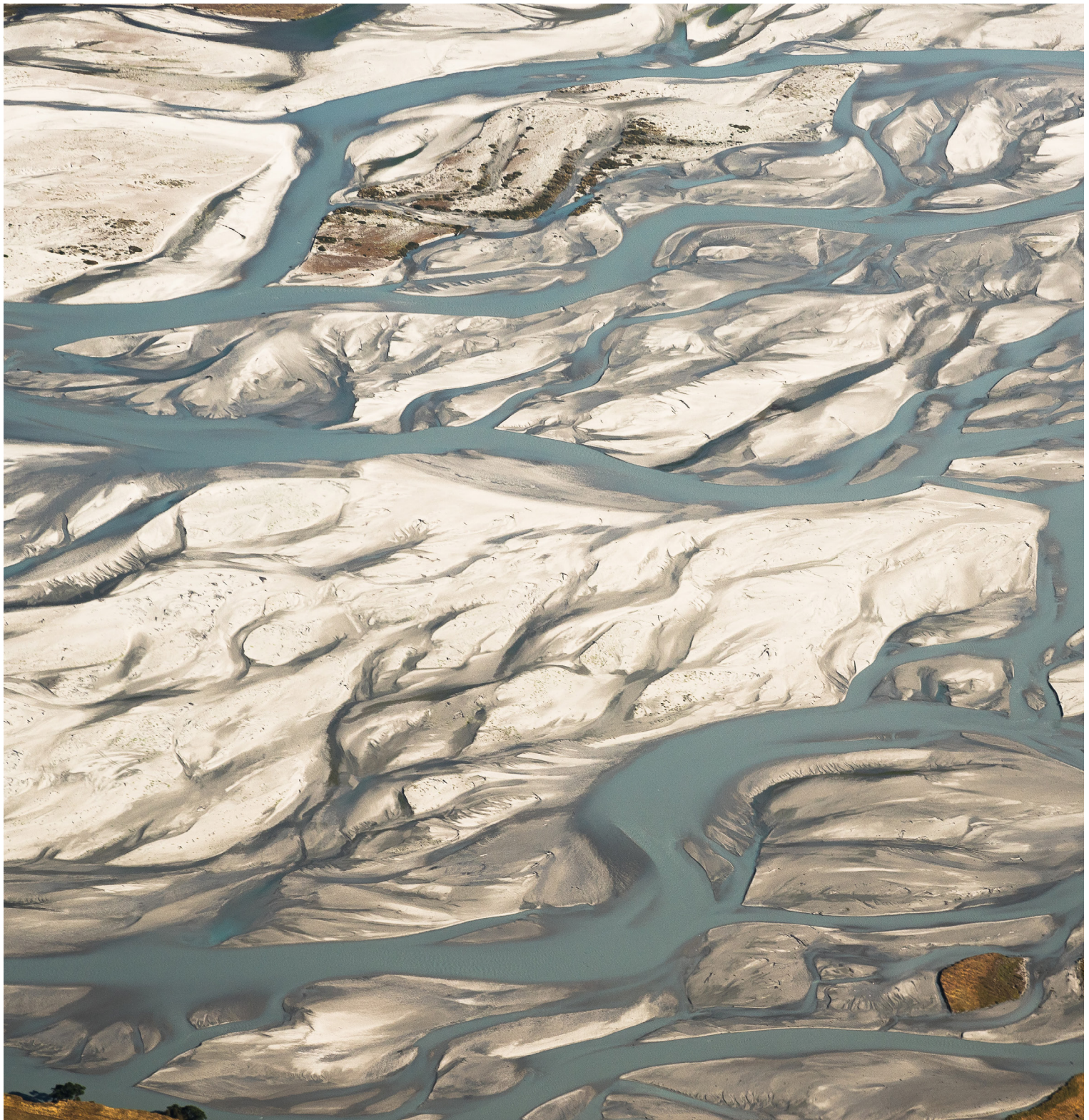




Te Puni Kōkiri
MINISTRY OF MĀORI DEVELOPMENT

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



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Cover Photo: The cover depicts the braided Dart River Te Awa Whakatipu in Te Waipounamu/South Island which reflects the journey both to date and in front of us. Like a river, the WAI 262 kaupapa has many sources, and the korero arising from it travel through many parallel and interweaving courses. Its' end point – Te Pae Tawhiti is a singular channel where Māori and the Crown meet together in partnership as envisioned in *Ko Aotearoa Tēnei*, shaping the future course of Aotearoa New Zealand as they move together.

