

27 June 2025

File Ref: OIA 50405



Tēnā koe 

### Official Information Act request

Thank you for your information request dated 8 April 2025. You asked for the following information:

*"...I am interested in TPK's work looking into and developing a sui generis means to protect mātauranga Māori. Could you please provide me with the following:"*

- *Project terms of reference, reports, memoranda, executive summaries, all communications (including, but not limited to, emails and Teams chats), presentation slides and notes, and meeting minutes, relating to the Te Pae Tawhiti team's mahi in developing a sui generis intellectual property policy and legal system for mātauranga Māori and other taonga (as referred to on TPK's website: <https://www.tpk.govt.nz/en/a-matou-whakaarotau/te-ao-maori/wai-262-te-pae-tawhiti>).*
- *As relevant, reports, memoranda, executive summaries, all communications (including, but not limited to, emails and Teams chats), presentation slides and notes, and meeting minutes from other TPK staff (other than Te Pae Tawhiti) regarding the development of sui generis protection of mātauranga Māori.*
- *The slides that Any Wikaira (from the Te Pae Tawhiti team) presented, as reported on TPK's website: <https://www.tpk.govt.nz/en/mo-te-puni-kokiri/our-stories-and-media/protecting-indigenous-knowledge-he-toa-takitini>.*
- *Any draft legislation or text towards a Bill relating to the development of sui generis protection of mātauranga Māori.*
- *An update on where the Te Pae Tawhiti project is at, especially as it relates to the development of sui generis protection of mātauranga Māori"*

On 2 May 2025, you clarified the scope of the request to include the following:

*Documents, since 2021, that have been provided to the Minister for Māori Development or other decision makers on how to protect mātauranga Māori relating to:*

- *Domestic policies, namely:*
  - *PVR*
  - *Toi Māori/Cultural Expressions and Digital information*
  - *Bioprospecting*
  - *Therapeutics and Natural Health Products as well as its relationship with rongoā;*
- *The prioritisation and progress of work regarding a 'sui generis' system; and*

- *International policies, including international commitments and agreements related to genetic resources and traditional knowledge.*

On 30 May 2025 you were notified of an extension of the timeframe for the response, to enable time for consultations. I am now in a position to respond.

Your request has been considered in accordance with the Official Information Act 1982 (the Act).

20 documents have been identified in scope of your request. The documents and my decisions with regard to the release of the information are set out in the table attached as Appendix A.

Some information has been withheld in accordance with the Act on the following grounds:

- Section 9(2)(a) - which applies to protect the privacy of natural persons;
- Section 9(2)(f)(iv) - which applies to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials, this includes information under active consideration;
- Section 9(2)(g)(i) - which applies to maintain the effective conduct of public affairs through the free and frank expression of opinions;
- Section 9(2)(j), which applies to enable the Crown to negotiate without disadvantage or prejudice.

In relation to information that has been withheld under section 9 of the Act, I am of the opinion that there are no countervailing considerations that make it desirable, in the public interest, to make the information available at this time.

I trust my response satisfies your request.

You have the right to seek an investigation and review by the Ombudsman of this response. 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. We will not publish your name, address or contact details.

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

Ngā mihi



Paula Rawiri  
Hautū, Te Puni Kaupapa | Deputy Secretary, Policy

Appendix A: Documents OIA request from [REDACTED] dated 8 April 2025

Item	Date	Document description	Decision
1.	18 May 2021	Briefing Paper 43249: <i>Te Pae Tawhiti: Wai 262 - Mānuka</i>	Released with some information withheld under sections 9(2)(a) and 9(2)(g)(i)
2.	20 August 2021	Briefing Paper 43807: Plant Variety Rights Bill Note: Certain information contained in this paper is out of scope.	Released with some information withheld under section 9(2)(a)
3.	08 September 2021	Briefing Paper 43805: <i>Bioprospecting: Protecting and Promoting Māori interests</i>	Released with some information withheld under section 9(2)(a)
		Attachment One: Flow chart showing operation of proposed bioprospecting regime	Released in full
		Attachment Two: Bioprospecting experiences of Australia and Canada	Released in full
		Attachment Three: Ko Aotearoa Tēnei commentary and recommendations on bioprospecting	Released in full
		Attachment Four: Summary of previous Crown work on bioprospecting	Released in full
4.	15 September 2021	Aide Memoire 43967: <i>Hui on the review of the Plant Variety Rights Bill with Hon Dr David Clark</i>	Released with some information withheld under section 9(2)(a)

5.	05 November 2021	Briefing Paper 44242: <i>Plant Variety Rights Bill: Appeals to the Māori Appellate Court</i>  Note: Certain information contained in this paper is out of scope.	Released with some information withheld under section 9(2)(a)
		Attachment One: Briefing Paper: <i>Plant Variety Rights: Appeal pathway for Māori Plant Varieties Committee Decisions</i>	Released with some information withheld under section 9(2)(a)
6.	17 January 2022	Aide Memoire 44531: <i>Engagement with Māori on Digital Sequence Information</i>	Released with some information withheld under section 9(2)(a)
		Annex One: Detailed calendar of domestic DSI engagement to inform GBF negotiations	Released in full
		Annex Two: List of identified key stakeholders for DSI in Aotearoa	Released with some information withheld under section 9(2)(a)
7.	1 February 2022	Cabinet Paper: <i>Te Tumu mō te Pae Tawhiti</i>  Note: This paper has been proactively released here: <a href="#">Te Tumu mō te Pae Tawhiti</a>	Refused in full under section 18(d)
8.	24 May 2022	Briefing Paper 44953: <i>Te Pae Tawhiti: Working Outcomes</i>	Released with some information withheld under section 9(2)(a)
9.	23 September 2022	Briefing Paper 45892: <i>Te Pae Tawhiti Strategic Options</i>	Released with some information withheld under section 9(2)(a)

10.	03 November 2022	Aide Memoire 46118: <i>7 November 2022 with Minister Henare For meeting on: Therapeutic Products Bill</i>	Released with some information withheld under section 9(2)(a)
11.	8 November 2022	Briefing Paper 46095: <i>Te Pae Tawhiti - Legislation Programme Bids</i>	Released with some information withheld under section 9(2)(a)
		Attachment 1: Biodiscovery Bill: Request for Priority in the 2023 Legislation Programme	Withheld in full under section 9(2)(f)(iv)
		Attachment 2: Mātauranga Māori Bill: Request for Priority in the 2023 Legislation Programme	Withheld in full under section 9(2)(f)(iv)
12.	14 December 2023	Briefing Paper 47995: <i>Diplomatic Conference – International Instrument on Genetic Resources and Traditional Knowledge</i>	Released with some information withheld under section 9(2)(a)
		Appendix One: International Treaties, Steps of Ratification	Released in full
13.	19 December 2023	Briefing Paper 47996: <i>Provenance across the value chain unlocking Māori innovation opportunities here and abroad</i>	Released with some information withheld under sections 9(2)(a), 9(2)(f)(iv) and 9(2)(j)
		Annex One: Existing Cabinet agreed cross government approach	Released in full
		Annex Two: Policy into Practice summary	Released in full
14.	02 May 2024	Aide Memoire 48586: <i>World Intellectual Property Organisation - Diplomatic Conference</i>	Released with some information withheld under 9(2)(a)

15.	11 September 2024	Briefing Paper 49383: <i>Biotechnology Value Chain – Landscape and Opportunities</i>	Released with some information withheld under sections 9(2)(a) and 9(2)(f)(iv)
		Appendix One: Overview of the biotechnology landscape across the value chain	Released in full
		Appendix Two: Proposed key messages for Ministerial colleagues	Released with some information withheld under section 9(2)(f)(iv)
16.	16 September 2024	Ministerial consultation 49563: <i>On integrated artificial intelligence work programme</i>	Released with some information withheld under sections 9(2)(a) and 9(2)(g)(i)
17.	24 September 2024	Ministerial consultation 49633: <i>Amplify: A Creative and Cultural Strategy for New Zealand 2024-2030</i>	Released in full
18.	22 October 2024	Memorandum: <i>Plant Variety Rights: Māori Plant Varieties Committee - Proposed Candidates for Appointment</i>  Note: Attachments to this memo are out of scope.	Released in full
19.	22 November 2024	Briefing Paper 71626: <i>World Intellectual Property Organization Intergovernmental Committee: agreement on approach and simplified mandate</i>	Released with some information withheld under sections 9(2)(a) and 9(2)(j)
		Appendix One: New Zealand's current negotiating mandate [CAB-23-MIN-0213 refers]	Withheld in full under section 9(2)(j)

20.	16 December 2024	Briefing Paper 71696: <i>Biodiscovery Framework – Engagement Report Back and Next Steps</i>	Released with some information withheld under sections 9(2)(a) and 9(2)(f)(iv)
		Attachment 1: Proposed Future State for Biodiscovery in Aotearoa New Zealand	Released with some information withheld under sections 9(2)(f)(iv) and 9(2)(g)(i)

## HEI WHAKATAU | BRIEFING

### Te Pae Tawhiti: Wai 262 - Mānuka

<b>Date:</b>	18 Haratua 2021	<b>Priority</b>	Medium
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	43249

Action sought	Date action required by
<p>It is recommended that you:</p> <ol style="list-style-type: none"> <li><b>note</b> the Mānuka Charitable Trust have requested additional crown support of \$1.6 million in 2021 and may need up to a further \$1 million per year in 2022 and 2023 to cover the additional costs of the certification trademark applications in New Zealand, China and the United Kingdom</li> <li><b>agree</b> to discuss the Trust's request for additional funding with relevant ministers including the Hon Grant Robertson, Minister of Finance; Hon Damien O'Connor, Minister of Agriculture, for Biosecurity and for Rural Communities, and Minister for Trade and Export Growth; and Hon Stuart Nash, Minister for Economic and Regional Development, to determine their appetite for providing additional crown funding</li> <li><b>agree</b> protection of iwi and hapū rights and interests in mānuka is directly relevant to Te Pae Tawhiti: Wai 262</li> <li><b>agree</b> Te Puni Kōkiri should provide a one-off grant of \$400,000 to support the new executive chair position at the Trust's subsidiary operating company Te Pitau Limited.</li> </ol>	19 Haratua 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone	Mobile	1 <sup>st</sup> contact
Geoff Short	Deputy Secretary Policy	9(2)(a)		√
Tāmati Olsen	Director			
Laine Fisher	Project Lead			

Other Agencies Consulted					
<input checked="" type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input checked="" type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input type="checkbox"/> MHUD	<input type="checkbox"/> Other				

<b>Attachments</b>	No attachments
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Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments:

Forward to:	✓ or ✗
• Minister for Māori Development	
• Parliamentary Under-Secretary, Trade and Export Growth	

RELEASED UNDER THE OFFICIAL INFORMATION ACT



19 Haratua 2021

Associate Minister for Māori Development

## Te Pae Tawhiti: Wai 262 - Mānuka

### Purpose

1. To provide you with further information on how Te Pae Tawhiti: Wai 262 project could support the Mānuka Charitable Trust following your meeting with the Trustees on 5 Haratua 2021.

### Background

2. Honey from mānuka (*Leptospermum scoparium*) is an exceptionally high value consumer product, generating domestic and international sales revenue of approximately \$300 million annually and growing. Mānuka honey is often able to command a premium in the market due to the asserted medicinal properties derived from mānuka.
3. In Hereturikōkā 2019, Regional Economic Development Ministers approved in principle a Provincial Growth Fund application for \$5.7 million to protect the term “MĀNUKA HONEY”<sup>1</sup> in key export markets.
4. This included a \$4 million grant to support a science programme and consultation and engagement with Māori and industry stakeholders. A further \$1.7 million loan was provided to support legal and advisory services in pursuit of intellectual property rights over the term “MĀNUKA HONEY” in both New Zealand and overseas markets.
5. The Provincial Growth Fund application was originally lodged by the Manuka Honey Appellation Society. The Mānuka Charitable Trust was established in Huitanguru 2020 as a condition of Provincial Growth Fund contracts specifically to oversee the initiatives to secure legal protection for Mānuka Honey and protect the interests of all Māori in mānuka, on the understanding that any intellectual property would be vested in the Trust
6. The current Trustees of the Trust are:
  - Pita Tipene – Chair
  - Haami Piripi
  - Victor Goldsmith
  - Paul Morgan
  - Aaron Taikato
  - Ngahere Wall
  - Lisa Tumahai
7. The Trust has also established a subsidiary company, Te Pītau Limited. Te Pītau Limited has delegated responsibility for establishing and implementing a strategy on behalf of the Trust.
8. The Trust (through the Mānuka Honey Appellation Society) has applications for Certification Trademarks (CTM) to protect the term “MĀNUKA HONEY” in both New Zealand and several overseas jurisdictions including the UK and China.

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<sup>1</sup> This includes all derivatives, including macrons.

9. The current position of the Trust's CTM applications is:
  - a. New Zealand – substantive opposition to application, primarily from Australian interests, hearing due to be held within next three months (likely Hōngongoi)
  - b. United Kingdom (UK) – application filed and oppositions hearing Scheduled for Mahuru 2021
  - c. China – initial application rejected. Appeal has been filed and awaiting decision on whether application for an appeal will be accepted.
  - d. Applications in the USA, Singapore and the European Union are either on hold or they have requested time extensions for the applications.

### **Current position of the Mānuka Charitable Trust**

#### *Role of Mānuka Charitable Trust*

10. The Trust has assumed interim responsibility for seeking legal protection for the term "MANUKA HONEY" both domestically and in key export markets in the absence of any other alternative structure representing Māori interests.
11. The Trust is undertaking 10 engagement hui around the motu seeking to give an update on the Trust's activities and discuss the future role of the Trust and the potential representation model in continuing to manage the mānuka taonga on behalf of Māori.

#### *PWC Strategic Review*

12. 9(2)(g)(i) 
13. The Trust have implemented several changes in response to the PWC review, including changes to the Trustees and Directors of Te Pītau Limited as well as appointing a new Executive Chair of Te Pītau Limited.
14. The establishment of this position was a recommendation of the recent PWC review and was not funded by the Provincial Growth Fund (PGF) grant.
15. The Trust has advised they have appointed Kristen Kohere-Soutar to the Executive Chair position of Te Pītau Ltd. Kristen is highly experienced in both governance and senior leadership roles and we expect will significantly strengthen the operation of Te Pītau Limited and communication with both industry and government stakeholders.
16. The future effective operation of the Trust is also at least partially dependent on several other external factors:
  - a. a commitment for further Crown funding of \$1.6 million to the end of 2021 to support the trademark applications
  - b. \$200,000 investment from industry to the end of 2021
  - c. securing ongoing investment beyond 2021
  - d. success with one or more of the certification trademark applications and establishing a sustainable business model.

### *Loan for Certified Trademark applications*

17. The Trust has indicated it does not have sufficient funding to continue with their CTM applications or the governance of the Trust and Te Pītau Limited beyond the end of Haratua 2021.
18. The \$1.7 million loan from the Provincial Growth Fund has already been expended on progressing CTM applications, primarily in New Zealand, China and the UK. All of these applications have been opposed by third parties and the Trust requires further funding to continue with the application processes.
19. The review has identified the Trust will require a further \$1.8 million to the end of this calendar year, and then between \$200,000 and \$1 million per year for the following two years to continue with the existing applications.
20. The PWC review confirmed the current IP strategy immediately focused on CTM and longer-term on seeking to establish Geographical Indications is robust.
21. If the Trust is unsuccessful in securing a CTM or other intellectual property rights in one or more jurisdictions it will have limited intellectual property off which to leverage future income.
22. If a CTM application is unsuccessful or lapses for any reason, the chances of a subsequent application being successful would likely be negligible.
23. The Trust has requested an additional \$1.6 million in Crown funding to support the applications for CTM. The manuka honey industry has committed an additional \$200,000.
24. Any additional funding for legal work streams would need to be on equivalent loan terms as the existing PGF contract.

### *Provincial Growth Fund Grant*

25. The Trust has drawn \$827,000 of the grant and has a further \$3.1 million available in staged allocations. Drawdown of this grant is conditional on meeting the agreed milestones over the 3-year period of the grant.
26. Most of the grant funding (\$3.366 million) is aligned with scientific work associated with mānuka honey. The remainder is spread across cultural and stakeholder engagement, communications and governance.

### **Role of Te Puni Kōkiri and interaction with Te Pae Tawhiti**

27. The Mānuka Charitable Trust was originally established as an interim governance entity in response to external commercial risks to the wider New Zealand mānuka honey industry, primarily from the use of the term “manuka honey” by Australian honey producers. The focus of the Trust has subsequently extended beyond these origins in mānuka honey to purportedly include all aspects of the relationship of Māori with mānuka.
28. The government has continued to support the mahi of the Trust over the interceding period. To date Te Puni Kōkiri has been working in partnership with the Ministry for Primary Industries and Ministry of Foreign Affairs and Trade and the Ministry of Business, Innovation and Employment in their relationships with the Trust. However, given the close alignment of this work to Te Pae Tawhiti – Wai 262 mahi we intend to take a more direct interest in this kaupapa.

29. Mānuka, both the plant and the kupu, are clearly taonga and the Crown has obligations to provide active protection for these resources. However, these are just two examples of a wide range of taonga species that will generate similar issues.
30. We recommend the long-term protection of the kaitiaki relationship of Māori with their taonga needs to be considered as part of a more strategic response to addressing the range of intellectual property issues relating to taonga and taonga species through Te Pae Tawhiti: Wai 262. The experiences with mānuka honey and the Trust will be valuable in developing the Te Pae Tawhiti work programme to protect the rights and interests of iwi and hapū in these taonga.
31. We propose to provide a one-off \$400,000 grant to the Trust to support the ongoing work of the Trust and Te Pītau Ltd via the new Executive Director position. We expect that strengthening the governance and management of Te Pītau Ltd will have a positive impact on the operation of both Te Pītau Ltd and the Trust.
32. The Trust has indicated they are supportive of broader issues regarding the protection of taonga, including mānuka within Te Pae Tawhiti. The Trust has also expressed their view that the Mānuka Charitable Trust is a transitional trust and they are looking to reset and pivot into a new direction
33. As the Trust has highlighted, New Zealand's intellectual property regime does not adequately protect the rights and interests of iwi, hapū, whānau and Māori.
34. It will be critical that the ongoing mahi of the Trust aligns with and supports the rights and interests of iwi in mānuka. The PWC review notes concern from iwi that the industry focus on trademarks has derogated from the focus on iwi rights and interests.
35. Key issues to be addressed through Te Pae Tawhiti: Wai 262 will include:
  - a. confirming the mandate from iwi and hapū for any structure or body representing the interests of iwi, hapū, whānau and Māori in taonga or taonga species such as mānuka
  - b. how the interests of individual iwi and hapū will be represented and
  - c. the best way to secure appropriate legal protection of both the taonga itself and the kaitiaki relationship of iwi and hapū to the taonga and who should have kaitiaki responsibility for maintaining and authorising use of any legal instruments
  - d. how any commercial benefits from the use or exploitation of a taonga or taonga species are equitably shared
  - e. establishing a mechanism to enable prior informed consent and access and benefit sharing arrangements with mana whenua for any bioprospecting activities involving taonga species and/or mātauranga Māori
  - f. ensuring New Zealand's intellectual property rights regime is fit for purpose, including adequately protecting Māori rights and interests.

