. Opportunities have been missed in the past. The intent of this mahi is to ensure we do not miss the opportunity presented to us right now.

The world is rapidly changing and I am mindful that we must find a way to progress the visionary aspirations of the original claimants to protect, restore and enhance the taonga we have inherited for the wellbeing of future generations.

The proposals in this document represent a fresh start, but are not an end in themselves. This kōrero is about how the Crown has been thinking about organising itself. I am all too aware that as Ministers advance their work programmes around Wai 262 matters, there is no formal process or framework to ensure coherence on the range of issues from a Wai 262 perspective.

My expectation is that the Crown organising itself to focus consciously on Wai 262 issues will have at least three important effects.

**IN CONFIDENCE**

Draft for Discussion only. This document does not represent Government policy

- First, it will create a framework that premised on genuine partnership conversations.
- Second, it will help the Crown take a more consistent and considered approach to Wai 262 issues in existing work as well as into the future.
- Third, it will make it easier for the Crown to play its part in realising a vision of Aotearoa / New Zealand in which our founding cultures are equally supported and promoted to the advantage of our nation.

This discussion paper is a step towards a new future – the journey itself will evolve over the next few years. I welcome your thoughts on how we can start well.

Hon Nanaia Mahuta  
Te Minita Whanaketanga Māori

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



Draft for Discussion only. This document does not represent Government policy

## PURPOSE

1. The Government intends to develop a whole-of-government approach to dealing with the issues raised in the Wai 262 claim and resulting Waitangi Tribunal report, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Ko Aotearoa Tēnei).<sup>1</sup>
2. The Government's first step in this process was to hold a hui on 5 July 2019 between Hon Minister Mahuta as Minister for Māori Development and representatives of the six original Wai 262 claimants. The purpose of that hui was to enable the Minister to inform representatives of the original claimants *kanohi ki te kanohi* about how the Government intends to approach this kaupapa.
3. On 28 August, Minister Mahuta attended the National Iwi Chairs Forum in Heretaunga to discuss the initial proposals contained in this document. Following this, she issued a press release about the Government's intention to work through issues raised by Ko Aotearoa Tēnei.<sup>2</sup>
4. This document is intended to facilitate initial discussions in September and October 2019 with targeted Māori groups about the Crown's proposals on how to organise itself to start the next chapter of this kaupapa. These groups include Wai 262 claimant representatives, Māori technical experts, Māori advisory boards, iwi leaders, various national Māori bodies and subject specialists. These discussions will help shape how Government approaches this work and how it can engage more widely with Māori and the wider public on this significant kaupapa.
5. These targeted discussions are an important initial step to help inform the work ahead of us before more substantive discussions begin. The overall work programme is likely to involve a number of Government Ministers and agencies coming together to work alongside each other, Māori and the wider public over a number of years.
6. The purpose of this paper and the initial targeted discussions is to seek views on:
  - a. how the Government intends to organise itself internally to move this kaupapa forward
  - b. how the Government can assist and work with Māori on this kaupapa
  - c. how the Government might prioritise, schedule and undertake work in this area.
7. In engaging with targeted Māori groups in September and October 2019, we also want to encourage Māori to Māori conversations about how Māori can work together and alongside the Government to progress this kaupapa.

<sup>1</sup> See [link to Cabinet paper/website] for more details.

<sup>2</sup> See [link to press release] for more details.

IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

8. We have written this document primarily to support and facilitate oral discussions during September and October 2019 rather than to seek written submissions. However, people wishing to provide their views in writing are welcome to do so.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

Draft for Discussion only. This document does not represent Government policy

## THE WAI 262 INQUIRY AND KO AOTEAROA TĒNEI

9. In this section, we briefly summarise the Wai 262 Inquiry, the Waitangi Tribunal's report *Ko Aotearoa Tēnei* and the Crown's progress in implementing its recommendations.
10. These summaries do not purport to be definitive descriptions of what the Wai 262 claim, the Wai 262 Inquiry and *Ko Aotearoa* were about. Others will likely want to offer alternative or additional accounts of this kaupapa as well. We welcome those views.

### A brief summary of the Wai 262 Inquiry

11. The Wai 262 claim was lodged in 1991 by six claimants on behalf of themselves and their iwi. The original claimants were Hema Nui a Tawhaki Witana (Te Rarawa, also known as Del Wihongi), Haana Murray (Ngāti Kuri), Te Witi McMath (Ngāti Wai), Tama Poata (Ngāti Porou), Kataraina Rimene (Ngāti Kahungunu) and John Hippolite (Ngāti Koata).
12. The claimants' initial concerns were driven by, among other things, the granting of intellectual property rights in indigenous plant species, the collection and use of indigenous plants, and Crown control of access to, and commercialisation of indigenous plant species. Over the course of the inquiry, the claim was extended to:<sup>3</sup>

te tino rangatiratanga o te iwi Māori in respect of indigenous flora and fauna *me o rātou taonga katoa*<sup>4</sup> (and all their treasures) including but not limited to mātauranga, whakairo, wehi tapu, biodiversity, genetics, Māori symbols and designs and their use and development and associated indigenous cultural and customary heritage rights in relation to such taonga.

13. For the claimants, 'taonga' encompassed all of the elements of a tribal group's estate, 'material and non-material, tangible and intangible'. They argued that tino rangatiratanga incorporated:<sup>5</sup>

- a. Decision-making authority over the conservation, control of, and proprietary interests in natural resources including indigenous flora and fauna *me o rātou taonga katoa*
- b. The right to determine indigenous cultural and customary heritage rights in the knowledge and use of indigenous flora and fauna *me o rātou taonga katoa*
- c. The right to participate in, benefit from, and make decisions about the application of existing and future technological advances as they relate to the breeding, genetic manipulation and other processes relevant to the use of indigenous flora and fauna
- d. The right to control and make decisions about the propagation, development, transport, study or sale of indigenous flora and fauna

<sup>3</sup> See page 4 of *Ko Aotearoa Tēnei*, Te Taumata Tuarua (Volume 1), available at: <https://www.waitanritribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>

<sup>4</sup> Original emphasis.

<sup>5</sup> See section pages 4-5 of *Ko Aotearoa Tēnei*, Te Taumata Tuarua (Volume 1). Original emphases.



IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

- e. The right to protect, enhance and transmit the cultural, medicinal and spiritual knowledge and concepts found in the life cycles of indigenous flora and fauna
  - f. A right to environmental well-being dependent upon the nurturing and wise use of indigenous flora and fauna
  - g. The right to participate in, benefit from and make decisions about the application, development, uses and sale of *o rātou taonga katoa*
  - h. The right to protect, enhance and transmit the cultural and spiritual knowledge and concepts found in *o rātou taonga katoa*.
14. Two further claimants were admitted to the proceedings in 2006. One was the Wairoa-Waikaremoana Māori Trust Board, which was concerned about the pollution of New Zealand waterways and its harmful effect on taonga species and Māori. Another claimant was Te Waka Kai Ora, which was concerned about the effects of the proposed Australia-New Zealand Therapeutic Products Agreement on Rongoā Māori.
15. Many of the issues raised in the claim were unique in 1991 but have since been raised by Māori in various other contexts, including Treaty settlements and other domestic and international processes.
16. The inquiry into the claim was one of the largest and most complex in the Waitangi Tribunal's history. It was the Waitangi Tribunal's first 'whole-of-government' inquiry – examining the policy areas of more than 20 government departments and agencies. It was also the first Tribunal inquiry to specifically address the Treaty relationship beyond the settlement of historical grievances.
17. The inquiry focused mainly on the Crown's existing laws, policies and practices instead of the Crown's historical actions. Who is entitled to make decisions – or participate in decisions – that affect indigenous flora and fauna, the environment, Māori culture and the products of Māori culture was a key focus.

**Ko Aotearoa Tēnei**

18. The Tribunal released its report, *Ko Aotearoa Tēnei*, in 2011. It is also known as the 'Wai 262 report'. The Waitangi Tribunal's recommendations included changes to the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international instruments.
19. The Waitangi Tribunal said that the objective of many of the proposed reforms was to establish genuine partnerships – including through the creation of new partnership bodies – in which the interests of Māori and other New Zealanders are fairly and transparently balanced.
20. The inquiry itself took 20 years from the time the claim was lodged to the release of the report *Ko Aotearoa Tēnei*.



20 Here-turi-kōkā (20 August) 2019

Members of the Wai 262 Ministerial Oversight Group:

Prime Minister  
Deputy Prime Minister  
Minister for Māori Crown relations: Te Arawhiti  
Minister of Energy and Resources  
Minister of Research, Science and Information  
Minister of State Services  
Minister for Treaty of Waitangi Negotiations  
Attorney-General  
Te Minita Whanaketanga Māori  
Minister of Commerce and Consumer Affairs

## **WAI 262: Ministerial Oversight Group briefing on Targeted Engagement**

### **WHY AM I RECEIVING THIS NOW?**

1. On 8 Paengawhāwhā (8 April) 2019 Cabinet approved the Minister of Māori Development leading work to develop an all of Government approach to Wai 262 issues [CAB 19-MIN-0138.01 refers]. As part of this work, the Government agreed to:
  - engage with specific Māori groups and individuals about the Crown's initial proposals for organising itself (referred to as "targeted engagement"), and
  - establish a Ministerial Oversight Group to provide high level oversight of Wai 262 work.
2. The Minister for Māori Development has delegation from Cabinet to approve the approach to targeted engagement after consulting with the Ministerial Oversight Group. You are a member of this group.
3. The Minister proposes to begin targeted engagement on 28 Here-turi-kōkā (28 August) at a meeting with the National Iwi Chairs Forum.
4. This briefing invites you, as a member of the Wai 262 Ministerial Oversight Group, to provide such feedback as you wish by **22 Here-turi-kōkā (22 August)** on:
  - a. the proposed approach to engagement as set out in paragraphs 18-30 of this briefing, and
  - b. the attached engagement document (**Attachment 2**)



## EXECUTIVE SUMMARY

- In Paengawhāwhā (April) 2019, Cabinet agreed to develop an all of Government approach to Wai 262 issues. "Wai 262 issues" is shorthand for a complex set of issues identified by the 1991 Wai 262 claim and subsequent 2011 Waitangi Tribunal report *Ko Aotearoa Tēnei*. Wai 262 shared many characteristics with what are now called 'contemporary' claims. *Ko Aotearoa Tēnei* was the Waitangi Tribunal's first all of government inquiry.
- A central theme linking Wai 262 issues is how our nation should make decisions – and who should participate in decisions – that affect taonga Māori. Wai 262 issues encompass the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international agreements.
- As part of its Paengawhāwhā (April) decisions Cabinet agreed to establish a Ministerial Oversight Group and agreed in principle to establish three focus groups or kete to coordinate work within government. Cabinet also agreed to undertake engagement with specific Māori groups and individuals about these proposals for how the Crown organises itself, before making final decisions on this.
- Cabinet invited the Minister for Māori Development to consult with the Ministerial Oversight Group before approving the approach to engagement.
- Engagement is planned to begin on 28 Here-turi-kōkā (28 August) with the National Iwi Chairs Forum and run through Mahuru me Whiringa-ā-nuku (September and October). The focus will be on:
  - Te Puni Kōkiri-led discussions with a number of national Māori organisations (refer **Attachment 1** for a complete list)
  - discussion, in partnership with relevant Government agencies, with sectoral Māori reference groups established by many agencies.
  - discussion, through a series of hui, with Māori academics and technical experts.
- Engagement will be primarily through discussions in person, supported by an engagement document (**Attachment 2** is a draft).
- The results of this engagement will inform a report to Cabinet before the end of 2019 on any changes needed to the Ministerial Oversight Group and kete.
- This end of year report will also address next steps in developing a coordinated and consistent approach across Wai 262 issues, and next steps in furthering a partnership conversation between the Crown and Māori.
- The key risks associated with targeted engagement relate to the limited time and scope of the engagement, and variation in the interpretation of what a partnership approach requires across existing work streams.
- Any feedback you wish to provide is needed by **22 Here-turi-kōkā (22 August) 2019**.



## BACKGROUND

### What is the Wai 262 claim?

5. The Wai 262 claim was filed in the Waitangi Tribunal in 1991. The claimants sought to establish who, if anyone, owns or controls mātauranga Māori (Māori traditional knowledge), traditional artistic and cultural expressions, the unique characteristics of indigenous flora and fauna, and New Zealand's natural environment more generally. While it had historical dimensions, Wai 262 shared many characteristics with what are now called 'contemporary' claims.
6. In 2011, the Waitangi Tribunal released its report *Ko Aotearoa Tēnei* ("This is New Zealand"), which recommended changes to the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international treaties and other instruments. This was the Tribunal's first all of government inquiry.

### How does Wai 262 affect the Government's agenda?

7. *Ko Aotearoa Tēnei* frames Wai 262 as being "...fundamentally a claim about how the future should look" and notes that addressing Wai 262 issues can help "...shift our view of the Treaty from that of a breached contract, which can be repaired in the moment, to that of an exchange of solemn promises about our ongoing relationships".
8. This forward-looking perspective places work on Wai 262 within the project of nation-building through strengthening the Māori-Crown partnership. *Ko Aotearoa Tēnei* notes that this work has the potential to fuel innovation, strengthen national identity, and enhance our international reputation, as well as deliver direct benefits to Māori.
9. The Crown has not made any formal response to the Wai 262 report. The passage of time means a Crown response needs to do more than simply respond to the detailed recommendations in *Ko Aotearoa Tēnei*. The issues it addresses however, have grown in importance and relevance since 2011. The lack of a Crown response is an ongoing factor in Crown-Māori relations. A considered Crown response is an essential part of strengthening the Māori-Crown partnership.

### How is this Government approaching Wai 262 issues?

10. Cabinet's agreement to develop an all of government approach will:
  - enable a more consistent and considered approach to Wai 262 issues within existing and upcoming work programmes, and
  - prepare for Māori-Crown dialogue on substantive and over-arching Wai 262 issues over the next few years.

11. Wai 262 issues arise in many areas of government work. The Crown has begun to address some issues raised by Wai 262 and *Ko Aotearoa Tēnei* within specific government work programmes<sup>1</sup>. Individual work programmes under this Government (eg the Plant Variety Rights Act review, the biodiversity work programme) address some substantive Wai 262 issues. These work programmes include engagement with Māori in line with the Government's engagement framework.
12. There is significant variation in the way agencies and portfolio Ministers are approaching Wai 262 issues at present. As noted in the Cabinet paper supporting Paengawhāwhā (April) decisions, this variation creates ongoing risks and means opportunities may be missed.
13. A genuine partnership approach, underpinned by co-ordinated and consistent government action in response to Wai 262 issues, requires governance structures within the Crown. To help the Government do this, Cabinet agreed in Paengawhāwhā (April) to establish the Ministerial Oversight Group to provide high level oversight and strategic direction, given the breadth and significance of the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*.
14. At that time, Cabinet also agreed in principle to establish three Ministerial focus groups. Each consists of Ministers with strong portfolio links to one of the following three broad kete of issues:
- a. Kete 1: Taonga works<sup>2</sup> me te mātauranga Māori
  - b. Kete 2: Taonga species<sup>3</sup> me te mātauranga Māori
  - c. Kete 3: Kawenata Aorere / Kaupapa Aorere (broadly, international issues).
15. Officials have already begun to "road-test" this Kete framework both to assess whether it can drive a more integrated approach to Wai 262 issues and to trial how the Kete approach can work in practice within the Crown. The approach appears promising and has already facilitated the identification of some common issues and possible future work on cross-cutting issues within the Kete.
16. At present, coordination is occurring through the trial of the Kete structure, and through direct liaison between the offices of Ministers involved in particular work streams. As part of the work within the Kete, officials are exploring ways to proactively engage with Māori on a range of Wai 262 issues that affect economic, trade, development, research and innovation opportunities.
17. The proposed framework of a Ministerial Oversight Group and three Kete, as well as the work programmes they encompass, is the focus for targeted engagement.