Photo Credit: Matt Lamers on Unsplash.



Tēnā koutou

Whāia te pae tawhiti kia tata

Whakamaua te pae tata kia tina

Ko tōna hononga – he whare me hanga ngātahi

E ngā 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*. *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 as envisioned by *Ko Aotearoa Tēnei*. *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.

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 our taonga. It has taken some 28 years since the claim was lodged for our country to commence this important conversation about the recognition of traditional knowledge, our unique species and taonga. What we do to protect this body of knowledge today will enhance the legacy inherited by the next generation of mokopuna.

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, through the Crown organising itself and focusing consciously on Wai 262 issues, there will be at least three important effects:

- First, it will create a partnership framework as envisioned by *Ko Aotearoa Tēnei* to engage Government agencies and Māori in progressing these issues.
- 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 enable the Crown to actively uphold the principles of protection, participation and partnership as we consider the current and future opportunities relating to traditional knowledge.

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



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)*.
2. The first step in this process was for the Minister for Māori Development to meet with representatives of the six original Wai 262 claimants. Recognition of the original claimants and their foresight and vision to protect a Māori worldview and traditional knowledge is an important step to begin the next phase of this journey.
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*.
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.
8. We have written this document primarily to support and facilitate kanohi ki te kanohi 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.
9. For more details see the section *Your views on the proposed approach* on page 25.

The Wai 262 Inquiry and Ko Aotearoa Tēnei

10. 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.
11. These summaries do not purport to be definitive descriptions of what the Wai 262 claim, the Wai 262 Inquiry and *Ko Aotearoa Tēnei* were about. Others will likely want to offer alternative or additional accounts of this kaupapa as well. We welcome those views¹.

A brief summary of the Wai 262 Inquiry

12. 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).
13. 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:²

"te tino rangatiratanga o te Iwi Māori in respect of indigenous flora and fauna *me o rātou taonga katoa*³ (and all their treasures) including but not limited to mātauranga, 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."

¹ For details see *Your views on the proposed approach* on page 25.

² 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/>

³ Original emphasis.



14. 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:⁴
- Decision-making authority over the conservation, control of, and proprietary interests in natural resources including indigenous flora and fauna *me o rātou taonga katoa*
 - 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*
 - 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
 - The right to control and make decisions about the propagation, development, transport, study or sale of indigenous flora and fauna
 - 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
 - A right to environmental well-being dependent upon the nurturing and wise use of indigenous flora and fauna
 - The right to participate in, benefit from and make decisions about the application, development, uses and sale of *o rātou taonga katoa*
 - The right to protect, enhance and transmit the cultural and spiritual knowledge and concepts found in *o rātou taonga katoa*.
15. 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.
16. 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.
17. 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.

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



18. The inquiry focused mainly on the Crown’s existing laws, policies and practices instead of the Crown’s historical actions. A key focus was 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.

Ko Aotearoa Tēnei

19. 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.
20. 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.
21. The inquiry itself took 20 years from the time the claim was lodged to the release of the report *Ko Aotearoa Tēnei*.



22. 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.
23. 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.⁵ See also pages 1-10 of *Ko Aotearoa Tēnei*, Te Taumata Tuarua (Volume 1).⁶

⁵ The paper can be found here: https://wai262.weebly.com/uploads/7/4/6/3/7463762/history_wai_262.pdf

⁶ *Ko Aotearoa Tēnei* can be found here: <https://www.waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>



Crown actions following *Ko Aotearoa Tēnei*

24. In December 2018, Hon Minister Mahuta provided a [Section 81 Report](#)⁷ 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:⁸

"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."

25. The feature section 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*.

⁷ <https://www.tpk.govt.nz/en/a-matou-mohiotanga/crownmaori-relations/the-section-81-report>

⁸ Page 7 of the 2018 Section 81 report.