### **Crown funding**

36. We have discussed the Trust's request for \$1.6 million this calendar year and between \$200,000 and \$1 million in 2022 and 2023 with both the Ministry for Primary Industries and the Ministry of Business, Innovation and Employment. Both Ministries have indicated there

are no options within existing appropriations to fund the \$1.6 million requested by the Trust to the end of this calendar year.

37. Te Puni Kōkiri, like other government agencies, is unable to fund this through existing appropriations without notable changes to work priorities.
38. We recommend you discuss the Trust's request for additional funding of \$1.6 million in 2021 and up to \$1 million per year in the following two years with relevant Ministers including Hon Grant Robertson, the Minister of Finance; Hon Damien O'Connor, Minister of Agriculture, for Biosecurity and for Rural Communities, and Minister for Trade and Export Growth; and Hon Stuart Nash, the Minister for Economic and Regional Development to determine their appetite for providing additional Crown funding.
39. Any consideration of additional funding to the Trust would need to carefully consider the potential impact on our bilateral relations and New Zealand's trade law obligations. Officials will provide more advice in advance of any decision.

### **Next Steps**

40. We will discuss this matter with you at the Official's meeting on 19 Haratua 2021.

### **Consultation**

41. We have consulted with the Ministry for Primary Industries, the Ministry of Business Innovation and Employment, and the Ministry of Foreign Affairs and Trade on this briefing paper.

### **Recommended Action**

42. It is recommended that you:

1. **note** the Mānuka Charitable Trust have requested Te Puni Kōkiri provide additional financial support to cover the additional costs of the new position of Executive Chair with the Trust's subsidiary operating company Te Pītau Limited
2. **note** establishing the Executive Chair position is intended to strengthen the operation and governance of the Trust and its subsidiary in response to concerns about the overall operation and strategy highlighted in the recent PWC strategic review
3. **agree** that Te Puni Kōkiri will provide an upfront payment of \$400,000 to the Trust from departmental funding in the Te Pae Tawhiti: WAI 262 budget for the 2020/21 financial year
4. **note** the Trust has also requested the Crown provide an additional \$1.6 million through to the end of 2021 calendar year to support its applications for Certification Trademarks in New Zealand, China and the UK
5. **note** the Trust has already received a \$1.7 million contingent loan from the Provincial Growth Fund to support the trademark applications but due to opposition to the Trust's trademark applications further funding is required

**Yes / No**

- 6. **note** Te Puni Kōkiri, the Ministry for Primary Industries and the Ministry for Business Innovation and Employment have indicated they do not have sufficient resources available within existing baselines to provide the requested funding
- 7. **agree** to discuss the Trust's request for an additional \$1.6 million with relevant Ministers including the Minister of Finance, Hon Grant Robertson; Minister of Agriculture, for Biosecurity and for Rural Communities, Hon Damien O'Connor; and the Minister for Economic and Regional Development, Hon Stuart Nash to determine their appetite for providing additional Crown funding **Yes / No**
- 8. **acknowledge** that any consideration of additional funding to the Trust would need to consider the potential impact on our bilateral relations and New Zealand's trade law obligations
- 9. **agree** the wider issues relating to taonga and taonga species, including mānuka and mānuka honey, will also be addressed through the Te Pae Tawhiti: WAI 262 work programme. **Yes / No**

Geoff Short  
Hautū, Te Puni Kaupapa Here | Deputy Secretary, Policy Partnerships

Hon Nanaia Mahuta Associate Minister for Māori Development
Date: ___ / ___ / 2021

# HEI WHAKATAU | BRIEFING

## Plant Variety Rights Bill

<b>Date:</b>	20 August 2021	<b>Priority</b>	Medium
<b>Classification</b>	Restricted	<b>Tracking Number</b>	43807

Action sought	Date action required by
1. <b>Agree</b> to the policy recommendations in this briefing  2. <b>Agree</b> to forward a copy of this briefing to the Minister for Commerce and Consumer Affairs, Hon Dr David Clark, and the Minister for Trade and Export Growth, Hon Damian O'Connor.	23 August 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone	Mobile	1 <sup>st</sup> contact
Laine Fisher	Kaiārahi Kaupapa		9(2)(a)	√
Tāmāti Olsen	Kaihautū (Kairīwhi)		9(2)(a)	
Geoff Short	Hautū, Kaupapa Here		9(2)(a)	

Other Agencies Consulted					
<input checked="" type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input type="checkbox"/> MHUD	<input type="checkbox"/> Other				

<b>Attachments</b>	No attachments
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Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments:

Forward to:	
• Minister for Māori Development	✓
• Minister for Commerce and Consumer Affairs	✓
• Minister for Trade and Export Growth	✓



20 August 2021

Associate Minister for Māori Development

## **Plant Variety Rights Bill**

### **Purpose**

1. To respond to your request for further advice on the concerns raised by Māori, including Ngā Toki Whakarūruranga (Ngā Toki), on the Plant Variety Rights (PVR) Bill.

### **Background and context for briefing**

2. As outlined in our previous Aide Memoire on the PVR Bill, some Māori organisations have raised concerns about the PVR Bill's implications for Māori. The matters raised in your hui with Ngā Toki reinforce the key themes and issues being raised as part of the Select Committee process.
3. Ngā Toki is a group formed from the mediation process with Crown as part of the Wai 2522 claim. Many of the concerns they have raised were also part of the Wai 2522 claim.
4. In Wai 2522, the Waitangi Tribunal found that the Crown's proposals for the PVR Bill were consistent with the Tribunal's recommendations in *Ko Aotearoa Tēnei*, and in some instances went further in providing for Māori interests than the Tribunal's earlier recommendations as part of Wai 262.
5. However, we note that while *Ko Aotearoa Tēnei* provides a valuable basis for analysis, it must be considered in the context and time it was written. Accordingly, we have applied a broader Te Pae Tawhiti perspective to the issues raised.
6. We have identified some potential changes to the PVR Bill and we will work with officials from the Ministry of Business, Innovation and employment (MBIE) to progress these. The proposed changes align with the existing policy intent and improve both understanding and application of the provisions.
7. We consider that many of the outstanding matters are best addressed thematically as part of Te Pae Tawhiti in the short to medium term. This is because they are issues broader than just the PVR system and relate to the intellectual property system more generally. We will propose addressing some of the broader intellectual property matters as a part of the proposed work programme we are providing you next week. There are also some matters raised that we consider require further policy analysis and are not matters we would prioritise or recommend regulating at this stage.
8. We have met with officials from MBIE and the Ministry of Foreign Affairs and Trade (MFAT) to explore opportunities and next steps to address the concerns with the PVR Bill that Ngā Toki has raised. This briefing reflects an approach that is generally agreed between Te Puni Kōkiri, MBIE and MFAT.

## Potential amendments to the PVR Bill

### *Te Tiriti o Waitangi obligations*

9. MBIE officials have acknowledged the concerns regarding the narrow scope of the current references to the Treaty/te Tiriti and have agreed to work with Te Puni Kōkiri officials to draft a more general clause for inclusion in the PVR Bill.
10. Te Puni Kōkiri officials have suggested a similar provision to the “Treaty clause” in the recently enacted COVID-19 Recovery (fast-track consenting) Act 2020 may be an option.
11. Section 6 of that Act states
  - 6 Treaty of Waitangi  
In achieving the purpose of this Act, all persons performing functions and exercising powers under it must act in a manner that is consistent with—
    - (a) the principles of the Treaty of Waitangi; and
    - (b) Treaty settlements.
12. This will need to be discussed further with MBIE and the Parliamentary Counsel Office. This language is consistent with the types of clauses officials have been working on more recently across government. It will strengthen the decision making by people exercising functions having to consider Māori issues by requirement and give more weight to issues raised by Māori when decisions are made.
13. We believe including a more general Treaty reference at the front of the PVR Bill would give extra confidence that the wider provisions of the PVR Bill will be interpreted and applied consistently with the principles of the Treaty/te Tiriti.
14. Should you, and the Minister for Commerce and Consumer Affairs, agree, we will work with MBIE to draft a new provision that is more akin to the COVID-19 Recovery (fast-track consenting) Act 2020.

### *Confidentiality of kaitiaki information and mātauranga Māori*

15. Māori have raised concerns that voicing their kaitiaki relationship with taonga species to assert and protect their interests under the PVR Bill could result in confidential mātauranga and related information entering the public domain.
16. Once a PVR application is received the default process is to make all associated information public.
17. We are exploring options with MBIE for protecting the confidentiality of information provided by kaitiaki, including mātauranga Māori, during the PVR process. This could include inserting a requirement into the PVR Bill that this information is treated as confidential unless the knowledge holders agree to making the information public.
18. We will also further consider how to ensure both confidentiality for kaitiaki and provide fair access for PVR applicants regarding information affecting their application.
19. Should you, and the Minister for Commerce and Consumer Affairs, agree, we will work with MBIE officials on how best to address this in the Bill.

*Appointment of the Māori Plant Varieties (PV) Committee*

20. Ngā Toki has the view that members of the Māori PV Committee should be appointed by Māori, not the Crown.
21. In the proposed process the Commissioner appoints the membership of the Committee. This is the same appointments process as the Māori Advisory Committees under the Trademarks Act 2003 and the Patents Act 2012.
22. In addition, the Commissioner, when appointing committee members, will be required to have “regard to that person’s knowledge of mātauranga Māori (Māori traditional knowledge), tikanga Māori (Māori protocol and culture), te ao Māori (the Māori world view), and taonga species”.
23. Operationally, this will likely mean that the Terms of Reference for the Māori PV Committee sets out a process whereby Māori can nominate members. This is akin to the process in the Terms of Reference for the Māori Trademarks Committee. The Terms of Reference includes seeking nominations through national and Māori media channels as well as inviting nominations directly from a range of sectors, including:
  - The Māori business community
  - Te Puni Kōkiri
  - The Waitangi Tribunal
  - New Zealand universities including whare wānanga
  - Te Papa Tongarewa Board
  - Te Hunga Rōia Māori o Aotearoa – The Māori Law Society Incorporated
  - Creative New Zealand - Te Waka Toi
  - Toi Māori Aotearoa – Māori Arts New Zealand
24. Not all the sectors listed above for the Māori Trademarks Advisory Committee will be appropriate for the Māori PV Committee, but MBIE officials have advised a similar approach, with sectors relevant to the PVR Bill, will be established to provide a strong base for appointments to the Committee.
25. We consider that this process is appropriate and should be maintained. However, this does not address Ngā Toki’s central concern that the Crown, rather than Māori, is making the appointments.
26. We will work with MBIE to consider what operational provisions we could potentially include in the PVR Bill to balance Māori and Crown interests regarding the appointments process to the Māori PV Committee. Given the role Te Puni Kōkiri plays in monitoring public sector effectiveness relating to Māori wellbeing, requiring the Commissioner to consider advice from Te Puni Kōkiri could be an appropriate measure. Te Puni Kōkiri would then work with the appropriate parties to inform this engagement process, including Ngā Toki.
27. Ngā Toki also raised concerns around the power of the Commissioner to dismiss a member from the Māori PV Committee. Like the Māori Advisory Committees for Trademarks and Patents, the criteria for dismissing a member of the Māori PV Committee will be detailed in the Terms of Reference and will ensure a level of fairness and transparency.
28. Should you, and the Minister for Commerce and Consumer Affairs, agree, we will work with MBIE officials on changes in the Bill and to ensure the Terms of Reference for the Māori PV Committee include similar provisions.

## Matters to be considered as part of Te Pae Tawhiti

### *Powers of the Māori PV Committee*

29. The Māori PV Committee is responsible for advising the Commissioner on PVR applications regarding both indigenous species and “non-indigenous plant species of significance”.
30. The Māori PV Committee informs the Commissioner on whether an application should proceed, proceed with mitigating conditions or if there is likely to be an impact on kaitiaki that can't be mitigated, the application must be declined.
31. This binding decision-making power goes further than the Waitangi Tribunal's recommendations in *Ko Aotearoa Tēnei*.
32. The Māori PV Committee is also responsible for making non-binding recommendations to the Commissioner regarding proposed denominations (names) for a new PVR. The criteria for this advice is whether the proposed denomination is likely to be 'offensive' to Māori. This is the same decision-making criteria for the Trademarks Māori Advisory Committee.
33. PVR applicants can request the Māori PV Committee review its decision *to decline* an application, only if there is further information that was not available at the time it made its initial decision.
34. Ngā Toki suggest that the Māori PV Committee does not have enough decision-making rights to effectively protect the kaitiaki relationship. We consider that giving the Māori PV Committee greater decision-making ability and independence would require a different structural/institutional approach. We will consider how rangatiratanga is given effect to in the wider intellectual property system as part of Te Pae Tawhiti to ensure that any institutional/significant regulatory changes are coherent in how they protect, promote and preserve mātauranga Māori and other taonga.

### *Obligations on PVR applicants to engage with kaitiaki*

35. Ngā Toki are concerned that the obligations on breeders to engage with kaitiaki are not stringent enough and the penalties for failing to engage are insufficient.
36. It is critical to note that all PVR applications involving indigenous species and/or non-indigenous species of significance are required to be referred to the Māori PV Committee, regardless of any prior engagement with relevant kaitiaki.
37. While there are no direct penalties for PVR applicants that don't engage with kaitiaki, the Māori PV Committee will be made aware of any failure to do so when making their decisions. Therefore, it is in the best interests of applicants to engage early with kaitiaki.
38. The Māori PV Committee will develop guidelines to assist PVR applicants to identify and engage with relevant kaitiaki.
39. The Māori PV Committee could either inform itself of any kaitiaki relationships relevant to the application or direct the applicant on what engagement with kaitiaki is required and either decline the application without the necessary information, or delay their decision while they wait on the applicant to provide additional information.
40. There is also a general provision in the Bill that a grant can be nullified if it turns out that misleading information was given and if the correct information had been given the grant would have been declined.

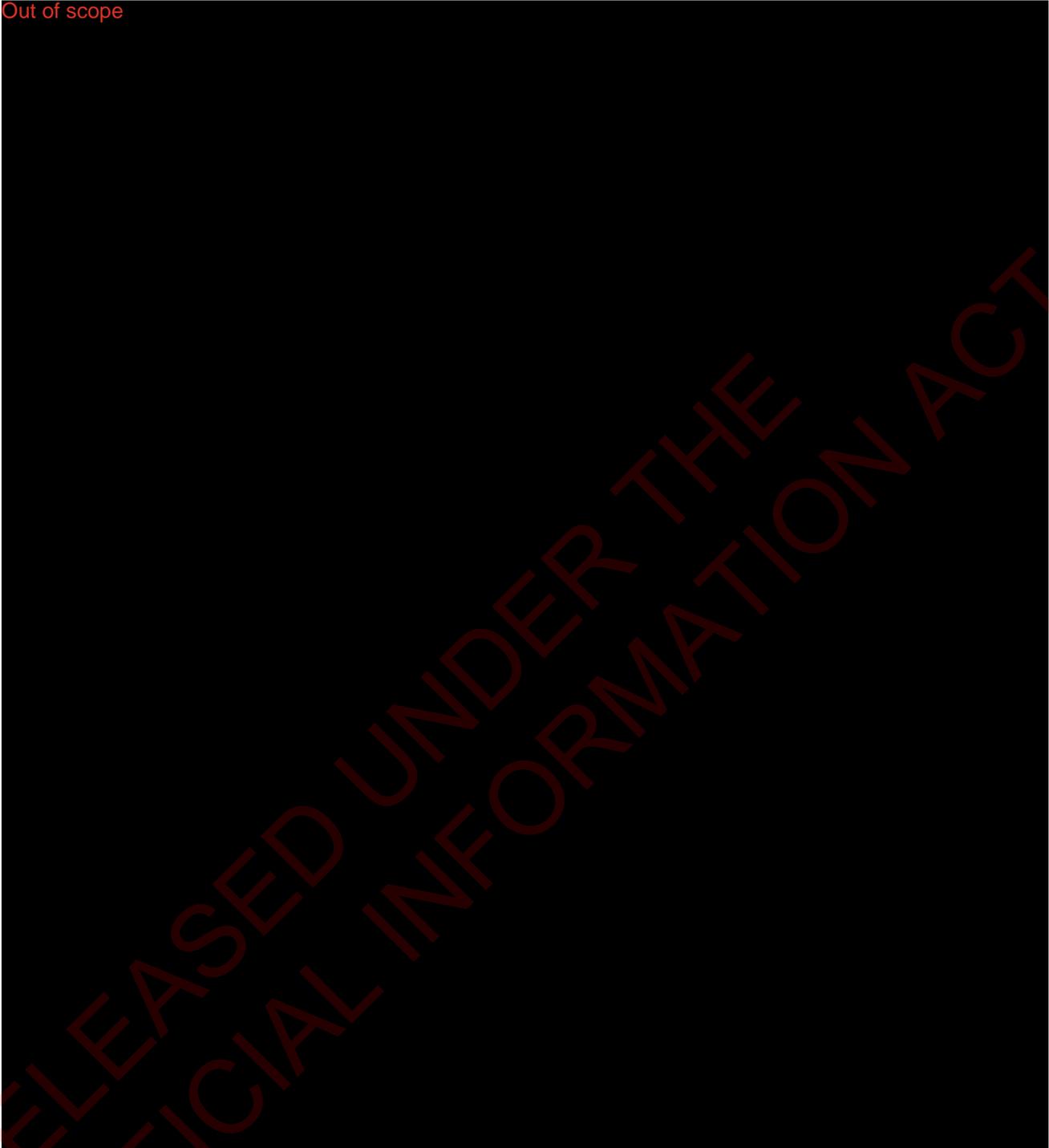
41. We acknowledge that the process for effectively identifying and engaging kaitiaki is not covered in the Bill. However, we consider that this should remain an operational process to be determined by the Māori PV Committee once it has been established.
42. There is a balance to be struck between specifying in great detail the arrangements in legislation and enacting only sufficient provisions to send signals to the operators of Parliament's intent. It is important to note that historically only 7-10 PVR applications relating to indigenous species are received each year, so it will be important that the new arrangements are given an opportunity to get underway with some flexibility for practice to develop.
43. We are continuing to focus on the how the interests of iwi hapū and Māori are recognised and provided for across the wider intellectual property system, including consideration of a sui generis system as part of the wider Te Pae Tawhiti programme of work.
44. An ongoing means of safeguarding kaitiaki relationships could be through the creation of a kaitiaki interest register, including for PVR. We will investigate, through Te Pae Tawhiti, ways in which kaitiaki could actively register their interest for all or some forms of applications. Then on application, the register could connect a plant breeder and kaitiaki. Given such a register could be applicable to bioprospecting and biodiversity systems, we will look at how it could be utilised across various systems.

### **Matters that we do not recommend addressing**

#### *Delay in enacting Part 5 of the PVR Bill relating to the Māori PV Committee*

45. Part 5 of the PVR Bill establishes the Māori PV Committee and how it will operate. Under the current drafting of the PVR Bill the provisions in Part 5 will not become operative until between 1 and 2 years after the Bill is enacted.
46. This delay is intended to provide time to establish the Māori PV Committee, the Terms of Reference and to develop the required operational regulations and guidelines for applicants. The delay will also provide time for breeders to prepare and familiarise themselves with the new obligations
47. Ngā Toki have raised concerns that the delay will incentivise breeders to try and avoid the Māori PV Committee process by rushing to lodge PVR applications before the provisions in Part 5 become operative.
48. We believe there is a relatively low risk of this happening. Historically there have only been between 7-10 PVR applications each year that would meet the criteria for referral to the Māori PV Committee.
49. Further, breeders seeking to circumvent the new obligations have already had the opportunity to do so during the several years that the review of the PVR Bill has been public. It is therefore unlikely that any breeders seriously seeking to pursue this course of action would have waited until after enactment of the Bill to do so.
50. We do not foresee any significant issues with the intended delay in Part 5 of provisions becoming operational. However, we are exploring options to ensure these provisions become operational as soon as possible.