<sup>1</sup> A summary of work to date was provided by the Minister for Māori Development in her November 2018 report to the House of Representatives under Section 8I of the Treaty of Waitangi Act 1975.

<sup>2</sup> The Waitangi Tribunal defined 'taonga works' as tangible and intangible expressions of mātauranga Māori that relate to or invoke ancestral connections, contain or reflect traditional narratives or stories, possess mauri and have living kaitiaki in accordance with tikanga Māori.

<sup>3</sup> The Waitangi Tribunal defined 'taonga species' as the species over which whānau, hapū or iwi claim kaitiakitanga (guardianship) obligations, and whose basis, history and content are set out in mātauranga Māori.



## TARGETED ENGAGEMENT

### How will this Government engage with Māori about its proposed all of government approach?

18. Cabinet agreed to:

- publicly announce its Paengawhāwhā (April) decisions after an initial meeting with Wai 262 claimant representatives, and
- discuss the Crown's proposed approach to organising itself with specific Māori groups and interests before reaching a final decision on how the Crown organises itself (called "targeted engagement" in the Cabinet decision)

19. Discussions during this phase will inform the Cabinet report on an all of government approach to Wai 262 due by the end of 2019.

20. The Minister for Māori Development hosted an initial hui with claimant representatives on 5 Hōngongoi (5 July), and this has led to further constructive conversations. Meeting with those who represent the original claimants, prior to a public statement of the Government's intentions, enabled the Government to acknowledge the claimants' early leadership, wisdom and resolve. It has enabled constructive dialogue about the role of this group away from the pressure of media inquiries as well as providing a positive foundation for further conversations with the claimant representatives and wider Māori interests.

21. A public announcement of the Government's 8 Paenga-whāwhā (8 April) decisions will occur on 28 Here-turi-kōkā (28 August). This will coincide with the Minister for Māori Development's meeting with Iwi Chairs. Under current plans, this will also mark the formal start of targeted engagement.

22. Cabinet agreed targeted engagement will involve Iwi Chairs, various other national Māori bodies, relevant Māori advisory groups and Māori technical experts as well as Wai 262 claimant representatives. This engagement will focus on how the Crown proposes to organise itself and the matters which might be considered in an ongoing programme of work.

23. Cabinet delegated the Minister for Maori Development authority to approve the approach to the targeted engagement, after consultation with the Ministerial Oversight Group.

### How will targeted engagement occur?

24. Targeted engagement will start with a discussion between the Minister of Māori Development and Iwi Chairs at their Here-turi-kōkā (August) meeting. Officials propose that the targeted engagement then run from Mahuru (September) through to Whiringa-ā-nuku (October).

25. Targeted engagement over this period will occur in at least three ways:

- a. Te Puni Kōkiri-led discussions with a number of national Māori organisations (refer **Attachment 1** for a complete list)



- b. discussion, in partnership with relevant agencies, with sectoral Māori reference groups which have been established by a number of agencies
  - c. discussion, through a series of hui, with Māori academics and technical experts.
26. This planned scope reflects the range of interests identified in the Cabinet Paper. In addition, existing relationships between the Crown and individual iwi will be supported as follows:
- a. Te Puni Kōkiri and Te Arawhiti will communicate with all Post-Settlement Governance Entities (PSGEs) to make them aware of the nature and scope of targeted engagement, and
  - b. individual agencies will share information, as appropriate, with iwi with whom they have relationships arising from historical Treaty settlements.
27. Officials will also engage with any other Māori groups that wish to participate. We are likely to see an initial broad interest. The level of interest may reduce once it is clear that this conversation is more about machinery of government rather than the detail and substance of Wai 262 issues.
28. Engagement will largely occur through oral discussion facilitated by a discussion document (**Attachment 2**). Engagement will reflect established good practice and will be informed by Te Puni Kōkiri's knowledge of, and experience with, engagement.
29. The passage of time, and previous stop-start approaches to Wai 262 mean that there is likely to be a low level of trust around the Government's intentions amongst Māori. Targeted engagement is an opportunity for the Crown to demonstrate a transparent, good faith approach at the start of this work. This may help create a stronger foundation for future conversations.
30. Equally, the issues encompassed by a Wai 262 work programme potentially touch many areas of New Zealand life, and there is likely to be limited awareness of Wai 262 in the wider public. While engagement is focussed on Māori groups, communication will also include the wider public. This will emphasise that there will continue to be opportunities for wider public input on substantive issues, as is the case at present. During targeted engagement substantive issues will continue to be managed by portfolio Ministers, with officials coordinating through the trial of the Kete structure.

### **What are the Crown's communications objectives?**

31. The communications objectives for targeted engagement include:
- a. explaining why the time is right, linking the aspirations of original claimants to the aspirations of Māori seeking to innovate and develop what is unique to Māori enterprise
  - b. highlighting the links between Wai 262 and the Governments priorities, in particular ensuring transparency and accountability, more effective public service for Māori, a post-settlement environment of renewed partnership,

genuine collaboration to solve tough problems, and the value of innovation/solutions that arise for the nation, and internationally

- c. recognising the whakapapa of the process. We have included summary information about the claim, the inquiry, the report *Ko Aotearoa Tēnei*, and what the Crown has done since *Ko Aotearoa Tēnei* was released<sup>4</sup>
  - d. ensuring people understand that:
    - i. we are at the very beginning of a new chapter in this process, and
    - ii. the overall work programme is likely to involve various government Ministers and agencies working alongside each other, Māori and the wider public for a number of years
  - e. being open about our considerations in designing the proposed structure. For example, paragraphs 26-29 in Attachment 2 discuss the balance we are trying to strike between making progress on detailed work streams and facilitating a partnership conversation on important issues, and
  - f. conveying that, while we considered how we might structure a conversation between Māori and the Crown on this kaupapa, we do not have rigid views on exactly what should be discussed or how work should be prioritised and sequenced. This includes thinking laterally about what might best suit Māori and the Crown in the future.
32. To reflect these objectives and signal the forward looking nature of this work, the Minister for Māori Development has chosen the name *Wai 262 – Te Pae Tawhiti* ("Wai 262 – The Far Horizon") for this work.

#### **What material is being produced to support these objectives?**

33. These communications objectives will shape the initial announcement and supporting media resources as well as officials and agencies communications during targeted engagement. They also inform the collateral prepared to support targeted engagement.
34. **Attachment 2** is a draft of the main engagement collateral for your review. Once confirmed this will shape other material, such as presentations, that will be used during targeted engagement.
35. After consultation with Ministerial Oversight Group Ministers is complete, officials will revise and finalise the targeted engagement material in line with feedback from Ministers. The Minister for Māori Development will then approve the final version for release. Barring unforeseen issues, officials expect to have a final version of the material ready for the Iwi Leaders Forum on 28 Here-turi-kōkā (28 August).

<sup>4</sup> This summary reflects the material tabled in Parliament in November 2018 by the Minister for Māori Development in her Section 8I report under the Treaty of Waitangi Act 1975.



## How will Ministers hear about the results of targeted engagement?

36. The Cabinet Paper envisages a briefing for Ministers on the outcomes of targeted engagement. Targeted engagement will run into Whiringa-ā-nuku (October). Officials will discuss with the Minister for Māori Development later in the year whether to proceed with a separate briefing or whether to incorporate the results into the end of year Cabinet Paper.

## What are the risks with targeted engagement?

### *Immediately post-announcement*

37. The public announcement will generate significant interest and discussion amongst Māori; the direction of the narrative is difficult to predict beyond general criticisms of the 28 year gap between the claim being lodged and these announcements.
38. Mitigation involves acknowledging concerns about the Crown's approach until now and re-emphasising the current Government's intention to act. The Crown is now discussing with Māori the way the Crown organises itself; this is part of the Government's overall commitment to the Māori-Crown partnership. The Government will also be able to point to specific work streams in which Wai 262 issues are now being openly considered.

### *Medium-term issues*

39. Timelines: There are a number of issues related to managing expectations and timeframes. While the Cabinet paper proposes a Whiringa-ā-Rangi (November) report back, there are factors that could delay this:

- If the Ministerial Oversight Group consultation leads to significant delays in the release of the targeted engagement material, then targeted engagement will be delayed. This would make it unlikely that proposals for Crown organisational structures could be finalised by the Whiringa-ā-Rangi (November) Cabinet deadline.
- While we can have expectations around targeted engagement, we cannot predict with complete certainty the scope and type of issues that may be raised and need consideration, nor can we control how those outside government will react to the start of this mahi.

40. Managing expectations: We anticipate that many people will want to see quick, concrete progress on Wai 262 issues as part of this process, including in response to the recommendations in *Ko Aotearoa Tēnei*. Other people may be concerned that the Government will merely take a 'tick the box' approach to whether or not the recommendations of *Ko Aotearoa Tēnei* should be adopted, without considering the wider or underlying issues, how they are relevant today and what they mean for the Māori-Crown relationship. Still others may be concerned that the Government ensures that it takes any action in this area in partnership with Māori.
41. The Crown proposal has been framed with these in mind. Emphasising that Wai 262 – Te Pae Tawhiti is a significant kaupapa with implications and opportunities for all Māori, and that it goes to the heart of the Māori-Crown partnership, will help manage expectations.



42. Impact of Government decisions: The Government is progressing a number of initiatives relevant to Wai 262 issues during the time of this engagement. Many of these were underway well before the decision to develop an all of government approach to Wai 262 was made. There is variation between existing work streams around what a partnership approach requires in each case. There is a risk that the approach already taken – or likely to be taken – in one or more kete work streams may give rise to concerns about whether the Government intends to take a partnership approach in these other work streams.
43. These concerns are likely to arise whether or not the Wai 262 targeted engagement is underway; their main effect on the targeted engagement will be to generate questions about the Government's sincerity in "walking the talk".
44. While the proposals for a Ministerial Oversight Group and associated three kete will support greater consistency in the medium term, they are not fully operational as yet. In the interim, officials have limited capacity to address any perceived inconsistencies arising from decisions other than to alert Ministers to their existence. We encourage Ministers to actively consider the extent to which proposals take into account the recommendations of *Ko Aotearoa Tenei*, including its findings on the Māori-Crown partnership. This will help to ensure that the Government is well-informed of likely potential issues in a timely manner.
45. Public discourse: Significant media debate around the Government's proposals is likely, in Māori media and possibly in mainstream media, over the medium term. While Māori interests are generally supportive of progress even as they debate details, there is a risk that the government's proposals could lead to a polarised and counter-productive reaction from some other interests.
46. The key mitigation approach is around regular and open communication. Agencies will proactively engage with wider sectoral interests about the Crown's plans. This will include clarification about the purpose of targeted engagement and the fact that there will be opportunities for wide participation in substantive discussions in the future, just as is the case now for specific work streams.

## CONSULTATION

47. All agencies that are engaged with the Wai 262 Kete have had an opportunity to comment on this briefing and on the draft material in Attachment 2.
48. These include the Ministries of Business Innovation and Enterprise, Culture and Heritage, Education, Environment, Foreign Affairs and Trade, Health and Primary Industries as well as the Environmental Protection Agency, Te Arawhiti and StatsNZ along with the Departments of Conservation and Internal Affairs. Discussions with Internal Affairs have included representatives of the National Library and Archives New Zealand.
49. The approach to the targeted engagement with sectoral groups has been developed in discussion with all these agencies.

## NEXT STEPS

50. Following feedback from the Ministerial Oversight Group, the Minister for Māori Development will approve a final approach to targeted engagement.
51. A public announcement of the Government's Paengawhāwhā (April) decisions will be made by the Minister for Māori Development on 28 I Here-turi-kōkā (28 August).
52. Targeted engagement will occur during September and October.
53. A Cabinet Paper proposing next steps for the all of Government approach to Wai 262 issues will be lodged in November 2019. This will incorporate the results of targeted engagement.

## Recommended Action

54. I recommend that you:

- a. **note** that the Minister for Māori Development is about to commence engagement with specific Māori groups and individuals over the Government's Paengawhāwhā (April) 2019 decisions in relation to Wai 262
- b. **note** that the Paengawhāwhā (April) 2019 Cabinet decisions require the Minister to consult with members of the Ministerial Oversight Group before commencing engagement
- c. **note** the risks and mitigation approaches set out in paragraphs 37 to 46 of this briefing
- d. **provide any feedback** to the Minister for Māori Development on the proposed engagement approach in paragraphs 18-30 of this briefing and the draft engagement document (Attachment 2) by **6pm on 22 Here-turi-kōkā (22 August) 2019.**



Rahera Ohia  
Deputy Chief Executive, Policy Partnerships  
Te Puni Kōkiri



## ATTACHMENT 1

National Māori organisations that will be contacted as part of targeted engagement

Group name	Kaupapa (from organisation websites)
Iwi Chairs Forum	A platform for regional iwi to share knowledge and information, and to come together to discuss and enable Māori aspirations in the spheres of cultural, social, economic, environmental and political development
Te Kaunihera Māori o Aotearoa – New Zealand Māori Council	Statutory body to consider and discuss such matters as appear relevant to the social and economic advancement of all Māori, and to promote, encourage and assist Māori in their endeavours
FOMA – Federation of Māori Authorities	Established in 1987 to advance the economic interests of Māori authorities
Te Rōpu Wahine Māori Toko I te Ora - Māori Women's Welfare League Inc.	An organisation that adheres to Māori traditional values and concept to be a voice for Māori across New Zealand and worldwide
Te Hunga Rōia Māori o Aotearoa – The Māori Law Society	A grouping that aims to identify and respond to the legal needs of te ao Māori
NUMA – National Urban Māori Authority	A proactive collective that influences and advances the social and economic development of urban Māori – made up of a range of regional urban Māori authorities
Te Ohu Kai Moana – Māori Fisheries Trust	A trust body that exists to advance Māori interests in the marine environment
Wairoa-Waikaremoana Trust Board	Māori trust board – became part of the Wai 262 claim in 2006
Te Tumu Paeroa	An independent organisation led by the Māori trustee that supports Māori landowners in protecting and enhancing their land



IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

**ATTACHMENT 2**

Wai 262- Te Pae Tawhiti:

The role of the Crown and Māori in making decisions  
about taonga and mātauranga Māori

Preliminary proposals for Crown organisation

Version 0.9.1

Ministerial Oversight Group Review Version 19 August 2019

## CONTENTS

PREFACE.....	3
PURPOSE .....	5
THE WAI 262 INQUIRY AND KO AOTEAROA TĒNEI.....	7
A brief summary of the Wai 262 Inquiry .....	7
Ko Aotearoa Tēnei.....	8
Crown actions following <i>Ko Aotearoa Tēnei</i> .....	9
PROPOSED GOVERNMENT ORGANISATIONAL STRUCTURE .....	10
Some of the Government's considerations in deciding how to move forward .....	10
High-level overview of the Government's proposed organisational structure .....	11
Ministerial groups for the three kete of issues.....	12
Ministerial Oversight Group.....	14
Intended benefits of the proposed Government organisational structure .....	15
POTENTIAL WORK PROGRAMME.....	16
Kete 1: Taonga works me te Mātauranga Māori .....	16
Kete 2: Taonga species me te Mātauranga Māori .....	17
Kete 3: Kawenata Aorere / Kaupapa Aorere .....	19
YOUR VIEWS ON THE PROPOSED APPROACH.....	21
TIMEFRAMES .....	21
APPENDIX A – Diagram on proposed Government Organisational Structure.....	22
APPENDIX B – Brief summary of existing and upcoming work streams in Kete 1.....	23
APPENDIX C – Brief summary of existing and upcoming work streams in Kete 2.....	26
APPENDIX D – Brief summary of some of the international instruments and related kaupapa on which the Crown is engaging with Māori .....	33

IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

## PREFACE

Tēnā koutou

*Whāia te pae tawhiti kia tata  
Whakamaua te pae tata kia tina  
Ko tōna hononga – he whare me hanga ngā tahi  
Engā iwi Māori me te Karauna*

The time is right to discuss the issues raised by Wai 262 and *Ko Aotearoa Tēnei*.