Proposed Government organisational structure

26. 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:
- exploring ways Wai 262 issues could be addressed in existing and upcoming government workstreams
 - seeking to apply a more holistic and coordinated approach across government to Wai 262 issues
 - 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.
 - creating a process that enables the Crown and Māori to discuss how to move forward on these issues in a spirit of partnership.

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

27. 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.
28. 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.



29. 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, including responses 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.

30. 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 issues⁹, 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.

31. We discuss the Government’s proposed approach in more detail below.

High-level overview of the Government’s proposed organisational structure

32. 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.

33. 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 proposes¹⁰ to establish:

⁹ 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.
¹⁰ 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.



- a. three Ministerial groups consisting of Ministers with strong portfolio links to the following three broad kete¹¹ of issues:
 - i. Kete 1: Taonga works¹² me te mātauranga Māori
 - ii. Kete 2: Taonga species¹³ me te mātauranga Māori
 - iii. Kete 3: Kawenata Aorere / Kaupapa Aorere
- b. a Ministerial oversight group, given the breadth and significance of the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*.

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



35. 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.

¹¹ The names of the kete or baskets draw on key terms that feature in *Ko Aotearoa Tēnei*.
¹² 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.
¹³ 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.



Ministerial groups for the three kete of issues

36. 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.
37. 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		
	Associate Ministers for Arts, Culture and Heritage	Hon Grant Robertson	Chapter 5 (Te Reo Māori)	
		Hon Carmel Sepuloni		
	Minister for Māori Development; Minister of Local Government	Hon Nanaia Mahuta		Chapter 6 (When the Crown Controls Mātauranga Māori)
	Minister of Internal Affairs	Hon Tracey Martin		
	Minister of Commerce and Consumer Affairs; Minister of Broadcasting, Communications and Digital Media	Hon Kris Faafoi		
Hon James Shaw				
Minister of Statistics	Hon James Shaw			

Kete	Portfolios	Ministers (as at July 2019)	Chapters of <i>Ko Aotearoa Tēnei</i>
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	
	Minister for the Environment	Hon David Parker	Chapter 3 (Relationship with the Environment)
	Minister for Māori Development; Minister of Local Government; Associate Minister for the Environment	Hon Nanaia Mahuta	
	Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	Chapter 4 (Taonga and the Conservation Estate)
	Minister for Climate Change	Hon James Shaw	
Minister of Conservation	Hon Eugenie Sage	Chapter 7 (Rongoā Māori)	
Kete 3: Kawenata Aorere / Kaupapa Aorere	Minister of Foreign Affairs		Rt Hon Winston Peters
	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	

38. The current kete structure is a proposal. At the moment, officials are trialling the kete approach within government and the Minister for Māori Development is leading this work at a Ministerial level. Other Ministers may also join kete as the Crown continues to identify work that belongs within each kete.
39. Feedback from Māori as part of this engagement may result in changes to the structure.



Ministerial Oversight Group

40. 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.

41. 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.

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

Ministerial Oversight Group		
Portfolios	Ministers (as at July 2019)	Chapter of <i>Ko Aotearoa Tēnei</i>
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	

Intended benefits of the proposed Government organisational structure

43. 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, kaitiakitanga 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.
44. 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

45. In this section, we discuss a potential work programme for each kete. This includes:
- options for future collaborative work
 - existing workstreams that the Government has so far identified as being likely to involve Wai 262 issues.
46. The work will involve some existing and upcoming workstreams that are likely to involve 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.
47. 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.
48. There is also scope to consider potential cross-cutting work within each kete and for the overall Wai 262 kaupapa. In this section, 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.
49. Appendices B, C, and D provide a brief summary of each of the existing and upcoming workstreams listed below. These workstreams 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 workstreams.



Kete 1: Taonga works me te Mātauranga Māori

What is the scope of this Kete?

50. Some of the options for future collaborative work between Māori and the Crown in Kete 1 might include:
- Kaitiakitanga**
How can we better enable kaitiaki to more fully exercise kaitiakitanga over taonga works and mātauranga Māori?
 - Protection**
Should there be a new legal framework to protect taonga works and mātauranga Māori? What should it look like?
 - Partnership**
How should we make decisions affecting taonga works and mātauranga Māori in New Zealand and who should make them?
 - Stewardship**
How should the Crown manage taonga works and mātauranga Māori it holds? How should the Crown approach Māori data stewardship and governance issues? How can the Crown better manage its metadata to enable access to the mātauranga Māori it holds?