Out of scope



### **Consultation**

56. MBIE and MFAT have been consulted on this paper.

### **Recommended Action**

57. It is recommended that you:

1. **Agree** to discuss with the Minister for Commerce and Consumer Affairs possible **amendments to the *Plant Variety Rights Bill*** to include:

- a. a broader Treaty clause in the front of the Bill, **Yes / No**
- b. explicit provisions to protect the confidentiality of kaitiaki interests and mātauranga Māori **Yes / No**
- c. a requirement for the Commissioner to consider advice from Te Puni Kōkiri in appointment of the PVR Māori Advisory Committee **Yes / No**
2. **Agree** to discuss with the Minister for Commerce and Consumer Affairs:
- a. Developing criteria for appointments to the Māori PV Committee similar to those in the Terms of Reference for the Māori Trademarks Advisory Committee **Yes / No**
- b. Exploring options to include provisions from the appointments process in the Terms of Reference, into the Plant Variety Rights Bill **Yes / No**
3. **Agree** to consider the following policy issues as part of Te Pae Tawhiti, subject to your final decisions on the overall work programme:
- a. The ability and capacity for Māori to engage more effectively in throughout the intellectual property system **Yes / No**
- b. The ability of Māori to make decisions relating to the protection, promotion and preservation of mātauranga Māori and taonga. **Yes / No**
4. **Agree**, subject to discussions with Minister for Commerce and Consumer Affairs, to support the Plant Variety Rights Bill progressing on its existing timeframes **Yes / No**
5. **Agree** to forward a copy of this briefing to the Minister for Commerce and Consumer Affairs, Hon Dr David Clark, and the Minister for Trade and Export Growth, Hon Damian O'Connor. **Yes / No**

Geoff Short  
 Hautū, Te Puni Kaupapa Here | Deputy Secretary, Policy Partnerships

Hon Nanaia Mahuta  
 Associate Minister for Māori Development

Date: \_\_\_\_ / \_\_\_\_ / 2021

# HEI WHAKATAU | BRIEFING

## Bioprospecting: Protecting and Promoting Māori interests

<b>Date:</b>	8 Mahuru 2021	<b>Priority</b>	High
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	43805

<b>Action sought</b>	<b>Date action required by</b>
<p>I recommend that you:</p> <ul style="list-style-type: none"> <li>• <b>provide</b> feedback on the draft 'tangata harakeke' model and key components that could form a national bioprospecting regime set out in this paper</li> <li>• <b>note</b> ensuring a national bioprospecting regime is consistent with international agreements including the Nagoya protocol will be critical to protect New Zealand's interests internationally</li> <li>• <b>direct</b> Te Puni Kōkiri, subject to your feedback, to develop a joint briefing to relevant Ministers on options for developing a domestic bioprospecting regime.</li> </ul>	Your earliest convenience

<b>Contact for telephone discussion (if required)</b>				
<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>Mobile</b>	<b>1<sup>st</sup> contact</b>
Tāmati Olsen	Director, Wellbeing		9(2)(a)	
Laine Fisher	Project Lead, Te Pae Tawhiti			√
Riki Ellison	Strategic Advisor, Te Pae Tawhiti			

<b>Other Agencies Consulted</b>					
<input checked="" type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input checked="" type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input checked="" type="checkbox"/> Other	Department of Conservation				

<b>Attachments</b>
<ol style="list-style-type: none"> <li>1. Flow chart showing operation of proposed bioprospecting regime</li> <li>2. Bioprospecting experiences of Australia and Canada</li> <li>3. <i>Ko Aotearoa Tēnei</i> commentary and recommendations on bioprospecting</li> <li>4. Summary of previous Crown work on bioprospecting</li> </ol>

Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments:



8 Mahuru 2021

Associate Minister for Māori Development

## **Bioprospecting: Protecting and Promoting Māori interests**

### **Purpose**

1. This briefing follows our initial discussion on bioprospecting and seeks your feedback on a 'tangata harakeke' domestic bioprospecting regime for Aotearoa New Zealand. The briefing includes background to the key matters we will consider as part of the policy process. Following your feedback, we will undertake the agreed next steps as a priority for Te Pae Tawhiti.

### **Executive Summary**

2. Internationally, countries have adopted regulatory frameworks to address how biological and genetic resources are accessed including for commercial development, known as bioprospecting. New Zealand is yet to establish a comprehensive regulatory framework, which means we are missing out on key economic, cultural and environmental outcomes.
3. Bioprospecting was a central aspect of the Wai 262 claim and *Ko Aotearoa Tēnei*. This is due bioprospecting using both taonga species and mātauranga Māori. Consequently, bioprospecting is an important issue for the Crown's Treaty partnership with iwi and hapū.
4. A domestic bioprospecting regime in New Zealand must reflect the Treaty partnership between the Crown and Māori, as well as provide for the interests of broader stakeholders, including international interests.
5. A national bioprospecting regime has the potential to provide significant benefits to New Zealand, as well as protecting and enabling the relationship of kaitiaki with their taonga species and associated mātauranga Māori.
6. We outline a tangata harakeke to identify some of the key components of a bioprospecting regime for your initial feedback. These components are:
  - a. Sui generis bioprospecting legislation to establish a bioprospecting regulator and associated processes
  - b. Taonga Species Register
  - c. Mātauranga Māori Register, and
  - d. Disclosure of origin requirement for patent applications.
7. We then propose that we undertake further policy development, as part of Te Pae Tawhiti, and provide you and key Ministers with a briefing on general approach and policy options by July 2022.

### **Background**

8. The protection and use of indigenous flora and fauna, including the associated genetic material, were central issues for the Wai 262 claim and the subsequent *Ko Aotearoa Tēnei* report.

9. Te Taumata Whakapūmau along with wider Māori and kaitiaki interests continue to highlight these matters, particularly bioprospecting, as a priority. This includes the report of the 2018 Ngā Taonga Tuku Iho conference: *Te Tau Ihu Ngā Taonga Tuku Iho Communique*, and at the recent Wai 262 – Kia Whakapūmau – Online Digital Symposium.
10. You have agreed bioprospecting is a priority issue for Te Pae Tawhiti whole-of-government programme of mahi. We met with you in Pipiri 2021 to discuss issues relating to bioprospecting. During the hui, we committed to providing you with this briefing outlining a tangata harakeke and key next steps.

## Overview of bioprospecting and its link to Wai 262

### **What is Bioprospecting?**

11. Bioprospecting is the examination of biological and genetic resources (e.g. plants, animals, microorganisms) for features that may be of value for commercial development. These features may include chemical compounds, genes and their products. In some cases, it may include the physical properties of the material in question.
12. The main distinguishing feature from other biotechnology research is the concept of “prospecting” – the search for biological material for as-yet undiscovered applications. Products developed from bioprospecting include pharmaceuticals, cosmetics, agricultural products, and new varieties of organisms.
13. Bioprospecting can source material directly from its natural environment (*in situ*), e.g. terrestrial, freshwater or marine ecosystems, or from a collection (*ex situ*) e.g. a zoo, an aquarium or a culture collection.
14. We intend to test and refine this definition during the policy development process.

### **Bioprospecting in New Zealand**

15. New Zealand has unique and diverse flora and fauna that have evolved over a long period of geographical isolation. New Zealand also has a number of geothermal areas as well as one of the largest Exclusive Economic Zones (EEZ) in the world.
16. The EEZ also includes a range of hydrothermal vents (fissures on the seafloor discharging geothermally heated water). Research has shown almost 95% of all marine animals and micro-organisms recovered from hydrothermal vent sites are new species.
17. Combined with a high degree of endemism (i.e. species only found in New Zealand), these factors make New Zealand a highly attractive location for bioprospecting.
18. Despite our rich genetic resource base New Zealand has no national bioprospecting regime to regulate access to and use of New Zealand’s biological and genetic resources.
19. This has implications for both New Zealand and Māori through an inability to:
  - effectively capture the benefits of these activities to Aotearoa New Zealand
  - protect both the kaitiaki interests and associated mātauranga Māori of iwi/hapū/whānau in taonga species, and
  - enable or require the sharing of benefits derived from the use of these resources.
20. The scale of bioprospecting that has occurred or is underway within Aotearoa is unknown. Nor do we know what innovation is hampered or prevented by not having a framework. Our initial discussions with key stakeholders have confirmed bioprospecting activities are both

underway or have already taken place. Part of the next steps of this mahi will be to develop a picture of the scale of bioprospecting either occurring or opportunities lost due to a lack of a formal regime.

### ***International bioprospecting agreements***

21. Bioprospecting and its interaction with traditional knowledge is the focus of a wide range of international agreements and programs. These include the:
  - Convention on Biological Diversity (CBD) and
  - the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (the Nagoya Protocol).
22. The CBD and the Nagoya Protocol are intended to facilitate access to genetic resources and share benefits between the party seeking access to the resources and any supplier of the resources and/or traditional knowledge. These benefits are to be shared on Mutually Agreeable Terms (MAT).
23. These international instruments also provide some protection for ensuring domestic regulatory regimes are upheld where genetic resources are utilised outside of their country of origin. This includes some countries requiring a declaration of origin and a declaration regarding the use of traditional knowledge as part of patent applications.
24. Bioprospecting is also a key topic covered at the World Intellectual Property Office (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

### ***Convention on Biological Diversity***

25. New Zealand is a Party to and has ratified the CBD. One of the objectives of the CBD is the fair and equitable sharing of benefits arising out of the utilisation of genetic resources within national jurisdiction, including by appropriate access to those resources.<sup>1</sup>
26. Under Article 8(j) of the CBD, Parties agreed to

*“as far as possible and as appropriate: Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.”*

27. New Zealand regularly participates in the work of the CBD, including in the Article 8(j) working group.

### ***The Nagoya Protocol***

28. The Nagoya Protocol was adopted in 2010 to supplement the CBD. The Protocol seeks to ensure that there is both a transparent legal framework governing access to genetic resources and fair and equitable sharing of the benefits that arise from their use. The Protocol also requires that indigenous people provide their free, prior and informed consent to the use of

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<sup>1</sup> Under the CBD “genetic material” is defined as any material of plant, animal, microbial or other origin containing functional units of heredity. “Genetic resources” are defined as genetic material of actual or potential value.

their resources and the genetic material itself. This is intended to contribute to the conservation of biological diversity and the sustainable use of the environment.

29. New Zealand is not a Party to the Protocol. Primarily this is because we do not have a domestic bioprospecting regime, which is a requirement of the Protocol. In late 2018, New Zealand received a letter from the CBD Executive reminding us that we were not yet a Party to the Nagoya Protocol. The previous Minister of Foreign Affairs responded that New Zealand was considering the domestic implications of the Protocol.<sup>2</sup>
30. One hundred and thirty countries have ratified the Nagoya Protocol as of March 2021, including major trading partners such as the European Union, Japan and China. As a non-Party, New Zealand's ability to shape decisions within the Protocol is limited as we have no decision-making powers or ability to table text.
31. At the same time, we retain an interest in ensuring that Protocol decisions do not restrict our access to foreign genetic resources. This access may become increasingly difficult as some countries and territories (e.g. New Caledonia) are beginning to ban companies or organisations in their jurisdiction from providing genetic resources to non-Parties such as New Zealand. Attachment two summarises our recent bioprospecting discussions with Australia and Canada.
32. TPK and MFAT will work closely on ensuring that the development of this regulatory regime applies international conventions as appropriate.

### ***Ko Aotearoa Tēnei and Te Tiriti***

33. Bioprospecting is directly referenced in the Waitangi Tribunal's report on the Wai 262 claim, *Ko Aotearoa Tēnei* (see **Attachment 3** for a summary).
34. The Tribunal made several recommendations on these matters, including recommending a regulatory regime for bioprospecting, and implementing a disclosure of origin requirement for Patent applications to identify where indigenous biodiversity or traditional knowledge has been used. However, it did not set out a specific set of findings around the full shape of a future bioprospecting regime.
35. *Ko Aotearoa Tēnei* identified that a bioprospecting regime could provide protection for the kaitiaki relationship of Māori with their taonga species and associated mātauranga Māori, as well as provide benefits from negotiating mutually agreed terms for use.
36. Te Tiriti and *Ko Aotearoa Tēnei*, coupled with international frameworks, raise several matters to consider for recognising and providing for Māori rights and interests. We consider that the bioprospecting regime should provide a framework to assist in determining:
  - who has kaitiaki rights over specific genetic and biological resources (e.g. which iwi and/or hapū),
  - the relationship of kaitiaki to specific biological resources (noting the Tribunal determined these may be differently perceived by different iwi and hapū),
  - a process to provide a substantive Māori role in decision-making to protect the relationship between kaitiaki and taonga species,
  - who is entitled/mandated to speak on behalf of Māori, iwi and hapū regarding specific applications, and

<sup>2</sup> Letter from Minister of Foreign Affairs, Rt Hon Winston Peters, 11 January 2019.

- how to balance the interests of Māori as kaitiaki with other interests. This may include researchers, holders of property rights (e.g. existing Patents or Plant Variety Rights), the interests of the public who may benefit from scientific research, and the interests of the species themselves.

37. Managing iwi and hapū rights and interests can be provided for on several levels:

- the regulation of access to the resources themselves,
- regulation of the use of mātauranga Māori related to resources, and
- the granting of intellectual property rights such as Patents, particularly where this impacts on the relationship between kaitiaki and taonga species.

38. The recommendations in *Ko Aotearoa Tēnei* predate the Nagoya Protocol, and particularly focus on point (iii) above. The Tribunal's recommendations were a ground-breaking attempt to incorporate kaitiaki Māori concerns about bioprospecting into existing regulatory regimes. While the Tribunal's recommended measures provide useful guidance, they are unlikely to be sufficient on their own to fully address the exercise of rangatiratanga in relation to bioprospecting.

### **The existing regulatory landscape and its constraints**

39. New Zealand does not have an official policy on bioprospecting or any specific regulations managing bioprospecting activities. As a result, the regulatory framework for bioprospecting in New Zealand is limited, ad hoc, fragmented, and reliant on legislation designed for other purposes.

40. The regulatory framework is not well-suited to maximising potential benefits, managing potential risks, or ensuring the benefits from bioprospecting activities are fairly and equitably shared with New Zealand as the country of origin or Māori. This is inconsistent with the Crown's Treaty obligations, as well as our international obligations.

41. Operationally, there is no clear stewardship role relating to bioprospecting within government to monitor and address the practice of bioprospecting. There are very few restrictions on bioprospectors – whether from New Zealand or overseas – taking and using biological material from New Zealand for scientific research and/or commercial development.

42. As mentioned above, we have very little information on who is taking biological material from New Zealand and for what purpose. There is no effective obligation on bioprospectors operating outside the conservation estate to tell anyone what they are taking, where they are taking it from or to, and for what purpose. We do know that, domestically, Crown Research Institutes (CRIs) and universities are involved in research activities relating to New Zealand's genetic resources, but we do not have any comprehensive overview of this activity.

43. For example, a company could secure permission from a private landowner to take a plant from their land and then commercialise a specific property of that plant without providing any benefits such as royalties back to the New Zealand economy.

### **Existing legislation**

44. The legal framework for the ownership of biological material is also fragmented. Some is vested in the Crown, e.g. most native animals and marine mammals, while ownership of others sits with the relevant landowner, e.g. all plants, including indigenous plants.

45. There are legal controls on access to material on the conservation estate and some Crown land, as well as some limited control of bioprospecting in the marine environment. However,

there are no direct controls on the collection of indigenous plants for bioprospecting purposes on private land or from ex-situ private collections.

46. In the marine environment, the *Fisheries Act 1996* regulates the commercial use of some marine and freshwater species, and further consideration of how any future bioprospecting regime would affect the Māori Fisheries Act 2004 will also be required.
47. Some marine resources are also subject to regulation under the *Continental Shelf Act 1964* and local government may also have a role as regulator under the *Resource Management Act 1991* for the coastal marine area (roughly the area from mean high water springs out to 12 nautical miles).
48. Permission from the New Zealand Government is also required for overseas research cruises in New Zealand waters. This is coordinated by the Ministry of Foreign Affairs and Trade (MFAT).

### Potential benefits of a bioprospecting regime

49. A Treaty-based bioprospecting framework, developed jointly with Māori, would serve as a positive example of change in the Māori-Crown relationship. Regulating access to and enabling benefit sharing from New Zealand's natural resources could provide a wide range of non-monetary and monetary benefits, for both Māori and New Zealand generally.
50. Earlier government bioprospecting discussion documents identified a range of potential non-monetary benefits that could be negotiated in return for access to a particular biological resource including:
  - Institutional capacity-building through, for example, participation in product development and access to external facilities such as databases and equipment.
  - Increased connectivity and sharing of research and development results between research entities.
  - Contributions to the local economy such as work force development and employment.
  - Increased scientific and public knowledge of the natural environment, for example, taxonomic information.
51. A summary of previous Crown work on bioprospecting is provided in **Attachment 4**.
52. Direct economic benefits can also be negotiated as part of the access and benefit sharing agreement, including from royalties or fees related to any commercial development of a product.
53. We will develop advice on the likely economic, cultural, and environmental outcomes of the bioprospecting regime. Experience in other countries, to date, suggests that most benefits are likely to be cultural and environmental as they relate to increased knowledge about biodiversity and associated improvements in conservation outcomes. This is due to most bioprospecting activities not resulting in commercially viable products.

### Becoming Party to the Nagoya Protocol

54. The design of the bioprospecting regulatory framework would consider the provisions within the Nagoya Protocol. We consider that the Nagoya protocol provides a workable and useful framework that we should seek to utilise in our mahi. A key outcome of the policy process should be to become a party to the Nagoya Protocol given its likely benefits to us internationally.

55. Critically, the Protocol includes provisions for access and benefit sharing of traditional knowledge (mātauranga Maori) associated with genetic resources subject to the free prior and informed consent of the knowledge holders, and on mutually agreed terms (Article 7)
56. The Protocol also requires parties to identify a *National Focal Point* as well as establishing one or more *Competent National Authorities* (Article 13).
57. The role of the *National Focal Point* is to be the primary point of first contact for potential applicants seeking access to genetic resources and must provide information on:
- the process for seeking approval to access genetic resources
  - procedures for securing prior informed consent and negotiating mutually agreed terms, including benefit sharing, for the use of traditional knowledge
  - information on competent national authorities, indigenous and local communities and relevant stakeholders.
58. Competent national authorities are responsible for granting access to genetic resources or, as applicable, issuing written evidence that access requirements have been met. They are also responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.
59. MFAT operates as New Zealand's National Focal Point. However, there is no mandated Competent National Authority in New Zealand. We will consider both roles as part of the policy development process.