Firstly I would like to acknowledge the original claimants who had the foresight to lodge the Wai 262 claim in 1991 for the benefit of te iwi Māori. They were visionary in their intent and they recognised how important mātauranga, kaitiakitanga and whānautanga are to Te Ao Māori and our relationship to our culture, language, identity and taiao. These kaupapa live in the Māori language, whakapapa, waiata, haka art and stories, thereby providing a unique view of the world.

In 2011, the Waitangi Tribunal released its report *Ko Aotearoa Tēnei* ("This is New Zealand"), *Ko Aotearoa Tēnei* frames Wai 262 as being "...fundamentally a claim about how the future should look" and notes that addressing Wai 262 issues can help "...shift our view of the Treaty from that of a breached contract, which can be repaired in the moment, to that of an exchange of solemn promises about our ongoing relationships".

This forward-looking perspective places work on Wai 262 within the project of nation-building through strengthening the Māori-Crown partnership. *Ko Aotearoa Tēnei* notes that this work has the potential to fuel innovation, strengthen national identity, and enhance our international reputation, as well as deliver direct benefits to Māori.

Never before has our nation been so ready for this mahi. Opportunities have been missed in the past. The intent of this mahi is to ensure we do not miss the opportunity presented to us right now.

The world is rapidly changing and I am mindful that we must find a way to progress the visionary aspirations of the original claimants to protect, restore and enhance the taonga we have inherited for the wellbeing of future generations.

The proposals in this document represent a fresh start, but are not an end in themselves. This kōrero is about how the Crown has been thinking about organising itself. I am all too aware that as Ministers advance their work programmes around Wai 262 matters, there is no formal process or framework to ensure coherence on the range of issues from a Wai 262 perspective.

My expectation is that the Crown organising itself to focus consciously on Wai 262 issues will have at least three important effects.



IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

- First, it will create a framework that premised on genuine partnership conversations.
- Second, it will help the Crown take a more consistent and considered approach to Wai 262 issues in existing work as well as into the future.
- Third, it will make it easier for the Crown to play its part in realising a vision of Aotearoa / New Zealand in which our founding cultures are equally supported and promoted to the advantage of our nation.

This discussion paper is a step towards a new future – the journey itself will evolve over the next few years. I welcome your thoughts on how we can start well.

Hon Nanaia Mahuta  
Te Minita Whanaketanga Māori

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

Draft for Discussion only. This document does not represent Government policy

## PURPOSE

1. The Government intends to develop a whole-of-government approach to dealing with the issues raised in the Wai 262 claim and resulting Waitangi Tribunal report, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Ko Aotearoa Tēnei).<sup>1</sup>
2. The Government's first step in this process was to hold a hui on 5 July 2019 between Hon Minister Mahuta as Minister for Māori Development and representatives of the six original Wai 262 claimants. The purpose of that hui was to enable the Minister to inform representatives of the original claimants *kanohi ki te kanohi* about how the Government intends to approach this kaupapa.
3. On 28 August, Minister Mahuta attended the National Iwi Chairs Forum in Heretaunga to discuss the initial proposals contained in this document. Following this, she issued a press release about the Government's intention to work through issues raised by *Ko Aotearoa Tēnei*.<sup>2</sup>
4. This document is intended to facilitate initial discussions in September and October 2019 with targeted Māori groups about the Crown's proposals on how to organise itself to start the next chapter of this kaupapa. These groups include Wai 262 claimant representatives, Māori technical experts, Māori advisory boards, iwi leaders, various national Māori bodies and subject specialists. These discussions will help shape how Government approaches this work and how it can engage more widely with Māori and the wider public on this significant kaupapa.
5. These targeted discussions are an important initial step to help inform the work ahead of us before more substantive discussions begin. The overall work programme is likely to involve a number of Government Ministers and agencies coming together to work alongside each other, Māori and the wider public over a number of years.
6. The purpose of this paper and the initial targeted discussions is to seek views on:
  - a. how the Government intends to organise itself internally to move this kaupapa forward
  - b. how the Government can assist and work with Māori on this kaupapa
  - c. how the Government might prioritise, schedule and undertake work in this area.
7. In engaging with targeted Māori groups in September and October 2019, we also want to encourage Māori to Māori conversations about how Māori can work together and alongside the Government to progress this kaupapa.

<sup>1</sup> See [link to Cabinet paper/website] for more details.

<sup>2</sup> See [link to press release] for more details.

IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

8. We have written this document primarily to support and facilitate oral discussions during September and October 2019 rather than to seek written submissions. However, people wishing to provide their views in writing are welcome to do so.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



## THE WAI 262 INQUIRY AND KO AOTEAROA TĒNEI

9. In this section, we briefly summarise the Wai 262 Inquiry, the Waitangi Tribunal's report *Ko Aotearoa Tēnei* and the Crown's progress in implementing its recommendations.
10. These summaries do not purport to be definitive descriptions of what the Wai 262 claim, the Wai 262 Inquiry and *Ko Aotearoa* were about. Others will likely want to offer alternative or additional accounts of this kaupapa as well. We welcome those views.

### A brief summary of the Wai 262 Inquiry

11. The Wai 262 claim was lodged in 1991 by six claimants on behalf of themselves and their iwi. The original claimants were Hema Nui a Tawhaki Witana (Te Rarawa, also known as Del Wihongi), Haana Murray (Ngāti Kuri), Te Witi McMath (Ngāti Wai), Tama Poata (Ngāti Porou), Kataraina Rimene (Ngāti Kahungunu) and John Hippolite (Ngāti Koata).
12. The claimants' initial concerns were driven by, among other things, the granting of intellectual property rights in indigenous plant species, the collection and use of indigenous plants, and Crown control of access to, and commercialisation of indigenous plant species. Over the course of the inquiry, the claim was extended to:<sup>3</sup>

te tino rangatiratanga o te Iwi Māori in respect of indigenous flora and fauna *me o rātou taonga katoa*<sup>4</sup> (and all their treasures) including but not limited to mātauranga, whakairo, wāhi tapu, biodiversity, genetics, Māori symbols and designs and their use and development and associated indigenous cultural and customary heritage rights in relation to such taonga.

13. For the claimants, 'taonga' encompassed all of the elements of a tribal group's estate, 'material and non-material, tangible and intangible'. They argued that tino rangatiratanga incorporated:<sup>5</sup>

- a. Decision-making authority over the conservation, control of, and proprietary interests in natural resources including indigenous flora and fauna *me o rātou taonga katoa*
- b. The right to determine indigenous cultural and customary heritage rights in the knowledge and use of indigenous flora and fauna *me o rātou taonga katoa*
- c. The right to participate in, benefit from, and make decisions about the application of existing and future technological advances as they relate to the breeding, genetic manipulation and other processes relevant to the use of indigenous flora and fauna
- d. The right to control and make decisions about the propagation, development, transport, study or sale of indigenous flora and fauna

<sup>3</sup> See page 4 of *Ko Aotearoa Tēnei*, Te Taumata Tuarua (Volume 1), available at: <https://www.waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>

<sup>4</sup> Original emphasis.

<sup>5</sup> See section pages 4-5 of *Ko Aotearoa Tēnei*, Te Taumata Tuarua (Volume 1). Original emphases.

Draft for Discussion only. This document does not represent Government policy

- e. The right to protect, enhance and transmit the cultural, medicinal and spiritual knowledge and concepts found in the life cycles of indigenous flora and fauna
  - f. A right to environmental well-being dependent upon the nurturing and wise use of indigenous flora and fauna
  - g. The right to participate in, benefit from and make decisions about the application, development, uses and sale of *o rātou taonga katoa*
  - h. The right to protect, enhance and transmit the cultural and spiritual knowledge and concepts found in *o rātou taonga katoa*.
14. Two further claimants were admitted to the proceedings in 2006. One was the Wairoa-Waikaremoana Māori Trust Board, which was concerned about the pollution of New Zealand waterways and its harmful effect on taonga species and Māori. Another claimant was Te Waka Kai Ora, which was concerned about the effects of the proposed Australia-New Zealand Therapeutic Products Agreement on Rongoā Māori.
15. Many of the issues raised in the claim were unique in 1991 but have since been raised by Māori in various other contexts, including Treaty settlements and other domestic and international processes.
16. The inquiry into the claim was one of the largest and most complex in the Waitangi Tribunal's history. It was the Waitangi Tribunal's first 'whole-of-government' inquiry – examining the policy areas of more than 20 government departments and agencies. It was also the first Tribunal inquiry to specifically address the Treaty relationship beyond the settlement of historical grievances.
17. The inquiry focused mainly on the Crown's existing laws, policies and practices instead of the Crown's historical actions. Who is entitled to make decisions – or participate in decisions – that affect indigenous flora and fauna, the environment, Māori culture and the products of Māori culture was a key focus.
- Ko Aotearoa Tēnei**
18. The Tribunal released its report, *Ko Aotearoa Tēnei*, in 2011. It is also known as the 'Wai 262 report'. The Waitangi Tribunal's recommendations included changes to the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international instruments.
19. The Waitangi Tribunal said that the objective of many of the proposed reforms was to establish genuine partnerships – including through the creation of new partnership bodies – in which the interests of Māori and other New Zealanders are fairly and transparently balanced.
20. The inquiry itself took 20 years from the time the claim was lodged to the release of the report *Ko Aotearoa Tēnei*.





21. The original presiding officer of the claim, Judge Richard Kearney, died in 2005 after a long period of illness. Justice Joseph Williams, who was recently appointed to the Supreme Court, then took over as presiding officer for the remainder of the proceedings.
22. More details on the background to the Wai 262 claim are set out in a paper entitled 'Background to Wai 262', prepared in June 2011 by Oliver Sutherland and the late Murray Parsons in conjunction with Moana Jackson and the whānau of claimants.<sup>6</sup> See also pages 1-10 of *Ko Aotearoa Tēnei*, Te Taumata Tuarua (Volume 1).<sup>7</sup>

#### Crown actions following *Ko Aotearoa Tēnei*

23. In December 2018, Hon Minister Mahuta provided a Section 81 Report<sup>8</sup> to Parliament, which summarised the Crown's progress implementing Waitangi Tribunal recommendations. The report contained a feature section on *Ko Aotearoa Tēnei*, which sought to:<sup>9</sup>

...provide an overview of the findings and recommendations of the Wai 262 report and what the Crown has done since it was released. It is intended to constitute a succinct and frank appraisal of the Crown's progress on Wai 262.

24. The feature section (attached as Appendix 1) showed that while the Crown has made progress in several areas, there is more work to do. The next section of this paper sets out how the Government intends to drive and coordinate work on the issues raised by the Wai 262 claim and *Ko Aotearoa Tēnei*.

<sup>6</sup> The paper can be found here:

[https://wai262.weebly.com/uploads/7/4/6/3/7463762/history\\_wai\\_262.pdf](https://wai262.weebly.com/uploads/7/4/6/3/7463762/history_wai_262.pdf)

<sup>7</sup> *Ko Aotearoa Tēnei* can be found here: <https://www.waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>

<sup>8</sup> <https://www.tpk.govt.nz/en/a-matou-mohiotanga/crownmaori-relations/the-section-81-report>

<sup>9</sup> Page 7 of the 2018 Section 81 report.



## PROPOSED GOVERNMENT ORGANISATIONAL STRUCTURE

25. The Government intends to develop a whole-of-government approach to dealing with the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*. Among other things, this is likely to involve:

- a. exploring ways Wai 262 issues could be addressed in existing and upcoming Government workstreams
- b. seeking to apply a more holistic and coordinated approach across government to Wai 262 issues
- c. creating a high-level forum within Government, at which the strategic and cross-cutting issues raised in the Wai 262 Inquiry and *Ko Aotearoa Tēnei* can be considered.
- d. creating a process that enables the Crown and Māori to discuss how to move forward on these issues in partnership.

### Some of the Government's considerations in deciding how to move forward

26. The Government acknowledges the foresight, wisdom and resolve of the original claimants and their whānau in bringing and maintaining the Wai 262 claim. We acknowledge the whānau and representatives of the original claimants for the crucial part they have played as stewards of the claim. We acknowledge the contribution of many others who have contributed their time, energy and expertise to this kaupapa over the years.

27. The Government recognises that the issues covered in Wai 262 impact on all Māori. We have no doubt that many individuals, iwi and groups will want to participate in the journey ahead of us. The Government welcomes this.

28. The Government also acknowledges the time that has passed since the claim was lodged and the report *Ko Aotearoa Tēnei* was released. We anticipate that, given the delay, many people will now want to see quick, concrete progress on Wai 262 issues as part of this process, including in response to the recommendations in *Ko Aotearoa Tēnei*. Other people may be concerned that the Government will merely take a 'tick the box' approach to whether or not the recommendations of the report *Ko Aotearoa Tēnei* should be adopted, without considering the wider or underlying issues, how they are relevant today and what they mean for the Māori-Crown relationship. Still others may be concerned that the Government ensures that it takes any action in this area in partnership with Māori.

Draft for Discussion only. This document does not represent Government policy

29. In framing the proposals below, we have kept all these considerations in mind. The proposals in this document seek to enable the Government to:

- a. make immediate progress on existing issues and workstreams where it makes sense to do so
- b. utilise the guidance the Waitangi Tribunal provided the Crown and Māori in *Ko Aotearoa Tēnei* as a foundation for our consideration of the issues<sup>10</sup>, without excluding other matters relevant to this kaupapa
- c. facilitate a higher-level conversation between Māori and the Ministerial Oversight Group about key cross-cutting and partnership issues.