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

51. 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 Mātauranga Māori):
- The review of the Copyright Act 1994
 - The review of the Haka Ka Mate Attribution Act 2014
 - Government data stewardship and Māori data governance
 - The review of the 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 mō Te Reo Māori Act 2016
 - Māori Media Sector Shift.
52. **Appendix B** has more details on each of these.



Kete 2: Taonga species me te Mātauranga Māori

What is the scope of this Kete?

53. Some of the options for future collaborative work between Māori and the Crown in Kete 2 might include:
- Kaitiakitanga**
How can we better enable kaitiaki to more fully exercise kaitiakitanga over taonga species and mātauranga Māori?
 - Protection**
How should we protect taonga species and mātauranga Māori? How might better information systems about taonga species and mātauranga Māori be developed?
 - Partnership**
How should we make decisions affecting taonga species and mātauranga Māori in New Zealand and who should make them? 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?

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

54. 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 Mātauranga Māori):
- Development of a new national biodiversity strategy
 - Responding to the Supreme Court's decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation*
 - Improving access to cultural materials
 - Comprehensive review of the resource management system
 - Essential Freshwater
 - Developing a National Policy Statement on Indigenous Biodiversity
 - Zero Carbon Bill
 - Emissions Trading Scheme
 - Mātauranga Māori when presented as evidence in a decision-making hearing
 - 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 Kaipapa Inquiry (Wai 2575)
- q. Māori Health Action Plan
- r. Fisheries Change Programme
- s. Review of the Biosecurity Act 1993
- t. Forestry Strategy.

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



Kete 3: Kawenata Aorere / Kaipapa Aorere

What is the scope of this Kete?

56. The proposed focus for Kete 3 (Kawenata Aorere / Kaipapa Aorere) is:

- a. **Māori interests at international level**
How should 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. **Engaging with Māori**
How should Government agencies engage with Māori when representing New Zealand?
- c. **Māori representation**
How Māori should be represented in international forums?

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

57. 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".

58. As set out above, this kete is primarily focused on the Crown relationship with Māori 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 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. UNFCCC/Paris Agreement/climate change negotiations
- g. E-Commerce negotiations at the World Trade Organization
- h. Digital Economic Partnership Agreement (DEPA) negotiations with Chile and Singapore
- i. Various free trade agreements and related work:
 - a. European Union/New Zealand free trade agreement negotiations
 - b. Regional Comprehensive Economic Partnership negotiations
 - c. Pacific Alliance free trade agreement negotiations
 - d. China free trade agreement upgrade negotiations
 - e. ASEAN Australia New Zealand free trade agreement upgrade negotiations
 - f. Brexit and possible UK-NZ FTA
 - g. Singapore Closer Economic Partnership (CEP) Upgrade
 - h. Investor-State Dispute Settlement protocol.

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

Your views on the proposed approach

60. 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.

61. The purpose of this document is primarily to support 'kanohi ki te kanohi' conversations. 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

62. We would also be interested to hear any other views you would like to share during these September and October 2019 conversations.

63. If you want to send us written feedback, you can share your views on the Crown's initial proposals for organising itself by sending us an email at: wai262@tpk.govt.nz



Timeframes

64. We would like to have conversations with interested Māori during September and October 2019.
65. 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.
66. 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.



Appendix

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

Ministerial Oversight Group (MOG)

(Rt Hon Jacinda Ardern, Rt Hon Winston Peters, Hon Kelvin Davis, Hon Dr Megan Woods, Hon Chris Hipkins, Hon Andrew Little, Hon David Parker, Hon Nanaia Mahuta, Hon Kris Faafoi)

- Oversee the government's high-level response across Wai 262
- Assist Ministers to 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 Māori-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 a partnership approach to laws, policies and decisions affecting taonga works and mātauranga Māori.
- Creating space for kaitiaki to exercise kaitiakitanga over taonga works and mātauranga Māori.
- Defining Crown roles 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 workstreams grouped together to enable cross-agency cooperation and more consistent approaches to issues.
See other side for details

Ministers
Hon Dr Megan Woods, Hon Dr David Clark, Hon David Parker, Hon Nanaia Mahuta, Hon Kris Faafoi, Hon James Shaw, Hon Eugenie Sage.