### **Tangata harakeke – components of a bioprospecting regime**

60. The bioprospecting regime should be designed based on Te Tiriti o Waitangi, while meeting our domestic interests and our international obligations. We will further develop the objectives and outcomes of the regime as part of the next phase of policy development. This will guide the design of the components. Below is a summary of the key components we will look to consider as part of the regulatory regime.
61. A diagram of the proposed process is given at **Attachment 1** showing operation of a bioprospecting regime.
62. We have identified the following components that are discussed further below:
- Sui generis bioprospecting legislation to establish a bioprospecting regulator and associated processes
  - Taonga Species Register
  - Mātauranga Māori Register, and
  - Disclosure of origin requirement for applications.

### ***Sui Generis legislation***

63. As discussed above, New Zealand does not have a specific bioprospecting regulatory regime and what controls do exist are disjointed and not primarily designed or intended to regulate bioprospecting activities.
64. We will consider an 'end-to-end' system that regulates bioprospecting through sui generis legislation. Sui generis means 'of its own type' and is used in this context to refer to developing a unique intellectual property regime that recognises and provides for the unique characteristics of mātauranga Māori, along with wider interests. These unique characteristics include collective ownership of knowledge as well as knowledge systems developed over generations and based in te ao Māori. Standard intellectual property right regimes such as trademarks, patents and copyright are generally incapable of effectively accommodating these types of characteristics.
65. We will consider if key elements of the bioprospecting regime could sit in the development of a sui generis mātauranga Māori intellectual property system. A sui generis system would protect New Zealand's interests in our indigenous genetic biodiversity, including the kaitiaki relationship between Māori and their taonga, enable fair and equitable access and benefit sharing arrangements, and provide clarity and certainty for those wanting to access our genetic resources for research or commercial objectives.
66. The legislation would also encompass other elements discussed below that require legislative authority to operate.

### ***Bioprospecting Regulator***

67. The bioprospecting system would need a regulator to make and enforce decisions. We will consider if the functions of the regulator would best fit being a standalone entity or operate within or as part of an existing agency. The regulator could act as both *National Focal Point* and *Competent National Authority* under the Nagoya Protocol and the CBD.
68. As the *Competent National Authority* the regulator would be responsible for decisions relating to bioprospecting applications and granting access to genetic resources. Consequently, it would also have a critical role in protecting the kaitiaki interests of iwi, hapū and Māori by ensuring the prior informed consent of kaitiaki is secured and mutually agreed terms are negotiated where appropriate.
69. The Commission could also be responsible for identifying relevant kaitiaki interests and consulting with them as necessary as part of its decision-making process. Designing a process to resolve any disagreements between kaitiaki interests about support or opposition to a particular application or the impacts on any kaitiaki relationship will also be important.
70. To ensure it is able to effectively represent the interests of kaitiaki the membership of the regulator should reflect the partnership between the Treaty partners, with appointments potentially made by the Crown and iwi/hapū/Māori.

### ***Taonga Species Register***

71. The establishment of a taonga species register would enable kaitiaki to register their interest in specific taonga species and ensure they are informed and consulted on any bioprospecting applications that relate to those species.
72. This could also support the operation of other intellectual property processes (eg the *Patents Act* and *Plant Varieties Act*) by identifying any kaitiaki interests relevant to those processes. Further consideration of the relevance to other intellectual property legislation such as the *Trademarks Act* is also recommended.

73. Taonga species acknowledged in existing Treaty settlements (in particular the Ngāi Tahu settlement) could form the basis of an initial taonga species register.
74. The bioprospecting regulator could be responsible for administering and maintaining the taonga species register. Māori or kaitiaki could subsequently apply to have additional species included on the register. The regulator could determine these applications against agreed criteria with provision for the regulator to seek further expert advice on applications where necessary.
75. Non-inclusion on the register would not preclude kaitiaki relationships being recognised and protected, but this would place increased importance on kaitiaki notifying the regulator of any potential interests in applications, and the regulator seeking to inform itself if any such interests are identified.

### ***Mātauranga Māori Register***

76. Similar to the Taonga Species Register, a Mātauranga Māori Register could enable kaitiaki to proactively register relevant mātauranga to ensure the regulator is aware of its relevance for any bioprospecting applications.
77. This could also support any 'disclosure of origin' requirement for Patent applications, particularly regarding the use of mātauranga Māori.
78. We will undertake further work to determine how the register could address:
- criteria for registering mātauranga Māori and how applications will be assessed and determined,
  - who can register their mātauranga e.g. individuals, whānau, hapū, iwi, and other organisations or groups,
  - options for registering varying mātauranga relating to the same species,
  - provision for 'silent files' enabling registration of a 'general kaitiaki interest' rather than registering specific mātauranga (with an obligation to consult directly when a bioprospecting/patent application relevant to the registered interest is received), and
  - an appeal process and who has standing rights to appeal.
79. As with the Taonga species register, non-registration of mātauranga interests would not be evidence that no such interests exist, but as above would place greater emphasis on the kaitiaki of this mātauranga to notify the regulator if any applications for bioprospecting and/or patents are lodged that are based on relevant mātauranga. Likewise, the regulator would also benefit from having the capability to identify possibly relevant applications itself for further discussion with relevant kaitiaki.

### ***Disclosure of Origin Requirement***

80. *Ko Aotearoa Tēnei* recommended establishing a "disclosure of origin" requirement as part of the Patent application process. This would require disclosure of the origins of any genetic material or mātauranga Māori utilised in the process the applicant is seeking to patent. This requirement could form part of the sui generis legislation and be enforced by the regulator.

## Next Steps

81. Earlier this year, you advised that you intended to begin discussions on a bioprospecting policy and framework with key Ministerial colleagues. We propose that you seek agreement to bioprospecting as a key priority as part of discussions on Te Pae Tawhiti prior to Cabinet's consideration.
82. Following agreement, we propose the process outlined below. However, in mid-next year we consider we will be in a place to advise on potential pathways to achieve the objectives in ways that may be able to put certain elements of the regime in place sooner (or prior to any legislation being passed).

Process step	General timeframe
Further development of the policy approach – objectives, problem definition, policy options and general cost-benefit analysis.	October 2021 – July 2022
You, as lead Minister, and key Ministers consider policy options and determine approach	Late 2022
Dependent on approach, further development of policy thinking and Cabinet process	Early 2023
Legislative and operational development process	Mid 2023 - onwards

## Key Ministers

83. The key agencies with interests in bioprospecting are:

- Te Puni Kōkiri (lead)
- Department of Conservation
- Ministry for Primary Industries
- Ministry of Business, Innovation and Employment (Intellectual Property, Energy and Resource and Research, Science and Innovation)
- Ministry of Foreign Affairs and Trade

84. Relevant Ministerial Portfolios include:

- Minister **Woods**: Research, Science and Innovation, Energy and Resources
- Minister **O'Connor**: Agriculture, Biosecurity
- Minister **Allan**: Conservation
- Minister **Clark**: Commerce and Consumer Affairs (includes responsibility for MBIE's Intellectual Property workstream)

## Consultation to date

85. We have provided all the key agencies listed above with the opportunity to comment on this paper. At this time only the Ministry of Foreign Affairs and Trade has provided comments and their views are reflected in the paper.

86. This kaupapa will form a key priority for Te Pae Tawhiti and be developed in a cross-agency manner. We will look to utilise the proposed expert rōpū that will be formed as part of Te Pae Tawhiti. We will also look to utilise existing rōpū to feed into the policy development, including Te Ara Pūtaiao, the network of Maori managers from the Crown Research Institutes.

## Recommended Action

87. We recommend that you:

- a. **provide** feedback on the draft 'tangata harakeke' model for a national bioprospecting regime set out in this paper
- b. **note** ensuring a national bioprospecting regime is consistent with international agreements including the Nagoya protocol will be critical to protect New Zealand's interests internationally
- c. **direct** Te Puni Kōkiri, subject to your feedback, to further develop the policy and report back to you and key Ministers in July 2022 on the general approach and policy options for developing a domestic bioprospecting regime.

Yes / No

Geoff Short

Manahautū Tuarua Te Puni Hononga Kaupapa Here / Deputy Secretary, Policy Partnerships

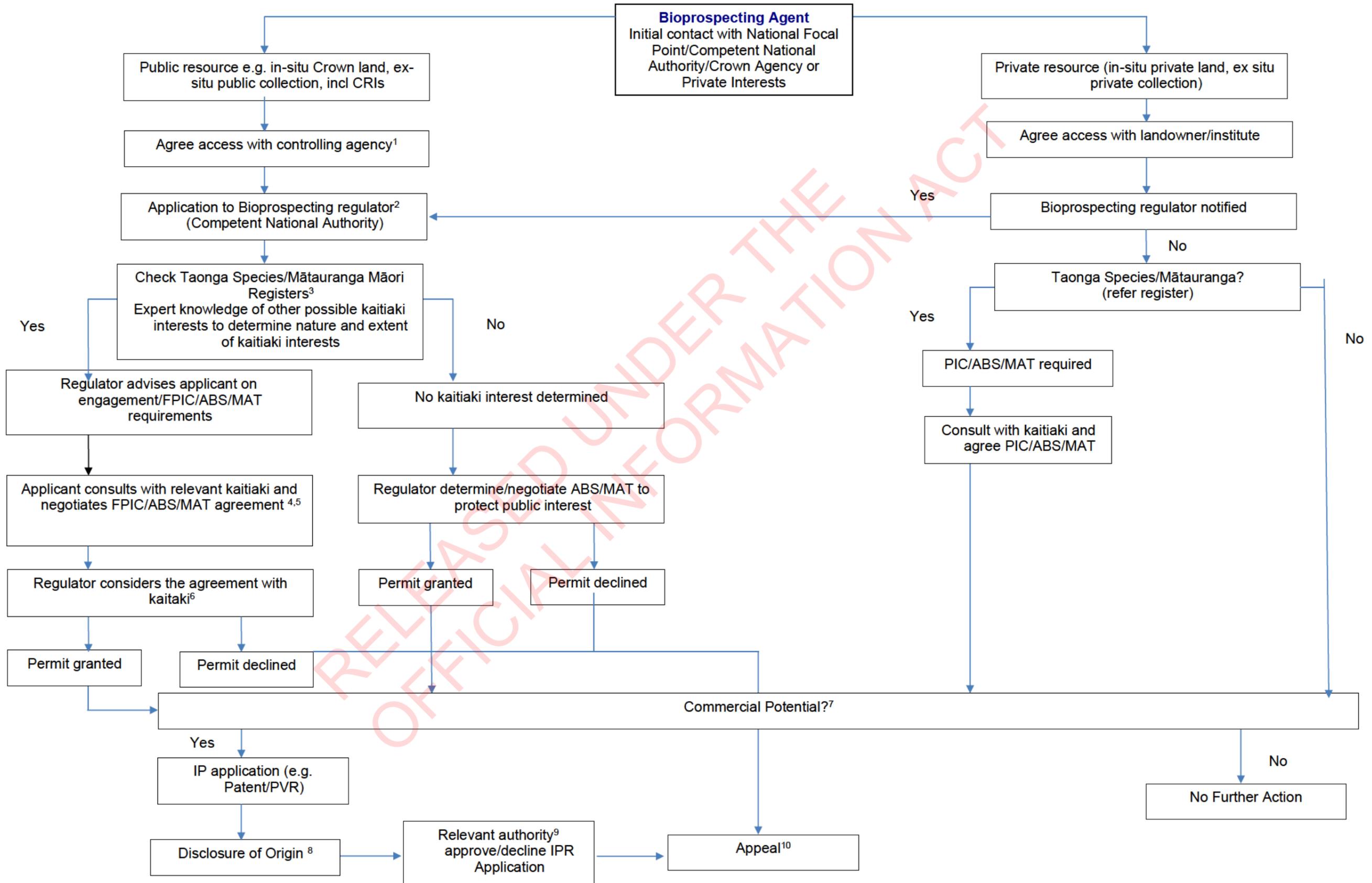
Hon Nanaia Mahuta  
Associate Minister for Māori Development

Date: \_\_\_\_ / \_\_\_\_ / 2021

RELEASED UNDER THE OFFICIAL INFORMATION ACT

**Attachment 1: “Tangata Harakeke” – Potential National Bioprospecting Regime**

- Regime below would require development of sui generis domestic New Zealand regulatory framework.



1. Agreement with controlling Crown agency (e.g. DoC) is an additional opportunity to determine/protect kaitiaki interests (e.g. DoC concession policy requiring section 4 consideration/consultation with tangata whenua). Crown funding streams for scientific research could also be utilised as a mechanism for managing bioprospecting to some degree.
2. The bioprospecting regulator could be appointed with iwi/hapū. Appointment process would need to be determined. E.g. Minister(s) appoint Crown members, Te Kawai Taumata or similar process for Treaty Partner members.
3. Taonga Species and Mātauranga Māori Registers would need to be created/established. Process and criteria to include on register will be required, along with decision making process and appeal process.
4. Bioprospecting regulator could advise on appropriate free, prior and informed consent (FPIC) / access and benefit-sharing (ABS) / mutually agreeable terms (MAT) agreements or they could be negotiated directly by parties
5. Establishing protocols/principles for engagement with iwi and ensuring up to date contacts will assist the consultation process
6. Will require criteria/principles for managing multiple kaitiaki interests, including how any benefits will be shared (eg Te Huarahi Tika Trust)
7. Many jurisdictions have 'easier' pathways for non-commercial research. Further consideration required on how this would align with protecting kaitiaki interests
8. Need to determine sanctions for failure to secure agreement prior to IP application (e.g. decline application)
9. Relevant authority could be Patent Commissioner or PVR Commissioner. They will need to determine if disclosure of origin information has met requirements or if application should be rejected.
10. Appeal body would need to be determined. Appeal pathway would also be required for kaitiaki or other interests where they oppose granting of consent.

## Attachment 2: Bioprospecting experiences of Australia and Canada

### Australia

- Australia is a signatory to the Nagoya Protocol but not a Party. While Australia supports the Protocol's intent, there is mixed implementation of bioprospecting across Australia due to differences between Commonwealth and State competencies.
- National legislation operates in Commonwealth areas only (land owned or leased by the Commonwealth, coastal sea, continental shelf, and the exclusive economic zone (EEZ) of Australia). Australia has had mixed success encouraging states and territories to implement this legislation.
- Regulations treat biological resources as a physical substance (so does not capture traditional knowledge directly) however if the biological resources to which access is sought are in an area that is indigenous people's land, the owner or native title holder must give prior informed consent to a benefit-sharing agreement concerning access to those biological resources. The government can therefore certify that traditional knowledge was obtained with prior informed consent (comment: this was considered 'the furthest Australia could go' without asserting ownership over traditional knowledge).
- There is a requirement to disclose the use of traditional knowledge in an application for access. However, there is a loophole in the legislation if the genetic resources are available elsewhere but traditional knowledge is still used (only picked up when genetic resources are used with associated traditional knowledge).
- An applicant for a permit for access to biological resources for commercial (or potential) purposes must enter into an Access and Benefit-Sharing (ABS) agreement with the access provider for the resources.
- In Australia's experience, the use of genetic resources has been at the higher-tech/biotech end of the spectrum.
- To date, no monetary benefits have been received from an ABS arrangement (just in-kind use of research and technology). The main benefits are the sharing of biodiversity data e.g. on new species discoveries. National legislation has allowed Australia to maintain relationships with researchers.

### Canada

#### *Overall context:*

- Access to genetic resources in Canada is largely governed by laws and regulations regulating access to biological resources, not genetic resources. In the bulk of cases, access to genetic material is not a subject of consideration.
- In Canada, access and benefit sharing is managed in accordance with applicable legislation, policies and legal principles; in particular, conservation legislation and property and contract law. Comprehensive land claims and self-governing agreements with Indigenous groups set out specific provisions with respect to access to lands. Canada acknowledges the unique relationship established by these agreements. In Canada all Indigenous communities have ability to govern access to Indigenous

- knowledge associated with genetic resources that they hold and that is not publicly available. Over the years, various Canadian providers and users of genetic resources have also developed and used ABS practices, including regulatory permits and licenses, contracts, loan agreements and specialized international access and benefit-sharing instruments, as well as codes of ethics, research protocols and guidelines.<sup>3</sup>

#### *ABS policy discussions:*

- ABS policy discussions in Canada began in 2004, when the Federal/ Provincial/ Territorial (F/P/T) Ministers responsible for Forests, Wildlife, Endangered Species and Fisheries and Agriculture recognised the need for stewardship of Canadian genetic resources. The Ministers approved a 2005 document developed by the F/P/T Working Group on ABS entitled *ABS Policies in Canada: Scoping the Questions and Issues*, which sought to contribute to the development of a coherent approach with consistent measures across jurisdictions, looking ahead to the possible international regime, and provide direction for fully engaging stakeholders. The paper translated some of the key CBD provisions into concrete issues that need to be considered from an F/P/T approach. It explored public policy objectives, raised policy questions in implementing ABS, and set out principles and features of Canadian ABS policies.
- Environment Canada, in collaboration with other federal departments and provinces and territories, convened thematic workshops to inform stakeholders and gather views. Scientists, industry representatives, Indigenous representatives, NGO representatives, academics, policy-makers and lawyers were invited, and some of the reports are available online.<sup>4</sup> In this period, Canada also co-organized the *International Expert Workshop on Access to Genetic Resources and Benefit-sharing with the Mexican government*.
- Domestic discussions and stakeholder engagement continued during the negotiation of the Nagoya Protocol, and in 2011 regarding possible signature. The decision was taken not to sign the Protocol, but analyses were undertaken to understand what gaps would need to be bridged to allow for accession, should a later decision be taken to accede, as well as what gaps still exist regarding CBD implementation. Environment and Climate Change Canada has continued to lead discussions on ABS policy development, including on whether a federal approach could provide a model for provinces, territories, Indigenous groups and private entities to use as a basis for their own policies and plans. No approved ABS policy document is available to share at this time.
- In recent years, Indigenous and civil society discussions on ABS policy development have mainly taken place via the *ABS Canada* project, including the development of a *book*, with a *chapter* by two ex-Environment Canada colleagues describing some elements of government ABS discussions and Indigenous engagement up to 2017).

Canadian officials anticipate that the Post-2020 Global Biodiversity Framework negotiations on an ABS goals and targets will stimulate domestic policy discussion and engagement, including on how to clarify access measures, strengthen opportunities for benefit-sharing and raise awareness of potential users and providers.

#### **Attachment 3: *Ko Aotearoa Tēnei* recommendations regarding bioprospecting**

<sup>3</sup> One prominent example of ABS-relevant guidelines is the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans (TCPS 2 (2018), *chapter 9*: Research Involving the First Nations, Inuit and Métis Peoples of Canada.

<sup>4</sup> *Northern Workshop on Access to Genetic Resources and Associated Traditional Knowledge and Benefit-Sharing; Genetic Resources in Canadian Agriculture; Access to Forest Genetic Resources and Benefit-sharing*

5. *Ko Aotearoa Tēnei* gives some guidance on a process for managing access to genetic resources on the Crown conservation estate and extrapolates this out to the wider Crown land estate. This does not address bioprospecting on private land. The Tribunal's view was its recommended changes to the wider Intellectual Property Regime would create a wash-back effect addressing bioprospecting on private land.