30. We discuss the Government's proposed approach in more detail below.

#### High-level overview of the Government's proposed organisational structure

31. Developing a whole-of-government approach to dealing with the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei* will involve coordinating the work of many Government agencies, given the breadth of the issues covered. This is essential for the Government to be able to have a genuine partnership conversation with Māori, who often ask for a more joined-up approach from the Crown.

32. Coordinating so many Government agencies across multiple years poses a considerable challenge. The Government is taking this coordination challenge seriously and wants to talk with Māori about how it is doing this. To help the Government meet this challenge, it proposes<sup>11</sup> to establish:

- a. three Ministerial groups consisting of Ministers with strong portfolio links to the following three broad kete of issues:
  - i. Kete 1: Taonga works<sup>12</sup> me te mātauranga Māori
  - ii. Kete 2: Taonga species<sup>13</sup> me te mātauranga Māori
  - iii. Kete 3: Kawenata Aorere / Kaupapa Aorere

<sup>10</sup> We consider that *Ko Aotearoa Tēnei* provides a good level of clarity, focus and direction across a number of critical issues for mātauranga Māori and other issues underlying the Wai 262 claim.

<sup>11</sup> The proposals to establish the Ministerial groups for each kete are only in-principle decisions at this stage. Further decisions on the Government's organisational structure will be made after the targeted engagement.

<sup>12</sup> The Waitangi Tribunal defined 'taonga works' as tangible and intangible expressions of mātauranga Māori that relate to or invoke ancestral connections, contain or reflect traditional narratives or stories, possess mauri and have living kaitiaki in accordance with tikanga Māori.

<sup>13</sup> The Waitangi Tribunal defined 'taonga species' as the species over which whānau, hapū or iwi claim kaitiakitanga (guardianship) obligations, and whose basis, history and content are set out in mātauranga Māori.



Draft for Discussion only. This document does not represent Government policy

- b. a Ministerial oversight group, given the breadth and significance of the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*.

33. The high-level organisational structure would look like this:



34. See **Appendix A** for a more detailed diagram intended to summarise the Government's proposed approach. It includes the proposed organisational structure, some of the workstreams relevant to each kete and the intended timeframe for the first stage of the work.

#### Ministerial groups for the three kete of issues

35. Organising work around the three kete of issues is intended to help the Government strike a balance between working groups whose work is:

- aligned enough to work collaboratively (which will also support the Crown and Māori work in a joined-up way), and
- broad enough to ensure that the working groups can take a holistic approach across various Government work streams.

36. The Crown is still working out exactly which topics are covered by this work. The table below shows the likely Participating Ministers in the three kete groups. It also shows in general terms where we think the Crown's approach to various chapters of *Ko Aotearoa Tēnei* might best be considered:

Kete	Portfolios	Ministers (as at July 2019)	Chapters of <i>Ko Aotearoa Tēnei</i>
Kete 1: Taonga works me te mātauranga Māori	Minister for Arts, Culture and Heritage	Rt Hon Jacinda Ardern	Chapter 1 (Taonga Works and Intellectual Property)
	Associate Minister of Education (Māori Education)	Hon Kelvin Davis	Chapter 5 (Te Reo Māori)
	Associate Ministers for Arts, Culture and Heritage	Hon Grant Robertson Hon Carmel Sepuloni	Chapter 6 (When the Crown Controls Mātauranga Māori)
	Minister for Māori Development; Minister of Local Government	Hon Nanaia Mahuta	



IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

	Minister of Internal Affairs	Hon Tracey Martin	
	Minister of Commerce and Consumer Affairs; Minister of Broadcasting, Communications and Digital Media	Hon Kris Faafoi	
	Minister of Statistics	Hon James Shaw	
Kete 2: Taonga species me te mātauranga Māori	Minister of Energy and Resources; Minister of Research, Science and Innovation	Hon Dr Megan Woods	Chapter 2 (Genetic and Biological Resources of Taonga Species)
	Minister of Health	Hon Dr David Clark	Chapter 3 (Relationship with the Environment)
	Minister for the Environment	Hon David Parker	Chapter 4 (Taonga and the Conservation Estate)
	Minister for Māori Development; Minister of Local Government; Associate Minister for the Environment	Hon Nanaia Mahuta	Chapter 7 (Rongoā Māori)
	Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	
	Minister for Climate Change	Hon James Shaw	
	Minister of Conservation	Hon Eugenie Sage	
Kete 3: Kawenata Aorere / Kaupapa Aorere	Minister of Foreign Affairs	Rt Hon Winston Peters	Chapter 8 (The Making of International Instruments)
	Minister for Trade and Export Growth	Hon David Parker	
	Minister for Māori Development	Hon Nanaia Mahuta	
	Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	
	Minister for Climate Change	Hon James Shaw	

Other Ministers may also join as the Crown continues to identify work that belongs within each kete. Feedback from Māori as part of this engagement may also result in changes to the structure.

## IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

### Ministerial Oversight Group

37. Creating a Ministerial Oversight Group is one way the Crown can make sure Wai 262 issues are given due weight across government. It also demonstrates that the mahi has the commitment of the whole government. Having a Ministerial Oversight Group helps the Crown prepare for conversations at the rangatira level. This is where the recommendations of *Ko Aotearoa Tēnei* Chapter 9 can be considered by the Crown.

38. The proposed role of the Ministerial Oversight Group is to:

- a. oversee the government's high-level response across Wai 262
- b. assist Ministers to coordinate within and across the three Ministerial groups (Kete 1-3 above)
- c. determine the Crown's approach to high-level and cross-cutting issues, and
- d. determine the high-level approach to Māori-Crown relationships on this kaupapa.

39. The Ministers in the Ministerial Oversight Group are currently:

Ministerial Oversight Group		
Portfolios	Ministers (as at July 2019)	Chapter of Ko Aotearoa Tēnei
Prime Minister	Rt Hon Jacinda Ardern	Chapter 9 (Conclusions, summary of recommendations and how to 'perfect' the Treaty partnership)
Deputy Prime Minister	Rt Hon Winston Peters	
Minister for Māori Crown Relations: Te Arawhiti	Hon Kelvin Davis	
Minister of Energy and Resources; Minister of Research, Science and Innovation	Hon Dr Megan Woods	
Minister of State Services	Hon Chris Hipkins	
Minister for Treaty of Waitangi Negotiations	Hon Andrew Little	
Attorney-General	Hon David Parker	
Minister for Māori Development	Hon Nanaia Mahuta	
Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	

IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

#### **Intended benefits of the proposed Government organisational structure**

40. The organisational structure is intended to:

- a. provide a more enabling environment for progressing Wai 262-related work and better strategic oversight of the priority, sequencing and funding of it
- b. enable the Government to facilitate kōrero on mātauranga Māori, katiakitanga and taonga and form meaningful partnerships with Māori to take this kaupapa forward
- c. support existing and upcoming work streams that have relevance to Wai 262 issues (see section entitled 'Potential Work Programme' below) and create a framework for Wai 262 conversations to take place
- d. enable Ministers to better coordinate work related to Wai 262, schedule public engagements and approach cross-portfolio issues in a consistent manner, and
- e. address issues underlying Government work related to Wai 262 in a coordinated and holistic way.

41. Establishing a "two-tiered" structure, with the Ministerial Oversight Group as well as the Ministerial groups responsible for the three kete of issues is intended to help the Government strike a balance between:

- a. the need for the Government to make progress on existing and future work areas that require detailed, specialist expertise, and
- b. the need for the Government to participate in a high-level conversation with Māori about how we prioritise our work in today's context and discuss key cross-cutting and underlying issues in this kaupapa.



## POTENTIAL WORK PROGRAMME

43. In this section, we discuss a potential work programme for each kete. The work will involve progressing some existing and upcoming workstreams that are likely to involve consideration of issues related to those considered in *Ko Aotearoa Tēnei*. It will also involve considering options for potential cross-cutting work within each kete and for the overall kaupapa.
44. Including workstreams in the kete will facilitate consideration of the issues raised in the Wai 262 claim and the findings and recommendations of *Ko Aotearoa Tēnei* when developing policy in these workstreams. It will also help the Government consider how engagement approaches and policy changes can be made consistent and coordinated across workstreams and policy areas.
45. There is also scope to consider potential cross-cutting work within each kete and for the overall Wai 262 kaupapa. Below, we have included ideas to provide transparency about our current thinking to prompt whakaaro and kōrero about possible future work. These discussions will be the first step in assisting the Government to develop a programme of work it could undertake under this broad kaupapa over the coming years.
46. Appendices 3, 4, and 5 provide a brief summary of each of the existing and upcoming workstreams listed below. The items listed below are not an exhaustive or final list. They are an indication of what has been identified to date. Developing a whole-of-government approach to Wai 262 and *Ko Aotearoa Tēnei* is likely to uncover further relevant work streams.

### Kete 1: Taonga works me te Mātauranga Māori

47. In Kete 1 (Taonga Works me te Mātauranga Māori), relevant existing and upcoming Government workstreams identified so far include:
- a. the review of the Copyright Act
  - b. the review of the Haka Ka Mate Attribution Act
  - c. Government data stewardship and Māori data governance
  - d. the review of the Statistics Act 1975
  - e. National Archival and Library Institutions (NALI) Ministerial Group
  - f. Government Digital Strategy
  - g. Refresh of Tau Mai Te Reo
  - h. Review of the Te Ture mō Te Reo Māori Act 2016
  - i. Māori Media Sector Shift

IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

48. **Appendix B** has more details on each of these.

49. Some of the options for future cross-cutting work in Kete 1 might include:

- a. What the respective roles of Māori and the Crown should be in developing laws and policies and making decisions that affect taonga works and mātauranga Māori.
- b. How the Crown could create space in various policy areas for kaitiaki to more fully exercise kaitiakitanga over taonga works and mātauranga Māori.
- c. Developing a Crown view on its role in respect of taonga works and mātauranga Māori. Developing a new legal framework governing the use of taonga works and mātauranga Māori.
- d. Developing a Crown approach to Māori data stewardship and governance issues.
- e. Developing a metadata framework for organising and facilitating access to mātauranga Māori held by the Crown.

**Kete 2: Taonga species me te Mātauranga Māori**

50. In Kete 2 (Taonga Species me te Mātauranga Māori), relevant existing and upcoming Government workstreams identified so far include:

- a. Development of a new national biodiversity strategy
- b. Responding to the Supreme Court's decision in Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation
- c. Improving Access to Cultural Materials
- d. Comprehensive review of the resource management system
- e. Essential freshwater
- f. Developing a National Policy Statement on Indigenous Biodiversity
- g. Zero Carbon Bill
- h. Emissions Trading Scheme
- i. Mātauranga Māori when presented as evidence in a decision-making hearing
- j. Exclusive Economic Zone Act
- k. Three Waters Review

IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

- l. Review of the Plant Variety Rights Act 1987
- m. Consideration of whether there should be a 'disclosure of origin' requirement in the patent system
- n. Development of a Resource Strategy
- o. Review of the Crown Minerals Act 1991
- p. Health Services and Outcomes Inquiry Kaupapa Inquiry (Wai 2575)
- q. Māori Health Action Plan
- r. Fisheries Change Programme
- s. Review of the Biosecurity Act 1993
- t. Forestry Strategy

51. **Appendix C** has more details on each of these.

52. Some of the options for future cross-cutting work in Kete 2 might include:

- a. What the roles of Māori and the Crown should be in developing laws and policies and making decisions that affect taonga species and mātauranga Māori.
- b. How the Crown could create space in various policy areas for kaitiaki to exercise kaitiakitanga over taonga species and mātauranga Māori.
- c. Developing a Crown view on its role in respect of taonga species and mātauranga Māori.
- d. How better information systems about taonga species and mātauranga Māori might be developed.
- e. How we might transition Māori-Crown engagement on taonga species and mātauranga Māori from a transactional issue-by-issue approach to a relationship-based model.



IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

### **Kete 3: Kawenata Aorere / Kaupapa Aorere**

53. Kete 3 (Kawenata Aorere / Kaupapa Aorere) is intended to focus on:

- a. How the Crown should work with Māori to identify Māori interests and the nature and strength of those interests when negotiating international instruments and participating in international forums.
- b. How Government agencies should engage with Māori when representing New Zealand.
- c. How Māori should be represented in international forums.

54. In Kete 3 existing, recent and upcoming Government workstreams of particular relevance include:

- a. Implementation of the 2001 Strategy for Engagement with Māori on International Treaties.
- b. The development of the Māori Crown Engagement Framework and Guidelines led by Te Arawhiti.
- c. The development of a Trade for All agenda. One of the Trade for All agenda's key principles is "the creation of a genuine conversation with the public and key stakeholders around the future direction of New Zealand's trade policy; this will include consultation with Māori, consistent with their role as a Treaty partner".

55. As set out above, this kete is primarily focused on the way the Crown engages with Māori in the area of international instruments. To provide further context, the following are examples of existing or potential future international instruments on which the Crown is currently engaging with Māori and will need to be mindful of the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*:

- a. New Zealand's development of a plan on the United Nations Declaration on the Rights of Indigenous Peoples
- b. World Intellectual Property Organization negotiations in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
- c. New Zealand's participation in the United Nations Permanent Forum
- d. Convention on Biological Diversity
- e. United Nations Agreement on Biodiversity Beyond National Jurisdiction negotiations
- f. E-Commerce negotiations at the World Trade Organization

IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

- g. UNFCCC/Paris Agreement/climate change negotiations
- h. Digital Economic Partnership Agreement (DEPA) negotiations with Chile and Singapore
- i. Various free trade agreements and related work:
  - i. European Union/New Zealand free trade agreement negotiations
  - ii. Regional Comprehensive Economic Partnership negotiations
  - iii. Pacific Alliance free trade agreement negotiations
  - iv. China free trade agreement upgrade negotiations
  - v. ASEAN Australia New Zealand free trade agreement upgrade negotiations
  - vi. Brexit and possible UK-NZ FTA
  - vii. Singapore Closer Economic Partnership (CEP) Upgrade
  - viii. Investor-State Dispute Settlement protocol.

56. You can refer to **Appendix D** for more details on the mahi described above.

Draft for Discussion only. This document does not represent Government policy

## YOUR VIEWS ON THE PROPOSED APPROACH

57. This paper describes the first steps that the current Government intends to take in developing a whole-of-government approach on this kaupapa. The overall work programme is likely to involve various Government agencies working alongside each other, Māori and the wider public over a number of years.

58. In that context, we look forward to discussing with you:

- whether the Crown's proposed organisational structure:
  - makes sense from a Māori perspective
  - is an approach Māori are likely to be able to work with
- options for how Māori can work with Government on this kaupapa
- how the Government might prioritise, schedule and undertake work in this area
- whether there are other cross-cutting issues or work you think we should consider.

59. We would also be interested to hear any other views you would like to share.

## TIMEFRAMES

60. We would like to have conversations with interested Māori during September and October 2019.

61. A paper confirming or modifying the proposed structure and the work-streams with each kete is planned to go to Cabinet by the end of 2019.