Kete 2: Taonga species me te Mātauranga Māori

Possible Cross-cutting work

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

Existing and upcoming specific workstreams grouped together to enable cross-agency cooperation and more consistent approaches to issues.
See other side for details

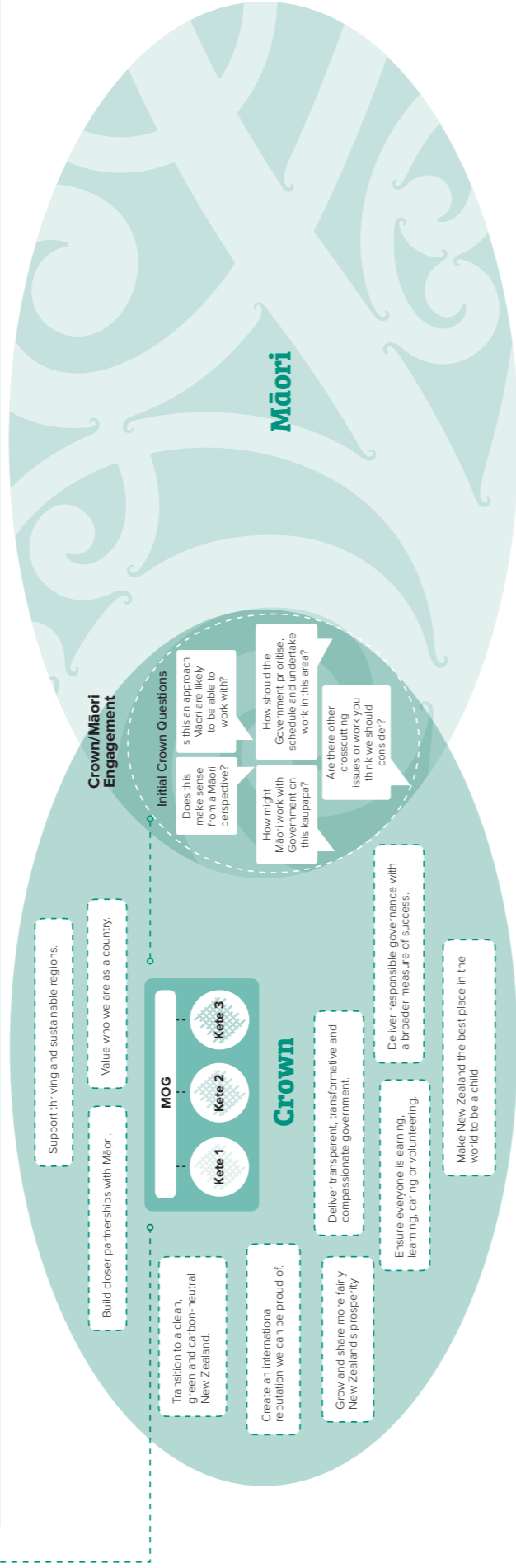
Ministers
Rt Hon Winston Peters, Hon David Parker, Hon Nanaia Mahuta, Hon Kris Faafoi, Hon James Shaw.

Kete 3: Kawenata Aoreore/Kaupapa Aoreore

Possible Cross-cutting work

- Working with Māori to identify Māori interests and understanding their nature and strength when negotiating international instruments and participating in international forums.
- A consistent approach to engaging with Māori when representing New Zealand.
- Māori representation in international forums.

Existing and upcoming specific workstreams grouped together to enable cross-agency cooperation and more consistent approaches to issues.
See other side for details



Taonga works me te Mātauranga Māori

What is the scope of this Kete?

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

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

- The review of the Copyright Act 1994
- The review of the Haka Ka Mate Attribution Act 2014
- Government data stewardship and Māori data governance
- The review of the 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 mō Te Reo Māori Act 2016
- Māori Media Sector Shift



Taonga species me te Mātauranga Māori

What is the scope of this Kete?