6. The Tribunal concluded:

*“that kaitiaki do not have rights in the genetic and biological resources of taonga species that are akin to the Western conception of ownership. Only in the most rare and exceptional cases, like the tuatara, would we say kaitiaki are justified in claiming an interest in each living specimen of a taonga species.*

7. Regarding bioprospecting the Tribunal continued:

*“that where there is a risk that bioprospecting, GM, or IP rights will affect kaitiaki relationships with taonga species, those relationships are entitled to a reasonable degree of protection. Just what is reasonable is a matter for case-by-case analysis. It requires a full understanding of the level of protection required to keep the relationship safe and healthy, as well as a careful balancing of all competing interests.”*

8. In commenting on mātauranga Māori the Tribunal stated:

*that kaitiaki have valid rights in respect of the mātauranga Māori associated with their taonga species, even though such rights do not amount to exclusive ownership of that knowledge, at least where the knowledge is already publicly known.*

*We conclude that activities involving the commercial exploitation of mātauranga Māori must give proper recognition to the interests of kaitiaki, including their rights to acknowledgement and to have a reasonable degree of control over the use of mātauranga Māori.*

9. The Tribunal's recommendations for the wider IP regime included:

- I. establishing a Māori Committee to advise the Commissioner of Patents on whether applications are derived from mātauranga or use taonga species. The Tribunal also recommended this Committee have authority to advise the Commissioner kaitiaki interests are at risk and a Patent application should be declined.
- II. expanding criteria for assessing Patent applications from just against public morality to include matters of *ordre public* which could include use of mātauranga Māori, or interfering with the kaitiaki relationship with taonga species
- III. establishing a process whereby kaitiaki can register their interest in taonga species, or to advise Intellectual Property Office of New Zealand of any issues they have with a particular application.
- IV. making it mandatory for all Patent applications to disclose the mātauranga Māori and genetic or biological resources that contributed to the research or invention that in any way led to the Patent application. Patent applicants who failed to comply with the disclosure requirements would be subject to range of sanctions, including cancellation of a Patent.

## **Attachment 4: Summary of previous Crown work on bioprospecting**

### **Introduction**

1. Considerable work was undertaken on bioprospecting in the 2000s by the former Ministry of Economic Development (MED). This work included two discussion documents and the setting up of a number of cross-government working groups to consider different aspects of the issue, including issues of importance to Māori. The work took place against the backdrop of the Wai 262 inquiry and the anticipated release of the report.

### **Bioprospecting in New Zealand: Discussing the Options 2002**

2. In 2001 the then Associate Minister of Economic Development requested an interdepartmental review of New Zealand's policy framework for the regulation of bioprospecting activities. This was based on concerns that New Zealand was not fully realising the potential benefits of bioprospecting research and that fulfilment of New Zealand's obligations under the CBD could be improved.
3. A 2002 discussion paper set out the issues arising from the review. The paper discussed the legislative and policy contexts for bioprospecting activities and presented some potential policy objectives and options to address issues with the status quo. Key principles on which these were based included that:
  - New Zealand has a right to gain benefit from the use of its own biological resources
  - Bioprospecting can contribute to the growth of an innovative economy and to increasing the skills of New Zealanders
  - The value of Māori knowledge about biological resources should be recognised and protected.
4. The results of the consultation "suggested that the current situation in New Zealand was not well suited to optimise possible benefit capture as well as minimise the potential risks that may stem from these pursuits."<sup>5</sup>

### **Bioprospecting: Harnessing Benefits for New Zealand 2007<sup>6</sup>**

5. In 2007 the then Minister of Energy released a further discussion document. The purpose of this document was to:
  - Gather further information about bioprospecting in New Zealand
  - Facilitate an informed discussion about the development of bioprospecting policy
  - Help determine how a bioprospecting framework might be structured
  - Allow policy development to better address the issue of traditional knowledge, in particular mātauranga Māori, relating to natural resources within a bioprospecting framework.
6. The consultation identified a general consensus that New Zealand needed a bioprospecting framework and identified a number of key issues that would need more detailed consideration as part of the development of that framework. One of the recommendations arising from the consultation was the establishment of working groups to address some of these issues. There was not, however, consensus on the timing of policy development, mainly because the Wai 262 inquiry was still underway.

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<sup>5</sup> As reported in the 2007 discussion document, see note 8

<sup>6</sup> <http://docs.niwa.co.nz/library/public/9780478310535.pdf>

15 Mahuru 2021

Associate Minister for Māori Development

## HE PĀRONGO | AIDE MEMOIRE

### Hui on the review of the Plant Variety Rights Bill with Hon Dr David Clark

Te Puni Kōkiri contact: Laine Fisher, Kaiārahi Kaupapa

Phone: 9(2)(a)

TPK tracking no: 43967

#### Purpose

1. To provide you with further information on the proposal to amend the Plant Variety Rights (PVR) Bill to allow decisions of the Māori Plant Varieties Committee (MPVC) to be appealed to the High Court.

#### Context – status quo in the Bill

2. Cabinet agreed in 2019 [DEV-19-MIN-0301 and CAB-19-MIN-0593 refer] that decisions concerning the relationship of kaitiaki with indigenous species and non-indigenous species of significance should be made in a meaningful and mana-enhancing way at all stages of the PVR process.
3. Cabinet agreed that decisions relating to Māori cultural interests should be made by Māori through the MPVC. MPVC members will be required to have relevant expertise and knowledge of mātauranga Māori, tikanga Māori, te ao Māori and taonga species.
4. Consistent with the above principle, Cabinet also agreed MPVC decisions should be subject to judicial review, but not an additional direct right of appeal. Judicial review focuses mainly on ensuring the *process* the MPVC used in making their decision followed the legal requirements (including principles of natural justice such as the right to be heard).
5. A direct right of appeal is where the Court becomes the decision-maker to determine if the MPVC made the 'right' decision based on the facts of the case. In effect the Court would be determining the interests of the kaitiaki in relation to the PVR application and how these should be protected.

#### *Select Committee and submissions*

6. The Economic, Development, Science and Innovation (EDSI) Select Committee received 6 submissions that commented on these provisions in the PVR Bill, 4 submissions, including the New Zealand Law Society and several plant breeders, requested the Bill provide a right of appeal to the High Court.
7. Submissions from the Māori Law Society and Wakatū Incorporation supported the current drafting that provides only for judicial review of the MPVC decisions. Wakatū Incorporation submitted that if an appeal process was to be included the Māori Land Court should have jurisdiction to hear appeals.
8. The Minister for Commerce and Consumer Affairs is now considering seeking Cabinet agreement to three amendments to the PVR Bill including the right of appeal to the High

Court regarding determinations of the MPVC. The other two changes relate to extending the PVR term for potatoes from 20 to 25 years, and the definition of 'essentially derived variety'.

9. ***Te Puni Kōkiri has advised the Ministry of Business, Innovation and Employment (MBIE) we do not support the proposed changes enabling MPVC decisions to be appealed to the High Court.***

## Comment

*When is it appropriate to include an appeal process in legislation?*

10. In all legislation, there is a question as to whether an appeal provision to a Court is necessary. This decision is usually made on:
- a. ***potential costs*** of including an appeal process and the outcomes it can create
  - b. ***implications of delay*** of a decision to the applicants and whether this would
  - c. ***significance of the subject matter***, particularly if it concerns the rights and interests of individuals
  - d. ***competence and expertise*** of the original decision maker and whether there is a need for a further step given their regulatory role
  - e. ***need for finality*** in decision-making to make it clear to applicants there is no further avenues for challenge.
11. ***Given these considerations, we think there is a strong policy rationale to maintain the status quo, We consider that if an appeal process is established there would need to be further policy development of the detail in the Bill to guide the Court. There would also need to be a process developed, akin to the one in the Trademarks Act, to enable experts to be appointed to the Court in any appeal process.***

## *Issues for Māori*

12. Amending the PVR Bill to allow MPVC decisions to be appealed directly to the High Court undermines the principles agreed in the original Cabinet decision that decisions regarding kaitiaki interests should be made by Māori through the MPVC. The proposal to allow direct appeals to the High Court is a significant change and risks having a detrimental impact on the Māori - Crown relationship by lessening the status of the MPVC as currently set out in the PVR Bill.
13. Enabling direct appeals to the High Court is also likely to severely limit the ability of many kaitiaki to protect their rights and interests if MPVC decisions are appealed. This is due to the prohibitive cost of participating in High Court appeals to defend their interests.
14. This would further exacerbate concerns raised by Māori, including Ngā Toki Whakarururanga (Ngā Toki), about the burden on kaitiaki from protecting their kaitiaki interests through the PVR and similar processes.
15. As noted above, the two submissions from Māori (the Māori Law Society and Wakatū Incorporation) that referred to the status of MPVC decisions both supported the current drafting. Other iwi/hapū and Māori with interests in the PVR Bill, including Ngā Toki are

also likely to oppose any changes to the current drafting that make it more difficult for kaitiaki to protect their interests.

16. The proposed changes are likely to be interpreted by Māori as the Crown not having trust in Māori to make equitable determinations regarding their own interests. Even though the proposals in the PVR go beyond the recommendations of *Ko Aotearoa Tēnei*, the proposed change will still be considered a backwards step by the Crown in recognising Māori aspirations for tino rangatiratanga over their interests.

#### *Precedent Setting*

17. Te Puni Kōkiri understands one of Minister Clark's main concerns is that the current drafting risks setting a precedent that matters regarding Māori cultural values or interests are beyond the purview of the Courts.
18. However, Te Puni Kōkiri's view is the matters being determined by the MPVC are unique and can be distinguished from other matters that may more appropriately be determined by the High Court. We believe the principles Cabinet applied in making their original decision in 2019 are still valid and no further information is available that would justify revoking that original decision.

#### *Criteria for determining kaitiaki relationships*

19. There are currently no criteria provided in the PVR Bill for how to determine if a kaitiaki relationship exists, or how to assess the implications of a PVR on any kaitiaki relationship.
20. If a right of appeal is provided to the High Court Te Puni Kōkiri believes it is critical to establish criteria to guide the Court in determining the existence or nature of kaitiaki relationships and what implications PVR may have on these interests.
21. To amend these provisions at this point in the process will require a robust policy process to develop suitable criteria to include alongside the new appeal provisions and this will likely generate significant interest with Māori as well.
22. Te Puni Kōkiri considers it unlikely officials will be able to develop suitably robust and detailed provisions within the available time for enacting the PVR Bill. Any further delay with enacting the PVR Bill is likely to be seen unfavourably in the context of New Zealand's obligations under the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP).

#### *Alternative Appeal Process*

23. If there is agreement to an appeal process on the MPVC decisions, an alternative may be to enable appeals to the Māori Land Court rather than the High Court. The Māori Land Court may be considered to have a greater level of expertise in dealing with Māori cultural values and interests than the High Court.

#### *Waitangi Tribunal Inquiry*

24. The Waitangi Tribunal also considered the drafting of the PVR as part of the Wai 2522 claim and was strongly in favour of the PVR drafting recognition and the protection of Māori interests in the Bill.
25. The proposed change to enable High Court appeals on the MPVC decisions may be viewed negatively if the Tribunal has the opportunity to consider these matters again in the future.

*Practical implications*

26. On average between 7 and 10 PVR applications involving indigenous species are received annually and would be referred to the MPVC for consideration.
27. Most of these applications come from small nurseries/growers.
28. This is a relatively low number of applications and based on our discussions with MBIE officials, in most instances we expect PVR applicants would seek to resolve any concerns directly with the relevant kaitiaki rather than seeking resolution via High Court appeal.
29. Combining the likelihood not all PVR applications involving indigenous species will have adverse effects on kaitiaki interests with the reality the costs of appeal are likely to be prohibitive for many PVR applicants as well as kaitiaki based on a cost-benefit analysis, we believe it is unlikely any appeal provisions will be used often.

**Next Steps**

30. You are meeting with Hon Dr David Clark at 1pm today to discuss the proposed policy changes to the PVR Bill.

**Recommendations**

31. Taking into consideration the limitations a High Court appeal process will have for the ability of kaitiaki to protect their interests, including cost and resourcing, and the uncertainties around the High Court and the Bill's capacity to define and make decisions on kaitiaki interests, Te Puni Kōkiri recommends retaining the existing policy.

Laine Fisher  
Kaiārahi Kaupapa | Project Lead, Policy Partnerships

<b>NOTED</b>
Hon Nanaia Mahuta Associate Minister for Māori Development
Date: ____ / ____ / 2021

# HEI WHAKATAU | BRIEFING

## Plant Variety Rights Bill: appeals to the Māori Appellate Court

<b>Date:</b>	5 Whiringa-ā-rangi 2021	<b>Priority</b>	Medium
<b>Classification</b>	In-Confidence	<b>Tracking Number</b>	44242

<b>Action sought</b>	<b>Date action required by</b>
It is recommended that you:  1. <b>Agree</b> to the recommendations in this briefing	9 Whiringa-ā-rangi 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone	Mobile	1 <sup>st</sup> contact
Laine Fisher	Kaiārahi Kaupapa		9(2)(a)	✓
Tāmāti Olsen	Kaihautū (Kairīwhi)			
Geoff Short	Hautū, Kaupapa Here			

Other Agencies Consulted					
<input type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input type="checkbox"/> MHUD	<input type="checkbox"/> Other				

<b>Attachments</b>	1. Plant Variety Rights: Appeal pathway for Māori Plant Varieties Committee Decisions briefing
--------------------	--

Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments:

<b>Forward to:</b>	
• Minister for Māori Development	✓
• Minister of Commerce and Consumer Affairs	✓

5 Whiringa-ā-rangi 2021

Associate Minister for Māori Development

## **Plant Variety Rights Bill: appeals to the Māori Appellate Court**

### **Purpose**

1. To seek your agreement to the proposed changes to the Plant Variety Rights (PVR) Bill to allow decisions made by the Māori Plant Varieties Committee (MPVC) to be appealed to the Māori Appellate Court.

### **Background**

2. Following consideration of submissions to the Select Committee, the Minister of Commerce and Consumer Affairs proposed the PVR Bill should include a right of appeal on MPVC decisions.
3. Cabinet agreed and rescinded its initial decision that determinations of the MPVC only be subject to judicial review. Cabinet delegated authority to the Minister of Commerce and Consumer Affairs, in consultation with you, to make further decisions on the nature of the appeal pathway [CAB-21-MIN-0388.01 refers].
4. Te Puni Kōkiri initially recommended the Māori Land Court was the preferred option if an appeal process was to be included.

### **Māori Appellate Court**

5. The Ministry of Business, Innovation and Employment (MBIE) consulted with the Chief Justice, Rt Hon Helen Winkelmann on whether the High Court or Māori Land Court would be the more appropriate court to hear appeals on MPVC decisions.
6. The Chief Justice consulted with the Chief High Court Judge and the Chief Māori Land Court Judge, and they agreed that the Māori Appellate Court would be the most appropriate court to hear these appeals.
7. The Chief Justice also advised that it would be sensible for the proposed right of appeal from the MPVC to be a general right of appeal, as there would be difficulty in distinguishing between questions of law and fact in this context.
8. MBIE recommended the Minister of Commerce and Consumer Affairs agree:
  - a. that the Māori Appellate Court should hear appeals regarding MPVC decisions, and
  - b. that the appeal be a general right of appeal on questions of both fact and law.
9. Attachment 1 refers to the Minister of Commerce and Consumer Affairs' decisions on these recommendations.

## Te Puni Kōkiri position

10. Te Puni Kōiri agrees the Māori Appellate Court is the most appropriate court to hear appeals regarding MPVC decisions. The Māori Appellate Court has sufficient seniority to reflect the status of the MPVC and the importance of appeals from this Committee. We agree it is also the most appropriate to consider matters regarding tikanga and kaitiaki relationships.
11. Te Puni Kōiri will continue to work with MBIE to identify opportunities to ensure kaitiaki are appropriately supported through the PVR process, including appeals to the Māori Appellate Court.

## Next Steps

Out of scope

## Recommended Action

15. It is recommended that you:

- a. **agree** that the Māori Appellate Court is the most appropriate court to consider appeals on decisions of the Māori Plant Varieties Committee, **Yes / No**
- b. **agree** to allow appeals on questions of both fact and law, **Yes / No**
- c. **agree** to forward this briefing with your decisions to the Minister of Commerce and Consumer Affairs. **Yes / No**

Laine Fisher  
Kaiārahi Kaupapa

Hon Nanaia Mahuta  
Associate Minister for Māori Development

Date: \_\_\_\_ / \_\_\_\_ / 2021



## BRIEFING

### Plant Variety Rights: Appeal pathway for Māori Plant Varieties Committee Decisions

<b>Date:</b>	28 October 2021	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-1344

Action sought		
	Action sought	Deadline
Hon Dr David Clark Minister of Commerce and Consumer Affairs	<p><b>Note</b> the recommended approach to appeals set out in this paper</p> <p><b>Consult</b> the Associate Minister for Māori Development on this issue</p> <p><b>Agree</b> the appeals pathway</p>	4 November 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Natasha Wells	Manager, Corporate Governance and Intellectual Property Policy	9(2)(a)	
Aidan Burch	Senior Policy Advisor		✓
Marcus Smith	Senior Policy Advisor		

The following departments/agencies have been consulted:
Te Puni Kōkiri, Ministry of Justice

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments:



## BRIEFING

### Plant Variety Rights: Appeal pathway for Māori Plant Varieties Committee Decisions

<b>Date:</b>	28 October 2021	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-1344

#### Purpose

To seek your decision on the appeal pathway for decisions of the Māori Plant Varieties Committee in the Plant Variety Rights Bill (**PVR Bill**).

#### Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that on 27 September 2021, Cabinet agreed that there be a right of appeal regarding decisions of the Māori Plant Varieties Committee

*Noted*

- b **Note** that Cabinet also authorised you, in consultation with the Associate Minister for Māori Development, to make further decisions on the nature of the appeal pathway

*Noted*

- c **Note** that Ministry of Justice officials recommended we consult the Chief Justice regarding the proposed appeal process and her view was that the Māori Appellate Court would be the appropriate appeal pathway

*Noted*

- d **Agree** that appeals against determinations of the Māori Plant Varieties Committee should be heard by

**Either:**

- a. The Māori Appellate Court (**our recommended option**).

*Agree / Disagree*

**Or:**

- b. The High Court

*Agree / Disagree*

- e **Agree** that the appeal be a general right of appeal on questions of both fact and law.

*Agree / Disagree*

- f **Note** that your decision will inform the basis of our subsequent advice to the Economic Development, Science and Innovation Committee that is currently considering the PVR Bill.

*Noted*

- g **Agree** to forward a copy of this briefing to the Hon Nanaia Mahuta, Associate Minister for Māori Development, and seek her views on this matter

*Agree* /  *Disagree*



Natasha Wells  
**Manager, Corporate Governance and  
Intellectual Property Policy**

28 / 10 / 2021



Hon Dr David Clark  
**Minister of Commerce and Consumer  
Affairs**

...1 / ...11 / ...2021

RELEASED UNDER  
OFFICIAL INFORMATION ACT

## **You have delegated authority to decide the most suitable appeal pathway for decisions of the Māori Plant Varieties Committee**

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1. The Plant Variety Rights Bill (**PVR Bill**) would establish a Māori Plant Varieties Committee (**MPVC**) to determine whether the grant of a plant variety right (**PVR**) would impact, without adequate mitigation, any relationship of kaitiakitanga between a taonga species and Māori.
2. The PVR Bill, which is before the Economic Development, Science and Innovation Committee, currently provides that:
  - a. any person may request the MPVC reconsider its decision if new information is available that wasn't available at the time of the original decision
  - b. there is no right to appeal a decision of the MPVC to the courts; only judicial review is available.
3. On 27 September 2021, Cabinet agreed to rescind its November 2019 decision that determinations of the MPVC only be subject to judicial review. They agreed that there should be a right of appeal, and delegated authority to you, in consultation with the Associate Minister for Māori Development, to make further decisions on the nature of the appeal pathway [CAB-21-MIN-0388.01 refers].