62. This paper will also address possible next steps in developing a coordinated and consistent approach across Wai 262 issues, and next steps in furthering a partnership conversation between the Crown and Māori.



IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

## **APPENDIX A – Diagram on proposed Government Organisational Structure**

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

# Wai 262- Te Pae Tawhiti: Preliminary Proposals for Crown Organisation

## Ministerial Oversight Group (MOG)

(Rt Hon Jacinda Ardern, Hon Kelvin Davis, Hon Grant Robertson, Hon Carmel Sepuloni, Hon Nanaia Mahuta, Hon Tracey Martin, Hon Kris Faafoi, Hon James Shaw, Hon Dr Megan Woods, Hon Dr David Clark, Hon David Parker, Hon Eugene Sage, Rt Hon Winston Peters,)

- Oversee the government's high-level response across Wai 262
- Assist Ministers co-ordinate within and across the three Ministerial groups (Kete 1-3)

- Determine the Crown's approach to high-level and cross-cutting issues
- Determine the high-level approach to Maori-Crown relationships on this kaupapa

### Ministers

Rt Hon Jacinda Ardern, Hon Kelvin Davis, Hon Grant Robertson, Hon Carmel Sepuloni, Hon Nanaia Mahuta, Hon Tracey Martin, Hon Kris Faafoi, Hon James Shaw.

### Kete 1: Taonga works me te Mātauranga Māori

#### Possible Cross-cutting work

- Developing partnership approach to policies and decisions affecting taonga works and mātauranga Māori.
- Creating space for kaitiaki to exercise kaitiakitanga over taonga works and mātauranga Māori.
- Defining Crown role in respect of taonga works and mātauranga Māori.
- Developing a new legal framework for the use and protection of taonga works and mātauranga Māori.

Existing and upcoming specific work-streams grouped together to enable cross-agency cooperation and more consistent approach to issues.

See other side for details

### Ministers

Rt Hon Jacinda Ardern, Hon Kelvin Davis, Hon Grant Robertson, Hon Carmel Sepuloni, Hon Nanaia Mahuta, Hon Tracey Martin, Hon Kris Faafoi, Hon James Shaw, Hon Dr Megan Woods, Hon Dr David Clark, Hon David Parker, Hon Eugene Sage, Rt Hon Winston Peters,)

### Kete 2: Taonga species me te Mātauranga Māori

#### Possible Cross-cutting work

- Developing partnership approach to policies and decisions affecting taonga species and mātauranga Māori.
- Creating space for kaitiaki to exercise kaitiakitanga over taonga species and mātauranga Māori.
- Defining Crown role in respect of taonga species and mātauranga Māori.
- Improving information about taonga species and mātauranga Māori.
- Establishing issue-by-issue approach to a relationship-based Maori-Crown dialogue on taonga species and mātauranga Māori.

Existing and upcoming specific work-streams grouped together to enable cross-agency cooperation and more consistent approach to issues.

See other side for details

### Ministers

Rt Hon Winston Peters, Hon David Parker, Hon Nanaia Mahuta, Hon Kris Faafoi, Hon James Shaw.

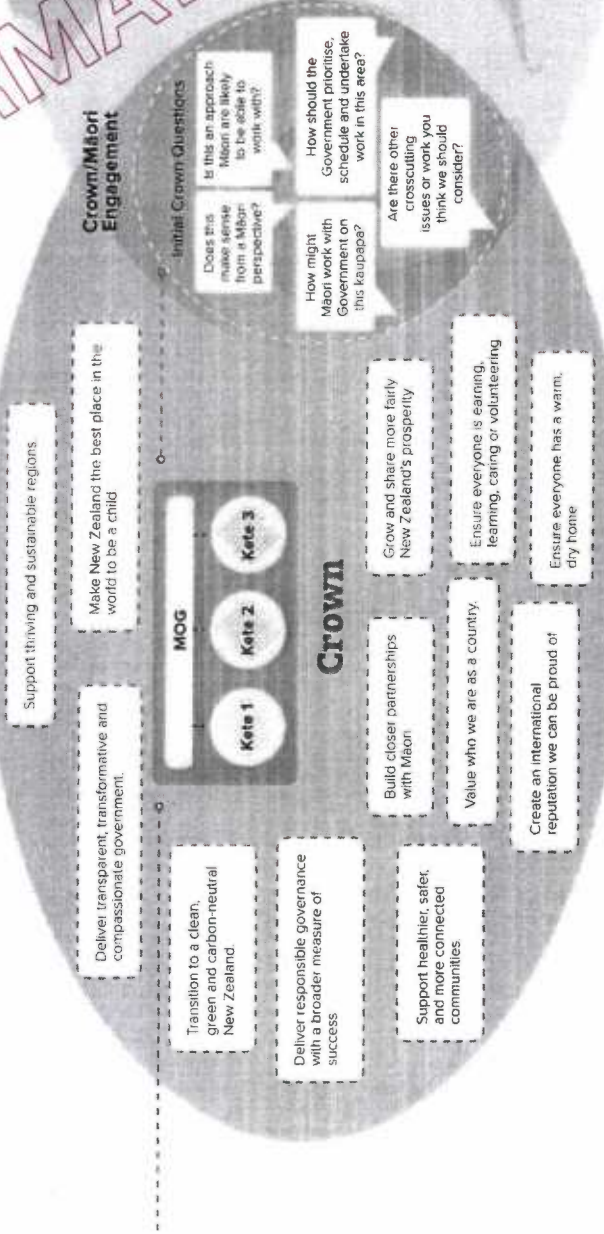
### Kete 3: Kawenata Aorere/ Kaupapa Aorere

#### Possible Cross-cutting work

- Identifying Maori interests and understanding their nature and strength when negotiating international instruments and participating in international forums.
- A consistent approach to engaging with Maori when representing New Zealand including how nature and strength of interest influences engagement.
- Maori representation in international forums.

Existing and upcoming specific work-streams grouped together to enable cross-agency cooperation and more consistent approach to issues.

See other side for details





## Kete 1: Taonga works me te Mātauranga Māori

In Kete 1 (Taonga Works me te Mātauranga Māori), relevant existing and upcoming Government workstreams include:

- The review of the Copyright Act
- The review of the Haka Ka Mate Attribution Act
- Government data stewardship and Māori data governance
- the review of Statistics Act 1975
- National Archival and Library Institutions (NALI) Ministerial Group
- Government Digital Strategy
- Refresh of Tau Mai Te Reo
- Review of the Te Ture mo Te Reo Māori Act
- Māori Media Sector Shift

**Some of the options for future cross-cutting work in Kete 1 might include:**

- What a partnership approach requires in terms of Māori participation in developing policies and making decisions that affect taonga work and mātauranga Māori.
- How the Crown could create space in various policy areas for kaitiaki to exercise kaitiakitanga over taonga works and mātauranga Māori.
- Developing a Crown view on its role in respect of taonga works and mātauranga Māori.
- Developing a new legal framework governing the use of taonga works and mātauranga Māori.
- Developing a Crown approach to Māori data stewardship and governance issues.
- Developing a metadata framework for organising and facilitating access to mātauranga Māori held by the Crown

## Kete 2: Taonga species me te Mātauranga Māori

In Kete 2 (Taonga Species me te Mātauranga Māori), relevant existing and upcoming Government workstreams include:

- Development of a new national biodiversity strategy
- Responding to the Supreme Court's decision in *Ngāi Tahu ki Teitaki Māori Trust v Minister of Conservation*
- Improving Access to Cultural Materials
- Comprehensive review of the resource management system
- Estuary and Freshwater
- Development of a National Policy Statement on Indigenous Biodiversity
- Te Ara Caricature Bill
- Expositions Trading Scheme
- Mātauranga Māori which presented its evidence in a decision-making hearing
- Exclusive Economic Zone Act
- Teitaki Māori Review
- Review of the Teitaki Māori Review
- Consideration of whether there should be a 'disclosure of origin' requirement in the patent system
- Development of a Resource Strategy
- Review of the Crown Minerals Act
- Health Services and Outcomes Inquiry (HSCOI) Inquiry (Wai 2575)
- Māori Health Action Plan
- Fisheries Change Programme
- Review of the Biosecurity Act
- Forestry Strategy

**Some of the options for future cross-cutting work in Kete 2 might include:**

- What a partnership approach requires in terms of Māori participation in developing policies and making decisions that affect taonga species and mātauranga Māori.
- How the Crown could create space in various policy areas for kaitiaki to exercise kaitiakitanga over taonga species and mātauranga Māori.
- Developing a Crown view on its role in respect of taonga species and mātauranga Māori.
- How better information systems about taonga species and mātauranga Māori might be developed.
- How we might transition Māori-Crown engagement on taonga species and mātauranga Māori from a transactional issue-by-issue approach to a relationship-based model.

## Kete 3: Kawenata Aorere/Kaupapa Aorere

**Kete 3 (Kawenata Aorere/Kaupapa Aorere) is intended to focus on:**

- How the Crown should identify Māori interests and come to a view on their nature and strength when negotiating international instruments and participating in international forums.
- How Government agencies should engage with Māori when representing New Zealand and how that engagement should be shaped by the nature and strength of the Māori interest.
- How Māori should be represented in international forums.

**In Kete 3 existing, recent and upcoming Government workstreams of particular relevance include:**

- Implementation of the 2001 Strategy for Engagement with Māori on International Treaties.
- The development of the Māori Crown Engagement Framework and Guidelines led by Te Arawhiti.

c) The development of a Trade for All agenda. One of the Trade for All agenda's key principles is 'the creation of a genuine conversation with the public and key stakeholders around the future direction of New Zealand's trade policy; this will include consultation with Māori, consistent with their role as a Treaty partner.'

**The following are examples of existing or potential future international instruments on which the Crown is currently engaging with Māori and will need to be mindful of the issues raised in the Wai 262 claim and Ko Aotearoa Tenei:**

- New Zealand's development of a plan on the United Nations Declaration on the Rights of Indigenous Peoples.
- World Intellectual Property Organization negotiations in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
- New Zealand's participation in the Permanent Forum.
- Convention on Biological Diversity.
- United Nations Agreement on Biodiversity Beyond National Jurisdiction negotiations.
- E-Commerce negotiations at the World Trade Organization.
- UNFCCC /Paris Agreement/Climate Change Negotiation.
- Digital Economic Partnership Agreement (DEPA) Negotiations with Chile and Singapore.
- Various Free Trade Agreements and related work



## APPENDIX B – Brief summary of existing and upcoming work streams in Kete 1

### Copyright Act review (Ministry of Business, Innovation and Employment)

1. The Ministry of Business, Innovation and Employment released an Issues Paper on the Copyright Act Review in November 2018. The Paper included a discussion of Chapter 1 of *Ko Aotearoa Tēnei*, which identified issues with the Copyright Act as it interacts with taonga works. Although *Ko Aotearoa Tēnei* does not recommend any changes to the copyright regime itself, it recommended that a new, standalone legislative regime be established to protect Māori rights and interests in taonga works.
2. In the Issues Paper, MBIE sought feedback on establishing a new work stream to consider *Ko Aotearoa Tēnei*'s taonga works recommendations while the Copyright Act review is still underway.

### Haka Ka Mate Attribution Act Review (Ministry of Business, Innovation and Employment)

3. The Haka Ka Mate Attribution Act provides that any commercial use of the haka *Ka Mate* must be accompanied by a statement that it was composed by Te Rauparaha of Ngāti Toa Rangatira. Section 12 of the Haka Ka Mate Attribution Act states that the Ministry of Business, Innovation and Employment must review the Act after 22 April 2019. The Act does not specify when it must complete this review by.

### Government data stewardship and Māori data governance (Statistics New Zealand)

4. The Chief Executive of Stats NZ (the Government Statistician) exercises functional leadership acting across government as the Government Chief Data Steward (GCDS). Data governance is a key element and several initiatives are being considered or are underway. One initiative is setting up an independent Advisory Group on Trusted Data Use to help maximise the opportunities and benefits from new and emerging uses of government data, while responsibly managing potential risks and harms. The group will provide independent advice to the GCDS and state sector agencies and include membership with expertise and knowledge in te ao Māori. Appointment of members is scheduled in the third quarter of this year.
5. The GCDS is also working jointly with the Data Iwi Leaders Group, along with Te Puni Kōkiri and Te Arawhiti to address a range of Māori data governance issues. A system-wide co-design approach is being developed, bringing together government officials and Māori to ensure that te ao Māori views are incorporated.

### Review of the Statistics Act 1975 (Statistics New Zealand)

6. Statistics New Zealand is working on a review of statistics and data legislation, with a view to repealing and replacing the Statistics Act 1975 with more modern legislation. A public consultation process was completed in late 2018, and policy options are being developed to submit to Cabinet later in 2019. Legislation changes would be expected to support data system governance initiatives, among other things.

Draft for Discussion only. This document does not represent Government policy

**National Archival and Library Institutions Ministerial Group (Department of Internal Affairs)**

7. The National Archival and Library Institutions Ministerial Group (NALI) was formed to consider options to strengthen the contribution of the National Library, Archives New Zealand and Ngā Taonga Sound and Vision to the culture and heritage sector. This includes consideration of options for kaupupuritanga and greater partnership with iwi and Māori for taonga Māori and mātauranga Maori, in accordance with the Treaty of Waitangi, that enables access. This work also has connections with Government data stewardship and Māori data governance and Government Digital Strategy work (see below).
8. This work is co-led by the Department of Internal Affairs and the Ministry of Culture and Heritage, whose Ministers are Co-Chairs of the NALI Ministerial Group. Te Puni Kōkiri and the State Services Commission are also involved, whose Ministers are involved in the Ministerial Group.
9. In 2018 officials sought public feedback exploring opportunities to strengthen the contribution of NALIs, and to respond to the challenges and opportunities. This included feedback from iwi groups with an interest in NALIs. There has not been any broader specific engagement with iwi and Māori throughout the life of the project but there is opportunity to do so.

**Government Digital Strategy (Department of Internal Affairs)**

10. This mahi has the vision of all New Zealanders thriving in the digital age, and working on the government's rapid response to societal and economic changes in the digital age. The Department of Internal Affairs has expressed a commitment to digital inclusion, especially for Māori, and to honouring Te Tiriti, as well as ensuring that tangata whenua have input into decisions at all levels.

**Refresh of Tau Mai Te Reo as part of the Education Work Programme (Ministry of Education)**

11. Tau Mai Te Reo (Māori Language in Education strategy) is being refreshed as part of the overall Education Work Programme. It will also express the education system's contribution to the Maihi Karauna. It will include existing Māori Language in Education activities, as well as new initiatives that are derived from other work-streams in the Education Work Programme, and a gap analysis to identify any potential initiatives for future consideration.