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

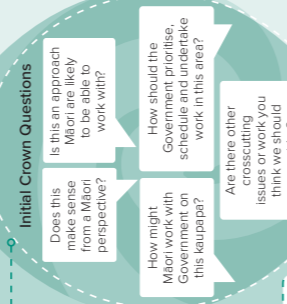
- Kaitiakitanga**
How can we better enable kaitiaki to more fully exercise kaitiakitanga over taonga species and mātauranga Māori?
- Protection**
How should we protect taonga species and mātauranga Māori? How might better information systems about taonga species and mātauranga Māori be developed?
- Partnership**
How should we make decisions affecting taonga species and mātauranga Māori in New Zealand and who should make them? 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?

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 Mātauranga Māori):

- Development of a new national biodiversity strategy
- Responding to the Supreme Court's decision in *Ngāi Tai ki Tamaki Tīhaki Trust v Minister of Conservation*
- Improving access to cultural materials
- Comprehensive review of the resource management system
- Essential freshwater
- Developing a National Policy Statement on Indigenous Biodiversity
- Zero Carbon Bill
- Emissions Trading Scheme
- Mātauranga Māori when presented as evidence in a decision-making hearing
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- Three Waters Review
- Review of the Plant Variety Rights Act 1987
- 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 1991
- Health Services and Outcomes Inquiry Kaupapa Inquiry (Wai 2575)
- Māori Health Action Plan
- Fisheries Change Programme
- Review of the Biosecurity Act 1993
- Forestry Strategy.

Crown/Māori Engagement



Kete 3: Kawenata Aoreore/Kaupapa Aoreore

What is the scope of this Kete?

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

- Māori interests at international level**
How should 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?
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How should Government agencies engage with Māori when representing New Zealand?
- Māori representation**
How Māori 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:

- 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
- 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".

As set out above, this kete is primarily focused on the Crown relationship with Māori 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 Māori and will need to be mindful of the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*:

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

Appendix B

Brief summary of existing and upcoming workstreams in Kete 1

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

4. The Ministry of Business, Innovation and Employment (MBIE) 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.
5. In the Issues Paper, MBIE sought feedback on establishing a new workstream to consider the taonga works recommendations in *Ko Aotearoa Tēnei* while the Copyright Act review is still underway.

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

6. 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)

7. 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.
8. 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)

9. 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.

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

10. 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).
11. 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. Te Puni Kōkiri and the State Services Commission are also involved, whose Ministers are involved in the Ministerial Group.
12. 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)

13. 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)

14. 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 workstreams 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)

15. 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 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)

16. 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 the structure of the Māori media sector and how the Government can support the most effective and efficient way of funding and producing te reo Māori and Māori content to achieve the best outcomes.
17. 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 workstreams in Kete 2

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

1. Department of Conservation (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 2019, 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/whānau 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/whānau are continuing.

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 o Waitangi, 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.
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 (ETS) 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 New Zealand ETS.
16. The Ministry for the Environment 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 Environmental Protection Authority (EPA) has developed a three-year work programme to increase the understanding of mātauranga across the EPA. This will 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.
18. The programme and tools are being developed in collaboration with members and kaumātua of Te Herenga, the EPA's network of Māori environmental managers, and its statutory Māori Advisory Committee, Ngā Kaihautū Tikanga Taiao. In early 2020, 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 (PVR) 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 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) requires New Zealand to align its regime with UPOV 91, the most recent version of the international 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. Public consultation is expected to begin during 2019.

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.

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

35. 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.
36. 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.
37. 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.



Biosecurity Act review (Ministry for Primary Industries)

38. 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.
39. MPI has identified this as a core part of the overhaul of the Biosecurity Act, and established a Māori engagement workstream 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)

40. 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.
41. 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).
42. 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 (*Ko Aotearoa Tēnei*).
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.



- 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)

- 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.
- 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)

- 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).
- 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)

- New Zealand, together with around 80 members at the World Trade Organisation (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)

- 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)

- 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)

- 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 (RCEP) (Ministry of Foreign Affairs and Trade)

- 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)

- 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 Free Trade Agreement (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 Free Trade Agreement (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. Ministry of Foreign Affairs and Trade took further submissions on the AANZFTA upgrade in July 2019.

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 World Trade Organisation (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.



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