## **Existing appeal procedures offer a few choices, in addition to appeal bodies**

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### **Appeal rights are different in kind to judicial review**

4. Everyone has a legitimate expectation, recognised by section 27 of the New Zealand Bill of Rights Act 1990, that decisions affecting their interests are made in accordance with the law. Subjecting these decisions to the possibility of review or appeal helps to ensure this happens (both by enabling wrongs to be corrected and by incentivising the original decision-maker to faithfully apply the law).
5. Judicial review is the inherent power of the High Court to review the lawfulness of decisions taken under statutory powers. This is limited to examination of whether the decision was reached in accordance with the law.
6. A right of appeal, on the other hand, enables parties to seek a review of the merits of a decision on questions of either or both fact or law. This typically involves the appellate body standing in place of the original decision-maker to see whether it would have reached the same conclusions.

### **Choice of appeal body is largely a matter of competence and expertise**

7. While the High Court is the usual option for appeals, given the constitution of the MPVC and the specialist nature of the matters it is to decide on, the Māori Land Court (or Māori Appellate Court) are also suitable options.
8. This is a choice between courts of general jurisdiction and a specialist court. The Legislation and Design Committee's 2021 guidelines (**the LDAC Guidelines**) (at 28.3) state that:

"Courts of general jurisdiction are more appropriate for second appeals from specialist courts, or for first appeals where general matters of criminal or civil law are involved. A specialist body will generally be appropriate for first appeals from decision makers in narrow fields or in cases that require technical expertise on the part of the decision maker."
9. The Māori Appellate Court is specially established under Te Ture Whenua Māori Act 1993 to hear appeals against decisions of the Māori Land Court. This reflects the fact that courts of

general jurisdiction are unlikely to have the specialist knowledge and expertise on tikanga and the nature of the relationship Māori have with land to properly hear these appeals.

10. However, as pointed out by the New Zealand Law Society in their submission on the PVR Bill, the High Court does have experience interpreting customary rights under the Treaty of Waitangi. Some legislation (e.g. section 99 of the Marine and Coastal Area (Takutai Moana) Act 2011) provides for the High Court to refer to the Māori Appellate Court for opinion or advice on tikanga. The High Court also has a power to appoint experts under the High Court Rules 2016.

## **We consulted with the judiciary on this issue**

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11. We sought the view of the Chief Justice, who in turn consulted with the Chief High Court Judge and the Chief Māori Land Court Judge, on the issue of whether the High Court or Māori Land Court would be the more appropriate appeal pathway. The Justices considered the Māori Appellate Court in addition to the Māori Land Court.
12. Her view, following this consultation with her colleagues, is that a right of appeal from the MPVC to the Māori Appellate Court would provide appropriate overall appeal rights. She added further that “[i]t seems sensible for the proposed right of appeal from the MPVC to be a general right of appeal, as in this context there would be particular difficulty in distinguishing between questions of law and fact”.
13. Given the very limited number of appeals expected (if any), the Chief Justice considered that the operational implications of this would be “modest”.

## **We have also consulted with the Ministry of Justice and Te Puni Kōkiri**

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14. Te Puni Kōkiri (TPK) requested that we include the following paragraphs.

### **Te Puni Kōkiri comment**

15. Te Puni Kōkiri agrees with the view of the Chief Justice that it would be appropriate for the Māori Appellate Court to consider appeals from the MPVC. This will ensure that the appeal court has relevant expertise on tikanga and kaitiaki when considering appeals regarding decisions of the MPVC.
16. Te Puni Kōkiri continues to hold the view that any appeals process should enable effective participation by both kaitiaki and plant breeders. We consider the Māori Appellate Court provides the most appropriate balance for both kaitiaki and plant breeders. We consider that kaitiaki would face greater barriers with appeals to the High Court. Te Puni Kōkiri recommends that the legislative and policy design of the appeals process give weighting to access to justice for kaitiaki given their relationship with taonga. This includes:
  - a. the amount of time available to appeal and operational process relating to the notice of appeal
  - b. during the hearing of the appeal - the material available to the court, the role of the MPVC, the grounds on which objection is permitted
  - c. the role of the court in exercising the powers of the Commissioner and ability to amend decisions or part of decisions; and
  - d. the status of the Commissioner’s original decision until a determination of the court is made.

**Ministry of Justice**

- 17. The Ministry of Justice (**MoJ**) is also comfortable with the Māori Appellate Court considering appeals from the MPVC, and they consider this consistent with the LDAC guidelines (discussed above in paragraph 8).
- 18. They also considered the precedent-setting nature of expanding the jurisdiction of the Māori Appellate Court. They agreed with our conclusions below that the risk would seem to be pretty low for such a discrete issue, with negligible volumes. Any further decisions to extend the jurisdiction of the court would be considered on its merits.
- 19. They raised the question of subsequent appeals, and our view is that, as for both the Māori Appellate Court and the High Court, these would be heard at the Court of Appeal.

**We recommend that appeals go to the Māori Appellate Court**

- 20. Having considered the views of the judiciary, and following consultation with our colleagues at MoJ and TPK, we recommend that appeals to decisions of the MPVC be heard at the Māori Appellate Court, and that the appeal be a general right of appeal.
- 21. The Māori Appellate Court will have the appropriate expertise to consider these issues. It is made up of judges of the Māori Land Court who, in turn, are required to have knowledge and expertise of te reo Māori, tikanga Māori and the Treaty of Waitangi.
- 22. This Court is also likely to be more accessible for Māori appellants, particularly due to this knowledge and expertise. The possible barrier of filing fees are also lower than for the High Court. One of the concerns previously raised by TPK with appeals to the High Court rested on this point. There is no reason to believe that this pathway would be any harder for plant breeders than the High Court, and the court could appoint experts (e.g. in plant breeding) if it saw fit.
- 23. This does not mean that the High Court is unsuitable for hearing these matters. There are avenues for the High Court to avail itself of additional expertise if needed. However, it is likely to be less accessible for Māori due to higher filing fees and this may make it more challenging for kaitiaki in particular to protect their rights and interests in any appeals process.
- 24. Both courts have established procedures for hearing appeals and the operational implications for either would not be significant.
- 25. It is hard to make any comment on the precedent-setting nature of our recommendation. The question at hand is a very specific one and so we do not think it creates any great risk of more general conclusions being drawn about where matters relating to te ao Māori should be considered. Each subsequent case in which such a decision might arise will be considered by the Justices in turn, and their view formed on the specific nature of the case.
- 26. Our recommendation is based on balancing consideration of the different factors discussed above. These are summarised in the following table.

Assessment criteria	Appeals heard by High Court	Appeals heard by Māori Appellate Court
Competence and expertise of decision-maker	Sub-optimal given the specialist nature of the decision under appeal, but some scope to bring in relevant expertise, or seek opinion/advice from the Māori Appellate Court.	Greater expertise in matters relating to the specific nature of the question at hand (kaitaki relationships with taonga species).

Assessment criteria	Appeals heard by High Court	Appeals heard by Māori Appellate Court
Procedural readiness	Already has procedures for considering appeals.	Already has procedures for considering appeals.
Operational implications	Not significant.	Not significant.
Fit with existing functions/ matters able to be heard	It is not unusual for the High Court to navigate Treaty of Waitangi issues, though the specific issue at hand is a matter of tikanga and te ao Māori. These issues would be within the general jurisdiction of the High Court.	Possible, but may require Parliament to extend the jurisdiction of this court. Further consultation with MoJ and PCO will be necessary here.
Accessibility for Treaty partners	The High Court will be more expensive to access.	Lower filing fees will provide greater accessibility. Knowledge and expertise of te reo Māori, tikanga Māori and the Treaty of Waitangi will enhance accessibility.
<b>Overall assessment</b>	These considerations do not rule out the High Court as an option ...	... but, based on the views of the Chief Justice, accessibility and expertise, our recommendation is the Māori Appellate Court.

## Next steps

27. We are aiming to provide our advice on this matter to the Economic Development, Science and Innovation Committee by Tuesday, 2 November, and so would appreciate your decision by 1 November. While this is not a sitting week, it gives the Committee the option of making a decision on this advice before their next scheduled meeting on 11 November.
28. At this meeting, the Committee is due to be considering the revised tracked version of the PVR Bill. Ideally, we will have a decision from the Committee before then so that the relevant amendments can be drafted by the Parliamentary Counsel Office. If they do not consider the advice before this meeting, there is likely to be a small delay to the report back.
29. We recognise that there are few sitting weeks left this year, but still consider it preferable that the PVR Bill is passed before the end of the year. This will give stakeholders comfort that the delays to the review caused by COVID will have been kept to a minimum.

17 Kohitātea 2022

Associate Minister for Māori Development

## **HE PĀRONGO | AIDE MEMOIRE**

### **Engagement with Māori on Digital Sequence Information**

Te Puni Kōkiri contact: Laine Fisher, Project Lead Te Pae Tawhiti

Phone: 9(2)(a) [REDACTED]

TPK tracking no: 44531

#### **Purpose**

1. The Ministry of Foreign Affairs and Trade (Manatū Aorere) lead Aotearoa New Zealand's (Aotearoa) input into the United Nations Convention on Biological Diversity (CBD) post-2020 Global Biodiversity Framework (GBF).
2. International Parties to the CBD are considering how to approach Digital Sequence Information (DSI) within the CBD. Given the connection between the CBD and Te Pae Tawhiti, you asked for advice on engagement with Māori on DSI.
3. This paper seeks your feedback on our proposed approach to engagement on DSI that drives incremental relationship building with iwi, hapū and Māori. This engagement will be led by Manatū Aorere, supported by Te Puni Kōkiri, and is expected to further inform the government's national position on DSI.

#### **Convention on Biological Diversity in Aotearoa**

4. Since 1993 Aotearoa has been a Party to the CBD; a multilateral, legally binding treaty that has three main goals: the conservation of biological diversity (or biodiversity); the sustainable use of its components; and the fair and equitable sharing of benefits arising from genetic resources.
5. Aotearoa engages with the CBD across technical working groups that provide advice to the governing Conference of the Parties (COP). This includes the Open-ended Working Group (OEWG-3) which negotiates the new global goals and targets for biodiversity and associated processes, known as the post-2020 Global Biodiversity Framework.<sup>1</sup>
6. The OEWG-3 will next meet in Geneva from 13-29 Poutūterangi 2022 and will discuss policy options to address access to, and sharing of benefits, arising from the use of DSI. Options being suggested currently range from national regulation to a multilateral mechanism, or a combination of the two. Negotiators from Aotearoa will be present to represent the national interest of Aotearoa.

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<sup>1</sup> The negotiated post-2020 Global Biodiversity Framework sits adjacent to the CBD and will not have a legally binding status in international law. Aotearoa, as a Party to CBD, will be expected to contribute to the targets in the finalised GBF through domestic actions.

## Digital Sequence Information

7. DSI is a place holding CBD term for electronically stored and exchanged DNA sequence information (a computerised representation of genetic information). DSI is widely used for the conservation and sustainable use of biodiversity. For example, responding to the Ash tree dieback in the UK or studying pollinator diversity globally and understanding threats to their populations.
8. The use of DSI has, and will continue to, provide significant benefits globally, including in conservation (e.g. ecosystem research), science, agriculture (e.g. supporting breeding of plants and animals) and public health (e.g. developing vaccines and medicines).
9. However, international parties are yet to reach consensus on the scope, definition, and use of the term DSI. This has slowed progress on developing policy proposals for a regulatory framework for access to and use of DSI within the CBD.
10. International parties seem to agree on the need for fair and equitable sharing between nations of the benefits from the use of DSI. However, the details of how benefit-sharing mechanisms would operate are still under discussion.
11. Both the Nagoya Protocol and Article 8j of the CBD (concerning the preservation of traditional knowledge) provide a model for discussions on access and benefit-sharing of genetic resources. It is likely that these will inform parties' positions.

## Implications of DSI for Māori relate to the protection of kaitiaki interests

12. Te Puni Kōkiri recognises that DSI is a new and emerging area and can be highly technical. This highlights the importance of understanding the implications of DSI for Māori. Having appropriate processes around the use of DSI is crucial to mitigate risks and unintended consequences.
13. The risks and opportunities in DSI technologies strongly link to Te Pae Tawhiti, concerning the protection of kaitiaki interests in taonga species and mātauranga Māori. Individuals or organisations working with genetic material will need to consider the consequences of depositing this information in international data banks. Aotearoa would likely have to consider DSI in the context of a domestic bioprospecting framework.
14. More discussion within Aotearoa is needed to understand views on the handling, management and sharing of DSI for the duty of kaitiakitanga, for example whether the DSI of taonga species would be considered a taonga (given the disputed definition at CBD level), and if so, what role should kaitiaki have in the evolving management process.
15. Te Puni Kōkiri notes that in the increasingly global data environment, open, free databases are already in use. DSI questions are similar in nature Māori data governance and sovereignty. Frameworks already engaged in Aotearoa could assist in examining DSI. For example, the Māori Data Principles of Te Mana Raraunga, and the CARE Principles for Indigenous Data Governance through the Global Indigenous Data Alliance (GIDA).

### **Engagement with Māori on DSI is needed to give effect to Te Tiriti o Waitangi**

16. The Crown has an obligation to work with its Treaty partner to share information and consider potential implications of DSI for Māori, including identifying potential impacts on taonga species and kaitiaki relationships.
17. This requires information, time, resource and provision for engagement to enable Māori to consider what, if any, implications DSI has for Māori rights and interests, including mātauranga Māori, and what options may exist to address these.
18. This is consistent with Waitangi Tribunal recommendations, including the recent Wai 2522 report that reiterates the necessity of a partnership approach with Māori when considering international instruments, as well as the recognition that data is part of mātauranga Māori and that mātauranga is a taonga.
19. The engagement process outlined in this paper provides an opportunity to respond to Wai 262 related issues by exploring Māori interests in the active international policy subject of DSI, as well as strengthening domestic policy in Aotearoa by uplifting Māori participation in an international instrument, the CBD.

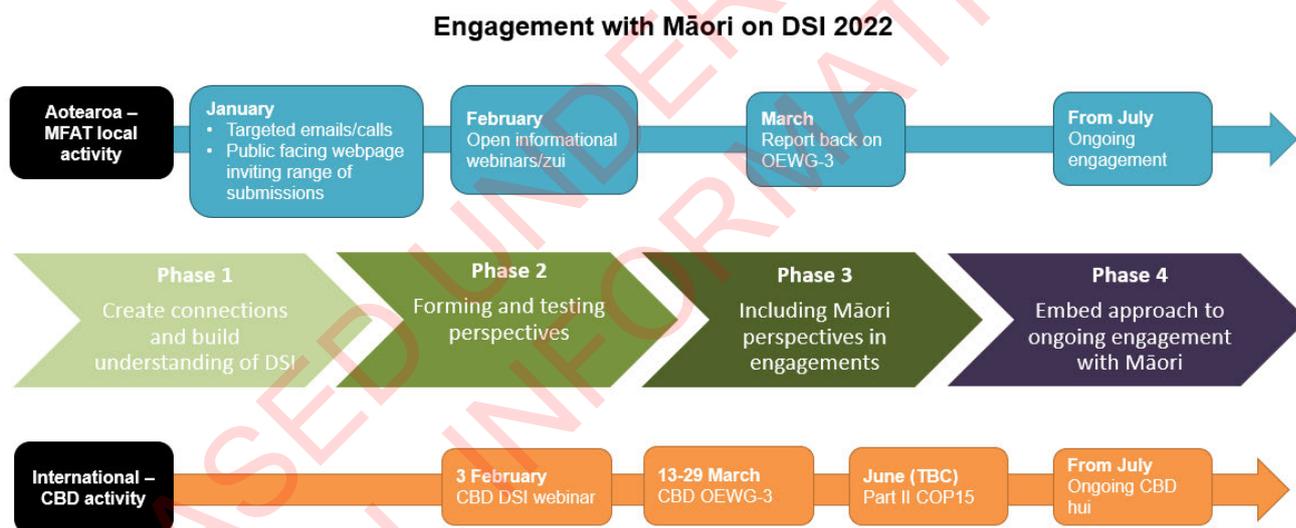
### **The negotiating position of Aotearoa will preserve space for future domestic actions**

20. Manatū Aorere is seeking an updated post-2020 Global Biodiversity Framework negotiation mandate from Cabinet in advance of the next international OEWG-3 hui in Poutūterangi 2022. Manatū Aorere recommend the negotiating position of Aotearoa on DSI should retain flexibility, to:
  - a. keep domestic policy options open to address DSI within Aotearoa;
  - b. support scientific research and innovation; and
  - c. encourage retention of associated metadata on the provenance and genetic material sources of DSI, so that any potential future rights to any benefits by indigenous peoples might be reserved.
21. With the ongoing discussion between Parties to the CBD on DSI issues, officials do not expect the OEWG-3 hui to achieve consensus. We anticipate final decisions will be deferred to the next CBD COP, likely to be in mid-2022 (subject to Covid-19 impacts).
22. Te Puni Kōkiri supports this negotiating position, as it provides the opportunity to engage more effectively with Māori and to identify opportunities and implications arising from DSI.

### **Engagement on DSI will provide the pathway for ongoing discussions**

23. Specific engagement with Māori on DSI has been limited to date and Māori views on DSI are largely unknown. A small number of individuals with interests in genetic resources have been approached, and the National Iwi Chairs Forum has recently agreed to engage on CBD as part of broader Conservation mahi, but no detailed discussions have yet been held.
24. Te Puni Kōkiri and Manatū Aorere are proposing to increase engagement with Māori on DSI to initiate ongoing, longer-term relationships that can inform and directly contribute to the national position on DSI within the CBD, as international discussions progress.

25. Time constraints limit what can be achieved prior to the next round of international negotiations in Poutūterangi 2022. Approximately 8 weeks are available for domestic engagement ahead of the OEWG-3 negotiations.
26. The first stage of high-priority engagement will focus on raising awareness of DSI and uplifting understanding on the work of the OEWG-3 amongst a wider group of Māori. This is expected to form connections with interested groups and sectors, that can continue to develop over time. Engagement would look to maximise interactions with existing rūpū and networks, such as Te Mana Raraunga (formed in 2015, to advocate for Māori rights and interests in data) and the Data Iwi Leaders Group (operating under the mandate of the National Iwi Chairs Forum).
27. Given the highly technical nature of DSI, we expect most interest will come from Māori working in related fields such as conservation, genetics or data sovereignty. As the implications of DSI are broad however, allowance for contribution from a wider range of interest groups (for example, Māori business or local government) is built into design.
28. Te Puni Kōkiri propose that Manatū Aorere undertake the staged approach outlined below to amplify Māori engagement on DSI (see detailed calendar of activities provided in *Annex One*):



- **Phase one:** To build understanding of DSI and create connections – provide information, facilitate kōrero and seek expressions of interest through existing channels and networks.
- **Phase two:** To form and test perspectives – facilitate kōrero and feedback thoughts for refining/testing to inform our national position.
- **Phase three:** To include Māori perspectives in CBD hui – determine Māori interests in DSI, solidify views from Aotearoa and enable Māori to participate/present at decision-making tables.
- **Phase four:** To embed process and approach – agree approach with identified stakeholders on how to continue DSI kōrero and linking to Te Pae Tawhiti international instruments workstream.