**Review of the Te Ture mō Te Reo Māori Act 2016 (Te Puni Kōkiri)**

12. The review of Te Ture mō Te Reo Māori 2016 is required to occur as soon as practicable after the expiry of three years from its commencement (30 April 2016). The overarching intent of the review is to ensure that the legislation is achieving what it was set out to do, mechanisms established under the Act are operating as expected/intended, any



Draft for Discussion only. This document does not represent Government policy

unintended consequences of the legislation are resolved, and any further opportunities for strengthening the impact of the legislation – which may have arisen since enactment – are explored. The approach to the review will be driven by a desire to maintain the integral role that te reo Māori has in promoting cultural, social and economic wellbeing for Māori and all New Zealanders. Following approval from the Minister for Māori Development and Te Mātāwai, this review is likely to occur in 2019/20.

**Māori Media Sector Shift (Te Puni Kōkiri)**

13. The Māori Media Sector Shift will explore the extent to which the Māori media sector is positioned for the future. It will take a big picture view of the Māori media sector and its potential to support the revitalisation of te reo Māori and greater awareness and understanding of Māori stories. It will also consider structure of the Māori media sector how Government can support the most effective and efficient way of funding and producing te reo Māori and Māori content to achieve the best outcomes.
14. The scope of the Māori Media Sector Shift as set out in the Terms of Reference includes assessment of “the rights, retention and access to te reo and tikanga Māori programming/content, including intellectual property and archiving”. In the context of the Māori Media Sector Shift, it will be important to ensure a balance between the protection of mātauranga Māori and appropriate access to archival material for research and repurposing.



## APPENDIX C – Brief summary of existing and upcoming work streams in Kete 2

### New Zealand Biodiversity Strategy and Action Plan (Department of Conservation)

1. DOC is leading the revision of the current New Zealand Biodiversity Strategy, which expires in 2020. A discussion document has been developed that reflects the views that DOC has heard from a series of 25 biodiversity-themed hui held with whānau, hapū and iwi around the country. A Te Ao Māori reference group has also been established to enable officials to test ideas through a series of workshops throughout the process. A second round of hui are being planned for August-September 2019 so that officials can continue the conversation about the discussion document.

### Response to the Supreme Court's decision in *Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122 (Department of Conservation)

2. The Department of Conservation (DOC) is undertaking work to respond to the Supreme Court's December 2018 decision in *Ngāi Tai Ki Tāmaki*, a case which dealt with DOC's consideration of Treaty principles in the granting of two commercial tour concessions on public conservation lands.
3. There is considerable overlap between some of the Waitangi Tribunal's recommendations in Wai 262 and the implications of the *Ngāi Tai ki Tāmaki* decision. For example, both envision amendment of the Conservation General Policy to reflect the relative strength of section 4 in the statutory scheme of the Conservation Act 1987. There are also similarities in the way *Ko Aotearoa Tēnei* and the recent Supreme Court decision treat the concept of economic preference (within the Treaty principle of active protection) in the context of DOC's statutory decision-making function.
4. As announced by the Minister of Conservation and the New Zealand Conservation Authority on 6 August, DOC is undertaking a partial review of the Conservation General Policy and the General Policy for National Parks with the aim of better reflecting section 4 responsibilities throughout. The draft Terms of Reference for the partial reviews includes consideration of relevant Wai 262 recommendations (some of which specifically relate to the general policies).

### Improving Access to Cultural Materials (Department of Conservation)

5. A new approach called Ngā Aitanga ā Nuku has been in place since 2016 which enables decision-making by iwi/hapū/whanau on access by their members to cultural materials on public conservation lands. The scope includes flora and dead protected fauna. Harvest of wildlife for consumption and commercial use are excluded. To date one Ngā Aitanga ā Nuku arrangement has been completed. Conversations with a number of interested PSGE's and iwi/hapū/whanau are continuing.

Draft for Discussion only. This document does not represent Government policy

**Comprehensive Review of the Resource Management System (Ministry for the Environment)**

6. The Government has announced a two-stage process to improve the resource management system. The first stage of reform is a bill proposing targeted changes to the Resource Management Act 1991. The second stage will be a comprehensive review of the resource management system, expected to begin later in 2019.

**Essential Freshwater (Ministry for the Environment)**

7. The Essential Freshwater work programme is focused on improving the quality of New Zealand's freshwater. Part of the programme will focus on areas where the Crown and Māori have shared interests – such as improving water quality and ecosystem health, and addressing water allocation issues. This work programme will be jointly delivered by a dedicated cross-government taskforce. This includes Te Puni Kōkiri, the Ministry for Primary Industries, Treasury, Te Arawhiti, the Department of Internal Affairs, the Department of Conservation and the Ministry of Business, Innovation and Employment, as well as local government.
8. In late 2018, the Government set up Te Kāhui Wai Māori – the Māori Freshwater Forum – to broaden the conversation with Māori on freshwater. Te Kāhui Wai Māori's purpose is to collaboratively develop and analyse freshwater policy options for issues of particular relevance to Māori. Although they were set up primarily to inform the Essential Freshwater programme, their mandate extends to any other issues that members consider have a bearing on freshwater policy. Te Kāhui have provided input to the Three Waters Review and the proposed comprehensive reforms of the resource management system, and have developed their own advice on how to systemically overhaul New Zealand's freshwater management. Public consultation on the Essential Freshwater programme is intended later in 2019.

**National Policy Statement for Indigenous Biodiversity (Ministry for the Environment)**

9. The Biodiversity Collaborative Group created a report in late 2018 on New Zealand's biodiversity, including a draft National Policy Statement for Indigenous Biodiversity. Its aim is to maintain and restore indigenous biodiversity under the Resource Management Act through an integrated and holistic approach. This involves acknowledging kaitiakitanga, taking into account the principles of the Treaty of Waitangi, protecting significant indigenous vegetation and significant habitat of indigenous fauna and providing for the relationship of Māori and their culture and traditions with their taonga.
10. It places the whakataukī Hutia te Rito at its heart, acknowledging the crucial relationship between people and the natural environment. The second objective set out in the proposed statement is all about Te Tiriti, recognising tangata whenua as kaitiaki, and providing for their relationship with their taonga by giving them support, building meaningful relationships between Māori and those exercising the functions and powers of the Resource Management Act, incorporating mātauranga Māori into indigenous biodiversity decision-making and management, and identifying and protecting taonga species.



IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

11. The proposed National Policy Statement for Indigenous Biodiversity is intended to open for public consultation late 2019.

**Proposed Climate Change Response (Zero Carbon) Amendment Bill (Ministry for the Environment)**

12. This Bill is intended to provide a framework by which New Zealand can develop clear and stable climate change policies that work towards the global effort to limit global warming to 1.5 degrees Celsius, under the Paris Agreement. This will be an amendment to the existing Climate Change Response Act 2002.
13. The Bill will set a new greenhouse gas emission reduction target for 2050, establish a system of five-yearly emissions budgets to step towards the long-term target, require the Government to publish plans for how the emissions budgets are to be achieved, and establish measures to ensure we understand and respond to the risks posed by climate change. The Bill will also establish a new and independent Climate Change Commission to provide expert advice and monitoring to keep governments on track to achieving climate goals.
14. In order to recognise and respect the Crown's responsibility to give effect to the Treaty of Waitangi, this Amendment Bill requires particular attention to seeking nominations from iwi and Māori representative organisations for nominations for the Climate Change Commission, and places relevant requirements on the Minister in relation to the expertise of the Commission, plans for reducing emissions and the national adaptation plan.

**New Zealand Emissions Trading Scheme (Ministry for the Environment)**

15. The Emissions Trading Scheme aims to reduce greenhouse gas emissions by creating a financial incentive for businesses who emit to invest in technologies and practices that reduce emissions. It also encourages forest planting and requires most sectors of New Zealand's economy to report on their emissions, and to purchase and surrender emissions units to the Government for these emissions. The Government intends to pass the Climate Change Response Amendment Bill (CCRAB) that will amend and improve the NZ ETS.
16. MfE commissioned a report on the impacts of NZ ETS on Māori, however this was written in 2008 and needs to be updated. The Select Committee stage of the CCRAB legislative process will provide an opportunity for Māori interests to be considered.

**Mātauranga Māori when presented as evidence in a decision-making hearing (Environmental Protection Authority)**

17. The EPA has developed a three-year work programme to increase the understanding of mātauranga across the EPA, to enable the making of better-informed decisions, and for the EPA to understand the issues and implications of this for its decision-making processes. The programme is currently focused on developing tools to help decision-makers understand, test and probe mātauranga evidence when it is provided during an application hearing.



IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

18. The programme and tools are being developed in collaboration with members and kaumatua of Te Herenga, the EPA's network of Māori environmental managers, and its statutory Māori Advisory Committee, Ngā Kaihautū Tikanga Taiao. In the 2nd half of 2019, the EPA intends to engage further with industry, Māori, government agencies and others to build understanding and support for the programme.

**Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (Ministry for the Environment / Environmental Protection Authority)**

19. This Act aims to promote the sustainable management of natural resources in New Zealand's exclusive economic zone and continental shelf, as well as seeking to protect these areas from pollution by regulating discharges and dumping.
20. The Act explicitly recognises the Crown's responsibility to give effect to the Treaty relationship, and there are some aspects of the legislation that allow Māori to participate in the marine consent process. These include the EPA's Māori Advisory Committee and their ability to provide advice and assistance to the EPA on policy and decision-making, the requirement that at least one member of the EPA board has knowledge and experience relating to the Treaty and tikanga, that the Act requires decision-makers to consider Treaty settlements and customary title granted under the Marine and Coastal Areas (Takutai Moana) Act 2011, and that the Minister is required to establish and use a process that gives iwi adequate time to comment on proposed standards and regulations.
21. This is linked to the development of a mātauranga Māori work programme developed by the EPA (see previous item).

**Three Waters Review (Department of Internal Affairs, Ministry of Health, Ministry for the Environment)**

22. The Three Waters Review (the Review) was established in mid-2017 by government, alongside the Havelock North Drinking Water Inquiry, as a cross-agency initiative led by the Department of Internal Affairs to look into the challenges facing our three waters system; and to develop recommendations for system-wide performance improvements.
23. The Review seeks to ensure everyone in New Zealand has reliable access to safe drinking water, and to ensure that the environmental impacts of wastewater and stormwater networks are managed in line with community expectations. The Review is aligned with the Essential Freshwater Programme and contributes to upholding Te Mana o te Wai. The Review team has engaged with Kāhui Wai Māori and other iwi and Māori groups and is exploring how to reflect mātauranga and other aspects of Te Ao Māori in this work.

**Plant Variety Rights Act review (Ministry of Business, Innovation and Employment)**

24. The PVR Act provides for the grant of temporary intellectual property rights to plant breeders over new plant varieties they have developed. The CPTPP requires New Zealand to align its regime with UPOV 91, the most recent version of the international

Draft for Discussion only. This document does not represent Government policy

convention on plant varieties. New Zealand has the ability to fulfil its obligations under the Treaty when complying with the CPTPP requirement. To do so, MBIE is using the Wai 262 report as the starting point for this in the review.

25. MBIE consulted in late-2018, holding industry workshops and eight regional hui for Māori. MBIE also released an Issues Paper and Māori engagement plan based on the Te Arawhiti guidelines. MBIE released an Options paper for public consultation on 9 July 2019. Cabinet is expected to make policy decisions in 2019 to allow a new bill to be introduced in 2020.

**Consideration of whether there should be a 'disclosure of origin' system in the patent system (Ministry of Business, Innovation and Employment)**

26. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is the key international forum looking at how the international intellectual property system could better protect the rights and interests of indigenous populations. Creating international rules around indigenous intellectual property would signal a significant step towards the protection of indigenous rights in their knowledge and resources under the United Nations Declaration on the Rights of Indigenous Peoples.
27. The key proposal in this forum is a mandatory patent disclosure of origin requirement, which would require states to implement a compulsory requirement that patent applications disclose the sources of genetic resources and/or traditional knowledge in their claimed inventions. This can help prevent patents from being granted over misappropriated traditional knowledge, as well as allowing states and indigenous peoples to track users and uses of their genetic resources and traditional knowledge.
28. MBIE consulted across the country about this alongside their Plant Variety Rights Act review in late 2018. Submissions were generally in favour of implementing a disclosure of origin requirement internationally and domestically, with a preference that this be a part of a wider bioprospecting policy and response to Wai 262.

**Development of a Resource Strategy (Ministry of Business, Innovation and Employment)**

29. The Government has recently announced the development of an Aotearoa New Zealand Resource Strategy for petroleum and minerals. The Resource Strategy will be used to underpin the review of the Crown Minerals Act 1991 (more info below) and will articulate the Government's long term vision for the petroleum and minerals sector in New Zealand. The Resource Strategy will be a 10-year strategy and will support the transition to a low emissions future and a productive, sustainable and inclusive economy.
30. Following early engagement and targeted workshops with iwi, the Resource Strategy is currently being developed. It will go out for public consultation mid-2019.



Draft for Discussion only. This document does not represent Government policy

**Crown Minerals Act Review (Ministry of Business, Innovation and Employment)**

31. MBIE is reviewing the Crown Minerals Act (CMA). The review will provide an in-depth look into the issues affecting the CMA – to ensure it is fit for purpose to meet the needs of all New Zealanders. A discussion document on the CMA review will be released in late 2019 for public consultation, after the release of the draft Resource Strategy for public consultation.

**Health Services Kaupapa Inquiry – Wai 2575 (Ministry of Health)**

32. This is a broad inquiry at the Waitangi Tribunal investigating all claims concerning Māori grievances relating to health services. This covers primary care, mental health, Māori with disabilities and issues of substance abuse. It is likely that the Waitangi Tribunal will focus on the way that the Crown works with Māori and how the contribution of Māori is valued in policy development processes. Health's response to the Wai 262 recommendations regarding Rongoā Māori will need to be considered alongside any recommendations from Wai 2575 and the broader Health & Disability Review underway.

**Māori Health Action Plan (Ministry of Health)**

33. A Māori Health Action Plan is being developed to support the implementation of He Korowai Oranga, the Ministry's Māori Health Strategy, through ensuring the whole health and disability sector, alongside other sectors, are working collaboratively to address health inequities and deliver high-quality and effective services that support Māori aspirations for health and wellbeing. The Māori health action plan will also provide a platform to positively and effectively engage with Māori to determine how the Ministry can improve its policies to address contemporary Treaty issues, and will consider the role of Mātauranga Māori in the development and delivery of health services to Māori, including the provision of Rongoā Māori.

**Fisheries Change Programme and other fisheries matters (Ministry for Primary Industries)**

34. This programme will proceed over three phases to improve the fisheries management system, incentivise good fishing practices and provide the fishing industry with a system that is consistent, easy to understand and responsive to change. The first phase is underway, and introduces electronic catch and position reporting on commercial fishing vessels. The second phase develops legislative amendments about which fish must be landed, and which can be returned to the sea. The third will introduce cameras on boats.
35. Fisheries are highly important to Māori, as a taonga and a commercial and customary resource. To ensure that Māori rights in fisheries are protected and understood throughout this process, officials have (and will continue to) comprehensively engage with Māori.
36. Other programmes, such as the Dolphin Threat Management Plan, proposed Marine Protected Area reform, and specific marine protection initiatives also interrelate with the fisheries interests of Māori, and have or will include strong engagement with Māori.



Draft for Discussion only. This document does not represent Government policy

**Biosecurity Act review (Ministry for Primary Industries)**

37. The Biosecurity Act is now over 25 years old, and some parts of the Act are no longer fit for purpose. It is silent as to the role of te ao Māori in the biosecurity system. Given that this system protects New Zealand's core economic, social, cultural and environmental values from the impacts of pests and disease, there is significant interplay between foundational Māori values in relation to land and taonga species, and the way in which the regulatory framework that governs the system operates.
38. MPI has identified this as a core part of the overhaul of the Biosecurity Act, and established a Māori engagement work stream to facilitate their interaction with Treaty partners as well as other groups who are representative of Māori interests. They expect this conversation to cover both gaining a mandate to undertake the wider work of the overhaul of the Biosecurity Act, as well as engagement on the substantive work streams within the overhaul project.

**Forestry Strategy (Ministry for Primary Industries)**

39. Te Uru Rākau is leading the development of a Forestry Strategy for New Zealand. Ministers have approved terms of reference, and Te Uru Rākau expects to complete the strategy by mid-2020. The strategy will aim to set a clear direction for the sector, identifying the contribution that forests and trees can make to New Zealand's transition to a sustainable, low-emissions economy.
40. Enabling Māori to achieve their forestry-related economic and cultural development aspirations is one of the Government's eight goals for the forestry sector. Te Uru Rākau will be working collaboratively with Māori to ensure that the Forestry Strategy encompasses the key issues and interests of Māori as kaitiaki, landowners, workers and businesses. This potentially encompasses a broad range of issues such as indigenous timber, permanent carbon forestry, integrating trees into farming landscapes, safe and sustainable forestry careers and opportunities for a bio-circular economy (i.e. bio-plastics and pharmaceuticals).
41. Te Uru Rākau is intending to set up a focus group 'He Rōpu Māori Rautaki Ngāhere' to guide this approach with Māori, and is working towards holding marae-based hui with iwi and hapū.

## **APPENDIX D – Brief summary of some of the international instruments and related kaupapa on which the Crown is engaging with Māori**

### **United Nations Declaration on the Rights of Indigenous Peoples (Te Puni Kōkiri)**

1. Te Puni Kōkiri has been given Cabinet approval to lead a Declaration Plan to implement and monitor New Zealand's progress towards the objectives of the Declaration. This will begin with the appointment of a working group of technical experts to help develop proposals for the plan, and a Māori engagement process. This mahi is ongoing and will likely often intersect with work on Wai 262.

### **The World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (Ministry of Business, Innovation and Employment)**

2. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was established in 2000, in order to consider how the international intellectual property system can better protect the intellectual property of indigenous populations. They are seeking to protect three areas: genetic resources, traditional cultural expressions and traditional knowledge, with significant overlap with Chapters 1 and 2 of the Wai 262 report.
3. New Zealand is seen as a leader in these negotiations for its approach to recognising Māori rights and interests.

### **United Nations Permanent Forum on Indigenous Issues (Te Puni Kōkiri)**

4. The UN Permanent Forum on Indigenous Issues was established in 2000 as an advisory body to the United Nations Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.
5. The Permanent Forum holds a two-week session every year, in which indigenous peoples organisations, countries, United Nations bodies and organs, inter-governmental organisations and NGOs can participate and speak to agenda items for each annual session.

### **Convention on Biological Diversity (Ministry of Foreign Affairs and Trade)**

6. The Convention on Biological Diversity is a multilateral environment agreement that seeks to conserve species, use biodiversity in sustainable ways, and share the benefits deriving from the use of genetic resources. Currently, parties to the CBD are participating in a process to negotiate new global biodiversity targets. The new biodiversity targets are to be finalised at the 15th Conference of Parties in China in 2020.



IN CONFIDENCE

Draft for Discussion only. This document does not represent Government policy

7. Two additional agreements supplement this original Convention: the Cartagena Protocol and the Nagoya Protocol. The Cartagena Protocol looks to ensure safe handling, transport and use of living modified organisms that may have adverse effects on biodiversity, while the Nagoya Protocol relates to genetic resources and associated traditional knowledge and has specific implications for Māori. New Zealand is a Party to the Cartagena Protocol, but not the Nagoya Protocol. New Zealand would need to set up a bioprospecting regime before ratifying the Nagoya Protocol.

**Marine Biodiversity Beyond National Jurisdiction (Ministry of Foreign Affairs and Trade)**

8. New Zealand is participating in the negotiation of a new UN treaty on the conservation and sustainable use of marine biodiversity beyond national jurisdiction (i.e. from the high seas and seabed outside states' Exclusive Economic Zones).
9. Pacific Islands Forum members – including New Zealand – have also emphasised the relevance of traditional knowledge of indigenous peoples and local communities to the new treaty, for example in relation to migratory species. A draft text was released in June 2019 and the negotiations are currently scheduled to conclude by mid-2020.

**E-commerce negotiations at the World Trade Organisation (Ministry of Foreign Affairs and Trade)**

10. New Zealand, together with around 80 members at the WTO, confirmed intentions in January 2019 to launch negotiations on E-commerce. We want to ensure our trade policy settings facilitate growth in this area, and will contribute towards achieving the government's economic diversification goals, as well as the transition to a low carbon economy and protection of areas of specific interest.

**UNFCCC/Paris Agreement (Ministry of Foreign Affairs and Trade)**

11. The United Nations Framework Convention on Climate Change (UNFCCC) provides a framework for a global effort to stabilise greenhouse gas concentrations in the atmosphere at a level that prevents dangerous anthropogenic interference with the climate system. The Paris Agreement commits all nations to meet this objective by undertaking ambitious national efforts to combat climate change and adapt to its effects, while recognising the need to support developing countries' effective implementation. All Parties are required to undertake and communicate ambitious efforts to achieve the purpose of the Agreement through nationally determined contributions (NDCs), and to strengthen these effort progressively in the years ahead.

**Digital Economic Partnership Agreement (DEPA) negotiations with Chile and Singapore (Ministry of Foreign Affairs and Trade)**

12. Negotiations with Singapore and Chile towards a DEPA were launched in May 2019. New Zealand's goal for DEPA is to help co-create and shape global norms for digital trade and to lead on important issues in the wider digital economy. The envisaged scope is wider than e-commerce chapters in free trade agreements and the WTO e-commerce negotiations, and at the same time will safeguard our ability to regulate to address legitimate public policy interests.



**European Union - New Zealand free trade agreement negotiations (Ministry of Foreign Affairs and Trade)**

13. Five rounds of negotiations for an EU-NZ FTA have been held since the launch in June 2018. New Zealand is seeking comprehensive and commercially meaningful market access outcomes from the EU in this agreement, in addition to strong provisions on sustainable development including climate change. We are working with the EU to decide on dates for the next round that will work well for both parties.

**Regional Comprehensive Economic Partnership (Ministry of Foreign Affairs and Trade)**

14. There are 16 countries involved in RCEP across Asia and the Pacific (including ASEAN countries, the North Asian countries – China, Japan and Korea – and India). Negotiations have made substantial progress in the period since early 2018, and the aim is to conclude in 2019.

**Pacific Alliance free trade agreement negotiations (Ministry of Foreign Affairs and Trade)**

15. Negotiations towards a free trade agreement with the Pacific Alliance (Chile, Colombia, Mexico and Peru) are ongoing. New Zealand is working to conclude negotiations as soon as possible, provided the agreement meets New Zealand's needs in terms of ambition.

**China FTA Upgrade (Ministry of Foreign Affairs and Trade)**

16. The China-NZ FTA has been in force since 2008 and negotiations to upgrade the agreement commenced in early 2017. The upgrade is an opportunity to modernise the FTA to include areas not addressed in the original negotiations (like provisions on the environment and digital trade), address specific barriers exporters say are restricting our trade with China and deepen and enhance our cooperation with China in a wide range of areas.

**ASEAN Australia New Zealand FTA (Ministry of Foreign Affairs and Trade)**

17. Upgrade negotiations for the ASEAN Australia New Zealand Free Trade Area (AANZFTA) were launched in May 2019. It's hoped the upgrade will achieve improvements both in long-standing areas of the FTA's built-in agenda (services, investment and rules of origin), as well as enabling the parties to agree on more novel areas (including new provisions in E-commerce and government procurement), and cooperation in trade and sustainable development. Goods trade and intellectual property are outside the agreed scope of the upgrade. MFAT is currently receiving public submissions on the upgrade negotiations until 31 July. Submissions on the AANZFTA General Review which formed the basis for the current negotiations were received in October 2016. MFAT took further submissions on the AANZFTA upgrade in July 2019.

Draft for Discussion only. This document does not represent Government policy

**Brexit and possible UK-NZ free trade agreement (Ministry of Foreign Affairs and Trade)**

18. On Brexit, the Government is working hard to ensure any issues are resolved in a way that minimises potential disruption for New Zealand's trade. The proposals that the EU and the UK have made to cut back their WTO quotas would seriously disadvantage exporters from a number of countries – New Zealand included – who depend on the WTO quota access for products which otherwise face prohibitively high tariffs into the EU and UK.
19. New Zealand and the UK are well placed to enter into negotiations on a trade deal as soon as the UK has resolved issues around Brexit, and is ready to enter formal negotiations. Written submissions on a possible UK-NZ FTA were sought between November 2018 and February 2019.

**Singapore Closer Economic Partnership (CEP) Upgrade (Ministry of Foreign Affairs and Trade)**

20. Signed in 2000, the CEP entered into force in 2001. New Zealand and Singapore sought to upgrade the existing agreement, and these negotiations were completed in November 2018, and signed by Ministers in May 2019. The agreement is currently undergoing the parliamentary treaty examination process. The agreement was presented to Parliament on 23 July 2019 and referred to the Foreign Affairs, Defence and Trade Committee for consideration. The committee is currently seeking public submission to assist it with its examination of the agreement as part of the parliamentary treaty examination process.

**Investor-state dispute settlement (ISDS) protocol (Ministry of Foreign Affairs and Trade)**

21. The Government is developing an ISDS protocol, which would apply if it were ever to have an ISDS case brought against it, in which the Treaty of Waitangi exception in New Zealand's FTAs was likely to be relied upon. Initial consultations were conducted in the final quarter of 2018, and are informing the development of a draft protocol, which will be subject to further consultation in 2019.



Te Puni Kōkiri  
MINISTRY OF MĀORI DEVELOPMENT

Te Kāwanatanga o Aotearoa

# Wai 262 – Te Pae Tawhiti

## Targeted Engagement Report

Preliminary Proposals for Crown Organisation





## Introduction

---

1. This targeted engagement report presents a brief overview of the purpose and approach of the targeted engagement process conducted by Te Puni Kōkiri officials during August – October 2019 on Wai 262: Te Pae Tawhiti – preliminary proposals for Crown organisation.
2. It also provides a summary of the key themes from these engagements, which will inform reporting to Cabinet on this kaupapa in early 2020.

## Background

---

3. On 8 Paengawhāwhā (April) 2019, Cabinet agreed that the Minister for Māori Development develop a draft an all-of-government strategy to address the issues raised in the Wai 262 claim and following report. Cabinet made some preliminary decisions about how the Crown would organise itself to address Wai 262 issues.
4. Cabinet also agreed that Te Puni Kōkiri officials, along with officials from other agencies, would engage with key Māori groups and individuals with interests in Wai 262 about how the Crown would organise itself.
5. As part of its Paengawhāwhā (April) decisions, Cabinet agreed to establish a Ministerial Oversight Group, and authorised the Minister for Māori Development to approve, in consultation with the Ministerial Oversight Group, the approach to targeted engagement.

## Purpose of targeted engagement

---

6. The purpose of targeted engagement was to facilitate initial discussions on preliminary proposals for Crown organisation and possible strategic and cross-cutting issues within the designated subject areas, or 'Kete' focus areas. The full discussion document can be accessed on the [Te Puni Kōkiri website](#). A summary of the Preliminary Proposals for Crown Organisation is all attached at Appendix 1.
7. Feedback during this phase will inform how the government approaches this work, and how it engages with Māori and the wider public on this significant kaupapa.



## Approach of targeted engagement

---

8. The targeted engagement process commenced with a meeting between Minister for Māori Development and the representatives of the six original Wai 262 claimants, to acknowledge the foresight and wisdom of these individuals in bringing this claim to the Tribunal.
9. The Minister then attended the National Iwi Chairs Forum in Heretaunga on 28 August 2019 to announce the commencement of this programme of work, and of this period of targeted engagement.
10. The remaining part of the engagement process was conducted primarily through discussions in person, supported by the discussion document, and these discussions occurred in three ways:
  - a. Te Puni Kōkiri-led discussions with a number of national Māori organisations
  - b. discussion, in partnership with relevant Government agencies, with sectoral Māori reference groups established by many agencies
  - c. discussion, through a hui, with Māori academics and technical experts.
11. Letters were also sent out to all Post-Settlement Governance Entities (PSGEs) informing them of the Crown's proposals and inviting them to participate in targeted engagement as they saw fit.
12. Officials further engaged with any other Māori groups or individuals that wished to participate. Written feedback was also received. Details of organisations and individuals that participated in targeted engagement are included in Appendix 2.
13. Targeted engagement with the above groups continued through September and October 2019.

## Overview of feedback

---

14. Targeted engagement feedback was cautiously positive about the proposed Crown structure. Most saw this process as an important first step, and an opportunity to refocus

the relationship between Māori and the Crown, using the Wai 262: Te Pae Tawhiti work as a vehicle for working collaboratively together on what can be achieved.

15. The limited negative feedback officials heard related mainly to groups wanting more time to engage and think about their specific issues before they could respond effectively.

## Key themes

16. The main themes Te Puni Kōkiri officials heard were:

- a. *Providing clarity on what partnership means in practical terms, and enshrining a commitment to engaging Māori throughout the Wai 262 work:* Māori want clarity on what partnership means in practical terms, and a clear commitment to engaging Māori throughout the Wai 262 work. The current role of various Māori fora and organisations is to be considered in ongoing conversations. Upskilling the Crown on how it works with Māori is key to the success of this kaupapa.
- b. *Ensuring an inclusive process which addresses issues that are relevant to all iwi and Māori:* the Māori-Crown partnership needs to be reflected at all levels of the Kete structure to ensure the Crown's response addresses issues that are relevant to all iwi and Māori. Current agreements and processes in place need to be honoured. The Crown and Māori need to ensure whānau are at the centre of issues where appropriate, such as Alexander Turnbull library agreements with whānau. Building a broad political consensus for the kaupapa is essential.
- c. *Maintaining the mana of the original claim and recognising the importance of the kaitiaki role of the representatives of the claimant rūpū:* the next stage of work needs to recognise the importance of the kaitiaki role of the claimant group in overseeing the integrity of the process. The fundamental kaupapa of the claim needs to be held in mind during the development of the partnership approach and work programme going forward.
- d. *The Crown needs to ensure resources are available to both enable Māori engagement with the Crown and support Māori-to-Māori conversations:* the way resources are provided needs to reflect the time needed for Māori-to-Māori conversations and enable a Te Ao Māori approach to emerge.
- e. *The Crown's approach needs to be broad enough to support social and economic parity and the full range of Māori and Crown interests:* the structure appears to be a sensible start, but the scope of the work programme needs to be broadened. The





work needs to align with the present and future states of both Crown and Māori (including urban Māori) worlds and support social and economic parity. The Crown needs to develop a consistent approach to engaging with Māori and provide more clarity on the interconnectedness of the three Kete and how Wai 262 will be joined up to other work (some participants mentioned mānuka honey as an example of this).