### Te Puni Kōkiri is working with Manatū Aorere to support this engagement

29. Te Puni Kōkiri and Manatū Aorere are working closely together on design of the outlined engagement. Manatū Aorere will lead the engagement, including managing activities through their websites, email and online platforms.
30. Te Puni Kōkiri will provide support to Manatū Aorere, including reviewing communication material and correspondence, analysing feedback received and participating in kōrero where requested.
31. Te Puni Kōkiri can assist in this role without work programme implications. Early discussions are underway between Manatū Aorere and Te Puni Kōkiri around what further resourcing and support may be needed over the next 6 months.

### Engaging key Māori stakeholders in Aotearoa on DSI

32. To initiate this proposed engagement process with Phase one, we recommend immediate approach to representatives from several expert groups that are likely to have a direct interest in DSI. These key groups and associated contacts are listed in *Annex Two*.
33. It will be necessary to work with interested parties to tailor engagement to manage the burden on stakeholders, while also ensuring sufficient opportunities are provided to input into policy development.
34. Te Puni Kōkiri notes that the time of key stakeholders is in-demand and koha is expected to support any involvement requested of experts engaged throughout this process.

  
 Laine Fisher  
 Kaiārahi Kaupapa, Te Puna Oranga | Programme Lead, Policy Puni

<b>NOTED</b>
Hon Nanaia Mahuta Associate Minister for Māori Development
Date: ____ / ____ / 2022

### Annex One: Detailed calendar of domestic DSI engagement to inform GBF negotiations

Phase	Date (2022)	Activities
<b>One</b> Build understanding	Kohitātea ASAP	Manatū Aorere to email introductory information and seek views from stakeholders (outlined in Annex One), with an invitation to share more broadly to their networks
		Public facing webpage of Manatū Aorere will be extended to provide a DSI landing site, link to CBD material with context, and allow for canvassing of wider DSI views, and inviting questions from broad audience
<b>Two</b> Test perspectives	Huitanguru	Additional informational webinar/zui led by Manatū Aorere and appropriate tikanga experts, if there is sufficient interest for this
	3 Huitanguru	CBD webinar on DSI
	Early Poutūterangi	Cabinet considers mandate update for GBF, including DSI
<b>Three</b> Include Māori perspectives	13-29 Poutūterangi	CBD OEWG-3 negotiations scheduled in Geneva
<b>Four</b> Embed process	Paengawhāwhā	Manatū Aorere negotiators feedback to Ministers as required, and to Aotearoa stakeholders updating on DSI development of options and discussions
	Pipiri (date TBC)	CBD COP 15 Part II hui anticipated
	From Pipiri	Ongoing CBD/DSI engagement anticipated

## Annex Two: List of identified key stakeholders for DSI in Aotearoa

Domestic groups that are likely to have an interest in DSI, and associated key contacts are listed in the table below. This list is not exhaustive and is considered a starting point for initiating conversations as part of Phase One of the proposed engagement. Te Puni Kōkiri will kōrero with Te Taumata Whakapūmau on this mahi given the relationship to Te Pae Tawhiti.

Organisation	Description of activities	Contacts
Te Taumata	The government's first port of call for trade discussions with Māori	<ul style="list-style-type: none"> <li>9(2)(a)</li> <li></li> </ul>
Ngā Toki Whakarururanga	Group established in 2020 to enable effective Māori influence on trade negotiations	<ul style="list-style-type: none"> <li>9(2)(a)</li> </ul>
Wai 2522 tikanga experts and practitioners	Experts who gave evidence as part of the recent Waitangi Tribunal's Wai 2522 hearings	<ul style="list-style-type: none"> <li>9(2)(a)</li> <li></li> <li></li> </ul>
Statistics New Zealand Data Iwi Leaders Group (DILG) contacts and Māori Data Governance Co-design Te Ao Māori group	DILG and Te Kāhui Raraunga Charitable Trust, associated working group	<ul style="list-style-type: none"> <li>9(2)(a)</li> <li></li> <li></li> </ul>
Genomics Aotearoa	An alliance of ten partners, including Universities and Crown Research Institutes. Has over 30 associate members, including organisations that are researchers or end users of genomics and bioinformatics.	<ul style="list-style-type: none"> <li>9(2)(a)</li> <li></li> </ul>

<p>Te Mana Raraunga – the Māori Data Sovereignty Network</p>	<p>The purpose of Te Mana Raraunga is to enable Māori Data Sovereignty and to advance Māori aspirations for collective and individual wellbeing – a self-organised voluntary rōpū</p>	<ul style="list-style-type: none"> <li>• 9(2)(a) [REDACTED]</li> </ul>
<p>Rua Bioscience, Te Waka Kai Ora, Nia Tero</p>	<p>Māori business practitioners working with genetic material and biodiversity</p>	<ul style="list-style-type: none"> <li>• 9(2)(a) [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> </ul>
<p>Global Biodiversity Information Facility</p>	<p>An international organisation that is working to make the world's biodiversity data accessible everywhere in the world. Aotearoa has dedicated contacts with a range of networks to potentially interested parties.</p>	<ul style="list-style-type: none"> <li>• 9(2)(a) [REDACTED]</li> <li>• [REDACTED]</li> </ul>

RELEASED UNDER THE OFFICIAL INFORMATION ACT



# HEI WHAKATAU | BRIEFING

## Te Pae Tawhiti: Working Outcomes

<b>Date:</b>	24 Haratua 2022	<b>Priority</b>	High
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	44953

<b>Action sought</b>	<b>Date action required by</b>
We recommend that you: <ol style="list-style-type: none"> <li><b>provide</b> feedback on the proposed policy outcomes; and</li> <li><b>note</b> we will provide you with strategic options on how Te Pae Tawhiti can progress these outcomes in July 2022.</li> </ol>	Your earliest convenience

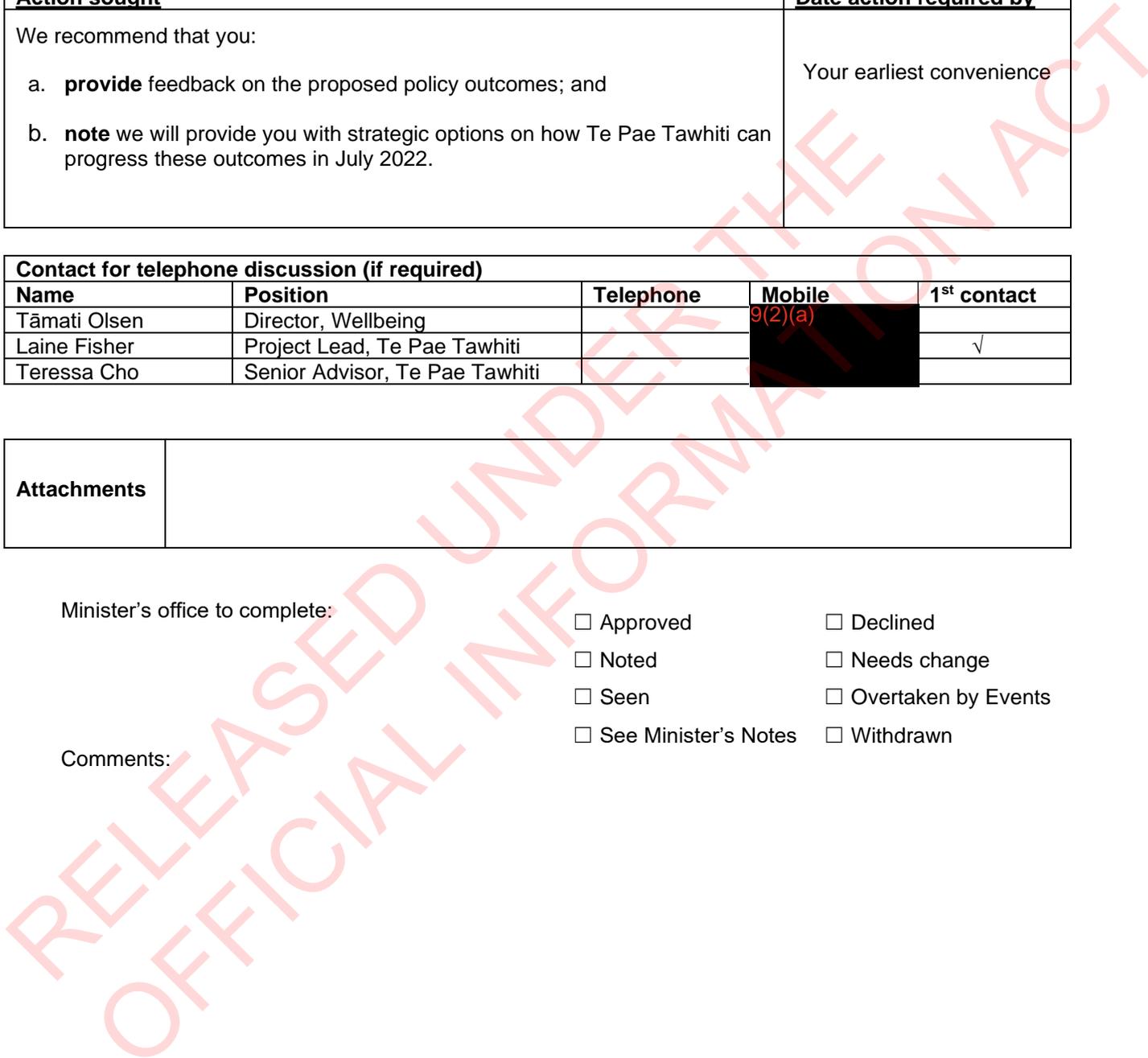
<b>Contact for telephone discussion (if required)</b>				
<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>Mobile</b>	<b>1<sup>st</sup> contact</b>
Tāmami Olsen	Director, Wellbeing		9(2)(a)	
Laine Fisher	Project Lead, Te Pae Tawhiti			√
Teresa Cho	Senior Advisor, Te Pae Tawhiti			

<b>Attachments</b>	
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Minister's office to complete:

- Approved
- Declined
- Noted
- Needs change
- Seen
- Overtaken by Events
- See Minister's Notes
- Withdrawn

Comments:





24 Haratua 2022

Associate Minister for Māori Development

## Te Pae Tawhiti: Working Outcomes

### Purpose

1. To seek your approval on working outcomes to guide the development of policy across te Pae Tawhiti work programme.

### **Cabinet has approved the refocused work programme and the next step is to develop outcomes of what Government seeks to achieve**

2. On 1 Huitanguru 2022, Cabinet agreed to the refocused work programme Te Tumu mō Pae Tawhiti [CAB-22-MIN-0003]. This involves 'Te Pae Tawhiti mahi' which include 11 cross-agency, high priority, and far-reaching focus areas where Te Puni Kōkiri (TPK) and key agencies<sup>1</sup> partner through Te Pae Tawhiti to deliver Ministerial priorities. Alongside these, are 9 areas of 'Te Pae Tawhiti-aligned mahi' that are smaller in scope currently underway and valuable to remain cognisant of as they continue to be progressed by their lead agencies.
3. TPK's focus, alongside partner agencies, is now on developing policy advice on the key areas we lead on. This includes identifying problems with the status quo built off the Wai 262 claim and developments since *Ko Aotearoa Tēnei*, assessing the strategic options and developing initial metrics to monitor and evaluate the Crown's progress towards a holistic, systems approach to mātauranga Māori across government.
4. This policy advice will begin with the development of government 'working' outcomes to enable us to sharpen our policy advice on what effective kāwanatanga looks like for our key areas of mahi.
5. The Taumata Steering Group and the kaumatua advisory group (Te Aho Matua) of the Wai 262 Taumata Whakapūmau, alongside Te Kahu Aronui, will contribute to the policy mahi ahead.
6. We will advise you on the developments of the proposed outcomes as part of the analysis and strategic options in July 2022.

### **We reviewed the focus areas and Te Pae Tawhiti-led mahi that has been done to date to develop the proposed outcomes**

7. Since Cabinet's approval in Huitanguru 2022, we have reviewed the objectives within each of the Te Pae Tawhiti-led focus areas of the work programme and the mahi that has been done to date.
8. We considered Te Pae Tawhiti's connection with the Government's priority focus in accelerating recovery from COVID-19 and laying the foundations for the future to build a high-wage, low carbon economy that provides economic security.

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<sup>1</sup> Ministry for Culture and Heritage, Ministry of Foreign Affairs and Trade, Department of Internal Affairs, Ministry of Primary Industries, Ministry for the Environment, Department of Conservation, Ministry of Business, Innovation and Employment (Building, Resources and Markets and Energy and Resource Markets), Statistics New Zealand, and Te Arawhiti.

9. In particular, we considered the focus on increasing the value of our exports and developing new markets, investing in skills and new technology, modernising and developing research and innovation to drive productivity while we reopen our border and reconnect with the world.
10. We have also considered key economic, environmental, and cultural strategies across government including TPK's Māori Economic Resilience Strategy and the Ministry of Business, Innovation and Employment's Crown–Māori Economic Development Strategy, He kai kei aku ringa.
11. We also took into account the following factors when developing the proposed outcomes:
  - a. The ever-changing climate (e.g., COVID-19) and the refocused work programme being in its early developmental stages. Therefore, the outcomes need to be broad enough to allow us to adapt as the environment or circumstances change around us and through further development of our work programme, but continue to maintain a steady direction of what we seek to achieve for Te Pae Tawhiti;
  - b. The need for continuous balancing between the protection and utilisation of mātauranga Māori and taonga, and active consideration of government's role in this kaupapa, and
  - c. A future focused lens across the focus areas including how decisions are made around undertaking new work on innovative and contemporary mātauranga Māori and taonga issues that may not have been foreseen by the Waitangi Tribunal in 2011 when they made their recommendations.

### **Our proposed policy outcomes for Te Pae Tawhiti work programme**

12. The proposed outcomes are underpinned by te Tiriti o Waitangi as the starting point for all our analysis. Based on this, we consider an overarching statement for te Pae Tawhiti could be:

***Māori and the Crown work together in Aotearoa New Zealand and internationally to enable mātauranga and taonga to flourish in accordance with tikanga Māori to create benefits for all of Aotearoa.***

13. Below are the working outcomes to help guide our policy development under each of the three high-level goals of te Pae Tawhiti:

#### Economic/tahua

- a. Māori create and directly benefit from increased economic opportunities through their unique identity locally, domestically, and internationally.
- b. Māori enterprises of all sizes are supported to enhance their innovation, research and creation of new opportunities through mātauranga Māori and be world leading in marketable indigenous intellectual property.
- c. Aotearoa New Zealand businesses are supported to ensure they utilise mātauranga Māori appropriately and partner with Māori effectively.

#### Cultural & social/tangata & tikanga

- d. Māori can exercise rangatiratanga over the protection and growth of their mātauranga and taonga, including taonga works, Māori data and te reo Māori.

- e. Aotearoa New Zealand has strong social cohesion which contributes to intergenerational wellbeing through embracing Māori culture as a shared national identity.

Environmental/taiao

- f. The role of Māori as kaitiaki and exercising tino rangatiratanga over their mātauranga and taonga is actively recognised, supported and implemented in decision making relating to environmental outcomes including biodiversity, sustainability, and heritage protection.
  - g. Indigenous biodiversity thrives through local and regional partnerships utilising strengths within each rohe.
  - h. Māori have greater access to their whenua and use of resources on their whenua, including whenua and resources on Crown land.
14. Te Taumata Whakapūmau have considered and endorse these working outcomes.

**Next steps**

- 15. We seek your feedback on this briefing and are happy to meet to kōrero with you if you wish to discuss.
- 16. If you agree to these outcomes, we will provide you strategic options in July 2022 on how Te Pae Tawhiti seeks to achieve these outcomes.

**Recommended Action**

17. We recommend that you:

- a. **provide** feedback on the proposed policy outcomes; and
- b. **note** we will provide you with strategic options on how Te Pae Tawhiti will progress these outcomes in July 2022.

**Noted**



Laine Fisher  
Kaiārahi Kaupapa

Hon Nanaia Mahuta Associate Minister for Māori Development
Date: ____ / ____ / 2022

# HEI WHAKATAU | BRIEFING

## Te Pae Tawhiti strategic options

<b>Date:</b>	23 Mahuru 2022	<b>Priority</b>	Medium
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	45892

Action sought	Date action required by
It is recommended that you:  1. <b>Agree</b> to the sequencing of priority Te Pae Tawhiti mahi, including through the development of a discussion document outlining the problem, outcomes, and potential options for key workstreams.	7 Whiringa-ā-nuku

Contact for telephone discussion (if required)				
Name	Position	Telephone	Mobile	1 <sup>st</sup> contact
Laine Fisher	Kaiārahi Kaupapa		9(2)(a)	√
Sharon Duke	Kaitohutohu			

Other Agencies Consulted					
<input type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input checked="" type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input type="checkbox"/> MHUD	<input type="checkbox"/> Other				

<b>Attachments</b>	No attachments
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Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments:



23 Mahuru 2022

Associate Minister for Māori Development

## Te Pae Tawhiti strategic options

### Purpose

1. To seek your approval to the sequencing of key Te Pae Tawhiti mahi, including the development of a discussion document on the proposed policy options.

### Background

2. On 24 Haratua, we provided you with a briefing on our proposed policy outcomes for Te Pae Tawhiti. Since then, we have used these outcomes to guide, test and develop our policy thinking around how we can begin to progress our four key work streams which will lay the foundation to realising these outcomes. The key workstreams are:
  - a. a **sui generis** intellectual property (IP) policy and legal system for mātauranga Māori and other taonga,
  - b. development of a domestic **biodiscovery regime**,
  - c. **evaluation framework** to measure outcomes related to mātauranga Māori and other taonga; and
  - d. Māori engagement in **international instruments and fora**.
3. On 6 Mahuru, we provided Te Taumata Whakapūmau and Te Kahu Aronui with an overview of the four key workstreams including proposed problem statements, scope, mechanisms to develop, and key questions to consider. After meeting on 8 and 9 Mahuru, Te Taumata Whakapūmau and Te Kahu Aronui provided positive feedback overall and are supportive of our proposed approach to the key workstreams moving forward.

### Strategic options

4. We met with you on 23 Hereturikōkā to discuss prioritising the four key workstreams, to which you agreed. In this hui we detailed our approach which includes the architecture we have developed over the past year and a half i.e. the Deputy Chief Executive (DCE) rōpū that provides oversight of Te Pae Tawhiti across key contributing agencies, a kaimahi rōpū also drawn from agencies to support communication and collaboration across channels, and some overarching frameworks such as the poutama 'Government's responsibility to mātauranga Māori' that will guide our mahi moving forward.
5. This briefing lays out the proposed sequencing for the next steps of our mahi:
  - a. **Tuatahi** – focused on 'quick wins' that are already progressing and have clear mandate.
  - b. **Tuarua** – focused on priority policy issues that we propose to test with a broad range of perspectives through a discussion document in Huitanguru – Haratua 2023.

- c. **Tuatoru** – focused on more complex and longer-term policy issues as we continue to learn what works through research and practice.

### **Tuatahi - current progress and near-term outcomes**

- 6. We are continuing our involvement in a number of Te Pae Tawhiti kaupapa with existing mandate that does not require broader engagement. This mahi is demonstrative of the progress we have made since the development of the work programme as we continue to work with government agencies and Te Taumata Whakapūmau to capitalise on the momentum we have built.