- f. *More clarity is needed on the phasing and timeframes of the work:* there are interests in the details of the substantive work and on the nature and timing of further dialogue.

## Conclusion

---

17. Substantive feedback mostly focused on:

- a. what the Crown would be doing and who it would be doing it with
- b. the nature and quality of the future Māori-Crown relationship
- c. allowing more time for Māori-to-Māori conversations and ongoing resource for Māori engagement.

18. Most groups or individuals acknowledged the importance of the Crown taking a first step towards addressing Wai 262 issues, and many saw this process as an opportunity to refocus the partnership between Māori and the Crown.

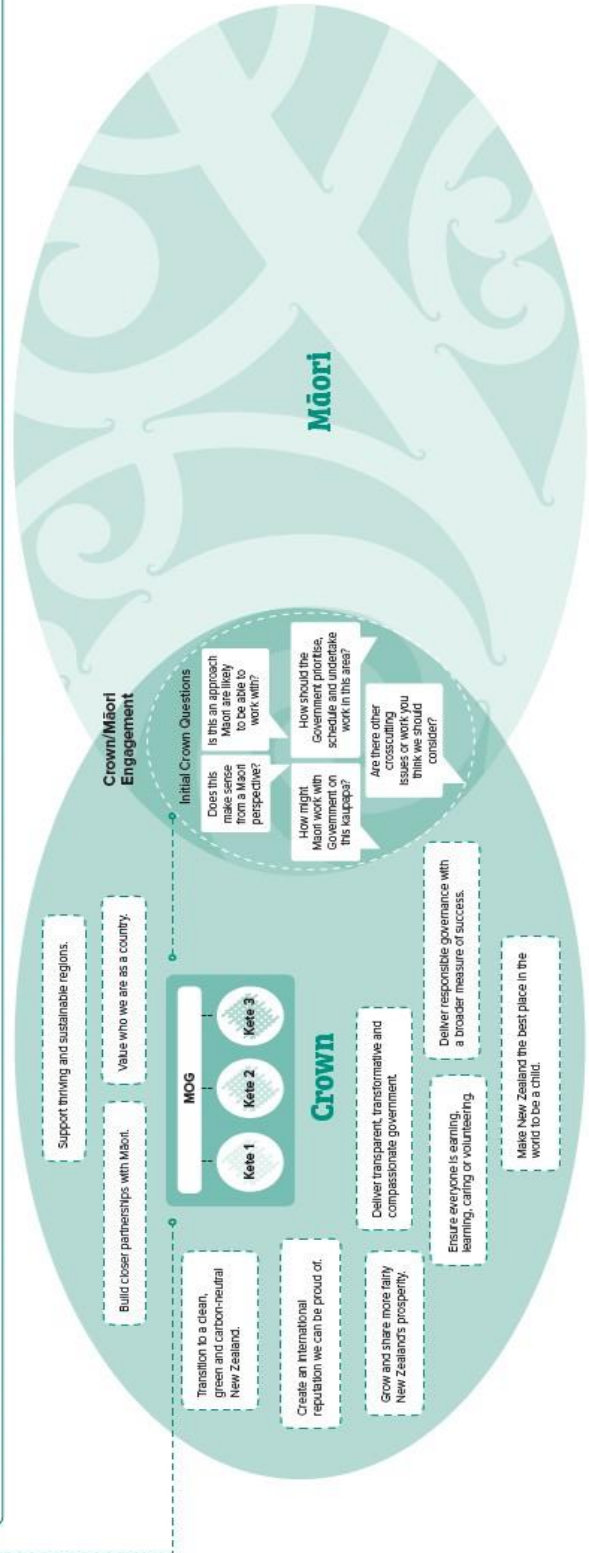
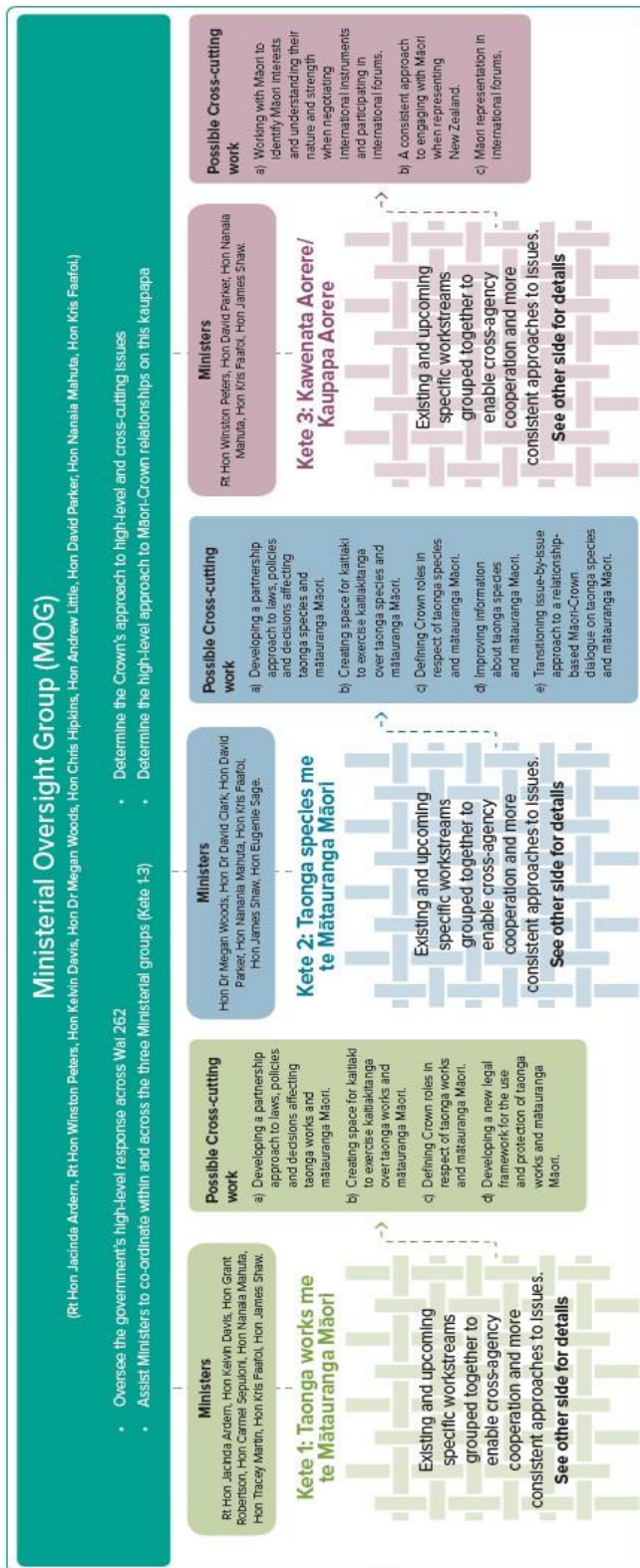
## Acknowledgement and next steps

---

- 19. Te Puni Kōkiri would like to express its sincere gratitude to all those who gave their time to provide their valuable feedback on these initial Crown proposals. This will form part of the report back to Cabinet in early 2020, to seek confirmation of the Crown organisational approach to Wai 262: Te Pae Tawhiti.
- 20. Updates on further engagements or substantive decisions will be made on the [Te Puni Kōkiri website](#).



## Wai 262 - Te Pae Tawhiti: Preliminary Proposals for Crown Organisation





### Kete 1: Taonga works me te Matauranga Maori

#### What is the scope of this Kete?

Some of the options for future collaborative work between Maori and the Crown in Kete 1 might include:

- a) **Kaitiakitanga**  
How can we better enable kaitiaki to more fully exercise kaitiakitanga over taonga works and matauranga Maori?
- b) **Protection**  
Should there be a new legal framework to protect taonga works and matauranga Maori? What should it look like?
- c) **Partnership**  
How should we make decisions affecting taonga works and matauranga Maori in New Zealand and who should make them?
- d) **Stewardship**  
How should the Crown manage taonga works and matauranga Maori? It holds? How should the Crown approach Maori data stewardship and governance issues? How can the Crown better manage its metadata to enable access to the matauranga Maori it holds?

#### What are the existing work programmes that sit within this Kete?

The Government has so far identified the following workstreams as being likely to involve issues related to those considered in *Ko Aotearoa Tēnei* in Kete 1 (Taonga Works me te Matauranga Maori):

- a) The review of the Copyright Act 1994
- b) The review of the Haka Ka Mate Attribution Act 2014
- c) Government data stewardship and Maori data governance
- d) The review of the Statistics Act 1975
- e) National Archival and Library Institutions (NALI) Ministerial Group
- f) Government Digital Strategy
- g) Refresh of Tau Mai Te Reo
- h) Review of the Te Ture mō Te Reo Maori Act 2016
- i) Maori Media Sector Shift



### Kete 2: Taonga species me te Matauranga Maori

#### What is the scope of this Kete?

Some of the options for future collaborative work between Maori and the Crown in Kete 2 might include:

- a) **Kaitiakitanga**  
How can we better enable kaitiaki to more fully exercise kaitiakitanga over taonga species and matauranga Maori?
- b) **Protection**  
How should we protect taonga species and matauranga Maori? How might better information systems about taonga species and matauranga Maori be developed?
- c) **Partnership**  
How should we make decisions affecting taonga species and matauranga Maori in New Zealand and who should make them? How we might transition Maori-Crown engagement on taonga species and matauranga Maori from a transactional, issue-by-issue approach to a relationship-based model?

#### What are the existing work programmes that sit within this Kete?

The Government has so far identified the following workstreams as being likely to involve issues related to those considered in *Ko Aotearoa Tēnei* in Kete 2 (Taonga Species me te Matauranga Maori):

- a) Development of a new national biodiversity strategy
- b) Responding to the Supreme Court's decision in *Ngarī Tai ki Tamaki Tīhaki Trust v Minister of Conservation*
- c) Improving access to cultural materials
- d) Comprehensive review of the resource management system
- e) Essential freshwater
- f) Developing a National Policy Statement on Indigenous Biodiversity
- g) Zero Carbon Bill
- h) Emissions Trading Scheme
- i) Matauranga Maori when presented as evidence in a decision-making hearing
- j) Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- k) Three Waters Review
- l) Review of the Plant Variety Rights Act 1987
- m) Consideration of whether there should be a 'disclosure of origin' requirement in the patent system
- n) Development of a resource strategy
- o) Review of the Crown Minerals Act 1991
- p) Health Services and Outcomes Inquiry Kaupapa inquiry (Wai 2575)
- q) Maori Health Action Plan
- r) Fisheries Change Programme
- s) Review of the Biosecurity Act 1993
- t) Forestry Strategy



### Kete 3: Kawenata Aorere/Kaupapa Aorere

#### What is the scope of this Kete?

The proposed focus for Kete 3 (Kawenata Aorere / Kaupapa Aorere) is:

- a) **Maori Interests at international level**  
How should the Crown work with Maori to identify Maori interests and the nature and strength of those interests when negotiating international instruments and participating in international forums?
- b) **Engaging with Maori**  
How should Government agencies engage with Maori when representing New Zealand?
- c) **Maori representation**  
How Maori should be represented in international forums?

#### What are the existing work programmes that sit within this Kete?

In Kete 3 existing, recent and upcoming Government workstreams of particular relevance include:

- a) Implementation of the 2001 Strategy for Engagement with Maori on international treaties
- b) The development of the Maori Crown Engagement Framework and Guidelines led by Te Arawhiti
- c) The development of a Trade for All agenda. One of the Trade for All agenda's key principles is "the creation of a genuine conversation with the public and key stakeholders around the future direction of New Zealand's trade policy; this will include consultation with Maori, consistent with their role as a Treaty partner".

As set out above, this Kete is primarily focused on the Crown relationship with Maori in the area of international instruments. To provide further context, the following are examples of existing or potential future international instruments and related kaupapa on which the Crown is currently engaging with Maori and will need to be mindful of the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*:

- a) New Zealand's development of a plan on the United Nations Declaration on the Rights of Indigenous Peoples
- b) World Intellectual Property Organisation negotiations in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
- c) New Zealand's participation in the United Nations Permanent Forum on Convention on Biological Diversity
- d) United Nations Agreement on Biodiversity Beyond National Jurisdiction negotiations
- e) UNFCCC/Paris Agreement/climate change negotiations
- f) E-commerce negotiations at the World Trade Organization
- g) Digital Economic Partnership Agreement (DEPA) negotiations with Chile and Singapore
- h) Various free trade agreements and related work.





## Appendix 2: Participation in Targeted Engagement

1. The following table outlines the National Māori Organisations that were invited and participated in discussions.

Organisation	Invited	Participated in discussions
Te Kaunihera Māori o Aotearoa – New Zealand Māori Council	Yes	No
FOMA – Federation of Māori Authorities	Yes	Yes
Te Rōpu Wahine Māori Toko I te Ora - Māori Women's Welfare League Inc.	Yes	No
Te Hunga Rōia Māori o Aotearoa – The Māori Law Society	Yes	Yes (including a written submission)
NUMA – National Urban Māori Authority	Yes	No
Te Ohu Kai Moana – Māori Fisheries Trust	Yes	Yes
Wairoa-Waikaremoana Trust Board	Yes	No
Te Tumu Paeroa	Yes	No
Māori Women's Development Incorporated	Yes	Yes
Te Waka Kai Ora	Yes	Yes

### Sectoral Māori Reference Groups

2. All Crown agencies involved with the work agreed to contact their sectoral Māori Reference Groups to offer an opportunity to discuss the Crown proposals.
3. The following sectoral Māori Reference Groups invited Te Puni Kōkiri to present and discuss the Government's preliminary proposals for Crown Organisation.
  - a. Te Taumata – Ministry of Foreign Affairs and Trade
  - b. Plant Variety Rights Māori Rōpū
  - c. Te Kōmiti Māori, National Library
  - d. Library Information and Advisory Group
  - e. Guardians Kaitiaki, National Library
  - f. Te Ara Putaiao, Crown Research Institutes
  - g. Archives Council and Te Pae Whakawairua, Archives New Zealand
4. The peak Māori education hui organised by the Ministry of Education was also advised of the work; participants did not take up an offer of further engagement.

### Māori Academics and Technical Experts

5. A hui was held in Wellington on 23 October 2019. Written feedback was received from one individual.





**Te Puni Kōkiri**  
MINISTRY OF MĀORI DEVELOPMENT

Te Puni Kōkiri, Te Puni Kōkiri House, 143 Lambton Quay, PO Box 3943, Wellington, New Zealand

**PHONE** Waea 0800 875 663 (0800 TPK MMD), **FAX** Waea Whakaahua 0800 875 329 (0800 TPK FAX)

**WEB** [tpk.govt.nz](http://tpk.govt.nz), **FACEBOOK** [facebook.com/tepunikokiri](https://facebook.com/tepunikokiri)