#### **Te tumu mō te Pae Tawhiti kaupapa**

- a. **National Policy Statement for Indigenous Biodiversity.** In Haratua, Cabinet agreed to progress a Māori implementation plan to support the delivery of the National Policy Statement for Indigenous Biodiversity (NPSIB), which has Ministerial oversight by you, the Minister for Māori Development, the Minister for Māori Crown Relations, and the Associate Minister for the Environment (Biodiversity). Progress on this mahi will be reported back to Cabinet by the end of 2022, alongside the exposure draft of the NPSIB. We are supporting Manatū Mō te Taiao in their delivery of the Māori implementation plan, who have contracted Te Amokura consultants to assist them with this mahi. Manatū Mō te Taiao are currently preparing a plan of engagement which will tentatively be carried out by the end of Whiringa-ā-rangi.
- b. **International treaty making Māori engagement strategy.** You have agreed to the redesign of the 2001 Engagement Strategy is due for review having not been updated for more than 20 years and is not well known or implemented effectively<sup>1</sup>. There is an opportunity here to build an end-to-end system to working with Māori and enable Māori leadership. Te Puni Kōkiri has proposed to, and is ready to, undertake this redesign. We propose a new Cabinet Office Circular is released by Pipiri 2023.
- c. **International fora.** We continue to advise and contribute to key international engagements, such as the World Intellectual Property (WIPO) Intergovernmental Committee, which looks at traditional knowledge, traditional cultural expressions, and genetic resources. Another opportunity we will look to advise on is the post-2020 Global Biodiversity Framework prior to the Conference of the Parties in Montreal, in December 2022. Key issues include Digital Sequencing Information which has implications for the protection of kaitiaki interests in taonga species, data governance and mātauranga Māori.
- d. **Protection of Haka Ka Mate.** We are working in partnership with Ngāti Toa Rangatira on the review of the Haka Ka Mate Attribution Act and general protection of mātauranga Māori relating to this haka. The next steps include beginning to interview kaumatua and knowledge holders on the history of Haka Ka Mate. This mahi has taken longer to progress due to the availability of Ngāti Toa Rangatira through competing priorities. We continue to provide resource to Ngāti Toa to attempt to increase momentum. We intend to have a review of the legislation complete by the end of Hakihea 2022.

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<sup>1</sup> Options responding to Cabinet direction for consideration of aspects of Aotearoa New Zealand's international treaty making process (Ministry of Foreign Affairs and Trade, Briefing, 29 June 2022)

### ***Wider Te Pae Tawhiti related kaupapa***

7. We are investigating potential options to partner with Australia and key Pacific countries to recognise our mutual interests in protecting our respective indigenous traditional knowledge and traditional cultural expressions. We will look to the WIPO session in Hakihea and potential ad hoc forum or visits in early 2023 to advance this. We will brief you once we have a clearer picture of potential options and steps you might like to take.
8. At our hui with you in Hereturikōkā, you asked us to develop a set of A3s for you to present to Cabinet committees on Te Pae Tawhiti based on the slide pack we provided you. We are developing the materials and seeking our DCE rōpū endorsement ahead of providing you with the A3s for consideration. We intend to provide you with these documents in mid Whiringa-ā-nuku for you to consider presentation to Cabinet committees in Whiringa-ā-rangi.

### ***Supporting our mahi through cross-agency coordination and Māori-led research***

9. In Pipiri this year, we began a stocktake and analysis of Māori advisory rōpū across Te Pae Tawhiti. Multiple factors contributed to this, including a steep rise in demand for Māori subject matter experts, lack of clarity about who or what rōpū represented, duplication of expertise across similar kaupapa, and a need to streamline processes for government agencies seeking to establish advisory rōpū.
10. The findings from the stocktake were presented at the recent quarterly DCE hui in Mahuru, where DCEs commissioned the further development of this mahi. This will include the development of a database where agencies can register and access the details of any advisory rōpū across government, and standard practice guidance to help agencies set up good processes and relieve some of the pressure off Māori experts and technicians. Once this prototype has been developed and implemented by Pipiri 2023, we will consider how it can be built out across government.

### ***Our funding mechanisms***

11. The \$2.0m per annum time-limited portion of funding from Budget 2022 enables us to invest in key initiatives that will enable us to learn what works in practice. We are in active conversations with potential projects that we might target our funding towards. We intend to seek applications for funding from late Whiringa-ā-nuku.
12. The \$1.0m cross-agency funding from Budget 2022 for Te Pae Tawhiti will be prioritised by the DCE rōpū by the end of this month. It is intended that the funding will be focused on resourcing key expertise needed in cross-government, priority kaupapa that has significant benefits for Māori e.g. biodiscovery.

### ***Tuarua – key workstreams and policy options that we will test through engagement***

13. The development of a discussion document and engagement with iwi, hapū, whānau, and the wider public will be a key part in developing the policies described in this section. Te Puni Kōkiri has developed these high-level proposals with Te Taumata Whakapūmau, Te Kahu Aronui and with our key agency partners.

14. We propose to further develop the following proposals, for your approval, before testing them more broadly. Engagement on the proposals enables us to get a broader understanding of the issues, barriers, efficacy of the solutions and potential alternative solutions. We would be seeking to engage iwi, hapū and whānau, industry experts and practitioners, technical experts, relevant businesses and organisations, and any other interested and affected parties or individuals. We will provide you with key stakeholder lists closer to the time.

**A sui generis intellectual property policy and legal system** for mātauranga Māori and taonga works.

15. The existing IP system does not effectively recognise or support active protection or appropriate use of mātauranga Māori. This has led to limited use of the IP system to protect IP related to mātauranga Māori and significant ambiguity as to what is appropriate to use in commercial and professional settings. This skews market outcomes with some businesses unintentionally misappropriating mātauranga Māori, leading significant brand and cultural damage. On the other hand, many businesses refrain from effectively benefitting from mātauranga Māori due to the uncertainty. As a result, the notable economic and cultural value of mātauranga Māori is not being realised.

16. For example, 23,364 economically significant<sup>2</sup> Māori owned businesses<sup>3</sup> making up 8.8% of all businesses were able to be identified in Te Matapaeroa 2020. This grew 11% over the last ten years and at a slightly faster growth rate of 2.2% per annum since 2016. Over a 10-year period the total indicative margin of all Māori-owned businesses has increased by almost 100% from \$3.7 billion to \$7.3 billion. While not a direct comparator for protection of mātauranga, only 1,218 out of 28,763 (4.2%) Trade Mark applications, and 9 out of 6,133 Patent applications (.15%) were referred to the Māori Advisory Committee in the 2020/2021 financial year<sup>4</sup>.

17. Notable issues include that iwi, hapū and whānau have not been able to exercise their decision-making rights over their mātauranga Māori and other taonga. This includes the public use of their mātauranga Māori. The lack of systemic support for appropriate decision making is exacerbated by the limited understanding and guidance for those within government as well as key commercial and professional sectors.

18. Te Puni Kōkiri is of the view that legislative change is necessary and should be prioritised alongside some non-legislative solutions to drive reform. Primary legislation would be based on existing international model law with adaptations for our domestic setting. There are some choices to be made, which we will develop further with Te Kahu Aronui. These include:

- a. An **Objections Framework** process for kaitiaki to object to unauthorised commercial uses of mātauranga Māori and other taonga, and a process for any member of the public to object to derogatory or offensive use of mātauranga and taonga.
- b. **Local decision-making mechanisms** to support iwi, hapū and whānau who are kaitiaki, make decisions, develop, design and implement tikanga governing definitions of derogatory use, authorised use of their mātauranga and other taonga, including formation of partnerships and advice at the local level, if required.

<sup>2</sup> Economically significant businesses are business included in the Longitudinal Business Database.

<sup>3</sup> Māori-owned businesses are categorised as those businesses where at least 50% of director, partner, and active shareholder wages were paid to someone of Māori ethnicity or decent.

<sup>4</sup> IPONZ Year in Review 2020/21

- c. **Partnership/joint ownership** where mātauranga Māori or taonga are used for commercial purposes, partnerships must be established with the kaitiaki of those taonga, and any IP rights must be shared. Where clear ownership is not apparent, the local mechanisms should be considered as platforms for regional and national conversations where appropriate for taonga that may be shared across iwi, hapū and whānau.
19. Non-legislative options for development include looking at guidance and training across sectors that can be implemented through existing decision-making authorities (e.g. Cabinet through a Cabinet Office Circular, or Commissioner of Patents, Trade Marks, Designs and Plant Variety Rights). These would likely be implemented through a Cabinet Office Circular. The measurement framework could then be utilised to measure how effective these mechanisms are in driving desired outcomes. We recommend that the non-legislative options we further develop also form part of the discussion document to provide people with a sense of the full range of tools and seek any feedback on how these can best be implemented and targeted.
20. Both legislative and non-legislation mechanisms will need to be consistent with the biodiscovery regime as both systems will overlap and, therefore, likely utilise a common set of mechanisms to operate.
21. Te Taumata Whakapūmau and Te Kahu Aronui supported the proposed policy options and were generally positive in their feedback. There were some suggested changes including stronger language in certain areas and enhancing the visibility, and in places elevating the role of, iwi, hapū and whānau across the problem statement and key mechanisms.

#### Development of a domestic **biodiscovery regime**

22. Development of a domestic biodiscovery regime (previously referred to as bioprospecting) is important for both Aotearoa generally and also for recognising and providing for the rights and interests of iwi, hapū and whānau as kaitiaki of our natural resources. Without a robust domestic system for managing biodiscovery activity we have limited options for capturing any benefits from the use and development of these resources. Related to this is the likely pressure Aotearoa will face to ratify international agreements such as the Nagoya Protocol. Agreements such as the Nagoya Protocol are important to provide both protection to our interests internationally, while also ensuring Aotearoa has continued access to important genetic resources, such as those utilised within the agricultural and horticultural sectors.
23. Ensuring appropriate and authorised use of related mātauranga Māori, including provisions for the equitable sharing of benefits arising from its use, will also be an important outcome of a domestic biodiscovery regime.
24. Our engagement would look to build off previous discussion documents on biodiscovery in 2002 and 2007. The discussion document would propose a comprehensive biodiscovery regime will require both regulatory tools, e.g. specific standalone biodiscovery legislation, supported by appropriate policy settings across government, for example access to Crown controlled resources such as conservation estate and our extensive marine resources, or collections held within Crown Research Institutes and universities.

25. This will also require working in partnership with iwi, hapū and whānau as te Tiriti partners to establish mechanisms to recognise and provide for their interests as kaitiaki. This includes identifying and managing the relevant kaitiaki relationships and providing for agreements regarding access and benefit sharing on mutually agreed terms. Getting agreement on how collective interests within and across iwi, hapū and whānau will be recognised and provided for, acknowledging that more than one group may have interests in particular resources and/or mātauranga Māori associated with those resources will also be critical.
26. There will also be strong synergies and opportunities to integrate the biodiscovery regime with the proposed sui generis system for enabling the use and protection of mātauranga Māori as well as the wider IP system such as the Patents Act.
27. Te Taumata Whakapūmau and Te Kahu Aronui are both supportive of the proposed approach, noting that any new national biodiscovery regulatory agency would need to be both co-designed and co-governed with iwi, hapū and whānau to ensure it reflects the respective roles and interests of te Tiriti partners.

**Evaluation framework** to measure outcomes related to mātauranga Māori and other taonga

28. The overall aim of this initiative is to establish a set of evaluation tools or resources for measuring and monitoring the policy settings that influence Crown interaction with, and use of, mātauranga Māori and other taonga.
29. Work on the problem statement to date has highlighted the implicit tension in this mahi, noting that Māori are the owners and inheritors of mātauranga, while the Crown has a responsibility to provide active protection and appropriate use of mātauranga Māori and other taonga. The Government has further Kāwanatanga responsibilities under article 2 to ensure effective and coordinated policy and governance, which requires committed sustainable partnership with Māori. Conceptual challenges that are critical include determining the scope of mātauranga Māori, as well as the methods and substance of measurement.
30. Design solutions are expected to form around multiple mechanisms, for example: a measurement framework; baseline data stocktake; formative and summative evaluation coupled with approaches to enhance practice, including development of standards and guidelines culminating in a roadmap outlining agreed workstream priorities and timeframes.
31. A measurement framework would develop indicators based on the overall Te Pae Tawhiti outcomes. Engagement would seek to get input on what people would like to be measured and how this could be measured.
32. This is also expected to link to the Te Taumata Whakapūmau work on a Tikanga Framework for dual approach to systems protection and utilisation of mātauranga. A measurement framework will be heavily informed by work underway on He Ara Waiora, a Te Tai Ōhanga programme that is underpinned by a mātauranga approach to conceptualising Māori wellbeing. Ngā Tohu Waiora is a project led by Te Puni Kōkiri with support from Te Tai Ōhanga. Its aim is to develop a measurement and indicator framework to support He Ara Waiora.<sup>5</sup>

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<sup>5</sup> Ngā Tohu Waiora project design is guided by Māori leadership at both the governance and work group levels. The timeframe to complete this first phase of work is October 2022. Ultimately, the results will assist Te Puni Kōkiri and Te Tai Ōhanga on two fronts. First, as a means for working with Public Service agencies to populate He Ara Waiora with indicators and data. Second, to develop a process for addressing any data limitations in the current Official Statistics System.

33. In addition, this initiative could drive baselining data and case studies of best practice across Government departments. An agency by agency stocktake of the work underway will reveal where there are clear gaps in the data and practice across the system. Te Kahu Aronui has carried out similar groundwork in the recent past. Questions around data sovereignty and ways of departmental working (e.g. collecting whānau-related data) will also be considered within this workstream. Further evaluative tools involve formative and summative evaluations against the programme outcomes. This could be used to form a high-level dashboard to give a current running state of play.
34. Te Kahu Aronui commentary on this initiative indicated a need to include an enforcement mechanism to form part of this workstream to ensure adequate accountability to effect the changes identified as required. Options we expect to canvas would include the provision of guidelines to cultural safety, research ethics and departmental practices, building on recent work members of Te Kahu Aronui have contributed to.<sup>6</sup>

### **Tuatoru – casting forward and exploring further system reform**

35. The complexity and breadth of the issues described throughout the four key workstreams requires us to adapt and learn while we continue to take steps toward the system level change needed to fully realise the outcomes we are seeking for iwi, hapū and whānau, and for Aotearoa katoa.
36. Some issues cannot be addressed, or can only be addressed in part, until we can set up the system levers we need, and can learn and understand more about these initiatives. This can only come from working in partnership with iwi hapū and whānau. Some of these issues include kaupapa across international instruments (described below), the recognition and protection of taonga and mātauranga Māori internationally i.e. taonga works (IP and physical collections across the galleries, libraries, archives and museum sector), taonga taiao (both the physical and non-tangible mātauranga around taonga species and our natural environment) and other taonga (Māori data sovereignty) and aspects of our proposed biodiscovery regime (i.e. becoming a party to the Nagoya Protocol).
37. These wider issues will continue to be part of the conversation while we prioritise mahi in tuatahi and tuarua but will not actively be developed through this upcoming proposed period of engagement and will extend over to the next term of Government.

### **Māori engagement in international instruments and fora**

38. Positive steps are being taken towards improving the rights and interests of iwi, hapū and whānau in international instruments, as detailed in 'stage one'. However, to realise a fully partnership-based system and give effect to te Tiriti, longer-term work will need to be developed and carried out beyond the next year. This includes mahi on kaupapa such as Pōkai Ao, Free Trade Agreements, the Trade for All process, and the Convention on Biological Diversity.
39. We have considered progressing mahi involving systems mapping and carrying out a Tiriti analysis on the broader international instruments system, including engagement with Māori. Due to the level of resourcing available, this option is not recommended at this stage, and therefore we do not consider this workstream requires testing through engagement as in the tuarua stage.

<sup>6</sup> For example, Ngā Tikanga Paihere (Maui Hudson and Stats NZ); Te Ara Tika: Guidelines for Māori Research ethics (HRC); Āhuatanga ū ki te tika me te pono mō te Rangahau Māori | Māori Research Ethics

## Timeframes and next steps

40. Should you agree with the approach and direction of the progress and set out in this briefing we will begin the development of a discussion document with Taumata Whakapūmau and Te Kahu Aronui which will cover policy options in tuarua across the proposed timeline below:
- a. **Late Whiringa-ā-nuku** – development of the discussion document and any other relevant materials for engagement are completed.
  - b. **Whiringa-ā-rangi** – we will be providing you with the discussion document ahead of departmental consultation.
  - c. **Whiringa-ā-rangi** – departmental consultation on the discussion document and engagement materials.
  - d. **Hakihea** – Ministerial consultation.
  - e. **Huitanguru 2023** – first week of Cabinet to seek mandate to begin engagement.
  - f. **Huitanguru – Haratua 2023** – proposed period for engagement.
  - g. **Pipiri 2023** – mid-year report back to Cabinet on progress to date.

## Recommended Action

8. It is recommended that you:

1. **Agree** to the development of a discussion document that will include problem statements, desired outcomes and policy options described in stage tuarua of our work programme for the following workstreams: **Yes / No**
  - a. a sui generis intellectual property policy and legal system for mātauranga Māori and taonga works,
  - b. development of a domestic biodiscovery regime; and
  - c. an evaluation framework to measure outcomes related to mātauranga Māori and other taonga.
2. **Agree** to engage with iwi, hapū and whānau, and the wider public on the policy options and issues raised in the discussion document **Yes / No**
3. **Note** that we will provide you with an engagement plan that includes a list of key stakeholders that we will be seeking to target. **Noted**
4. **Agree** to the proposed timeline: **Yes / No**
  - a. **Late Whiringa-ā-nuku** – development of the discussion document and any other relevant materials for engagement are completed.
  - b. **Whiringa-ā-rangi** – departmental consultation and engagement with Te Taumata Whakapūmau on discussion document and engagement materials.
  - c. **Hakihea** – Ministerial consultation.

- d. **Huitanguru 2023** – first week of Cabinet for approval to begin engagement.
  - e. **Huitanguru – Haratua 2023** – proposed period for engagement.
5. **Pipiri 2023** –**Note** that mahi described in ‘stage 3’ of the work programme will be progressed on a longer timeframe

**Noted**



Laine Fisher  
Kaiārahi Kaupapa | Programme Lead

Hon Nanaia Mahuta  
Associate Minister for Māori Development

Date: \_\_\_\_ / \_\_\_\_ / 2022

RELEASED UNDER THE OFFICIAL INFORMATION ACT

03 November 2022

Associate Minister for Māori Development

## **HE PĀRONGO | AIDE MEMOIRE**

### **7 November 2022 with Minister Henare**

### **For meeting on: Therapeutic Products Bill**

Te Puni Kōkiri contact: Laine Fisher, Kaiwhakahaere  
Phone: 9(2)(a) [REDACTED]  
TPK tracking no: 46118

#### **Purpose**

1. To update you on matters regarding the Therapeutic Products Bill and rongoā Māori for your hui with Minister Henare on Monday 7 November.

#### **Context**

2. The draft Therapeutic Products Bill currently implicitly regulates rongoā rākau products as therapeutic products.
3. However, the Minister of Health has asked the Associate Minister of Health to further explore how government should recognise rongoā rākau as a therapeutic product. We understand Health Officials are considering whether this is an opportunity to create supporting regulation for rongoā, in part due to the increased commercialisation of rongoā.
4. Te Aka Whai Ora consider that rongoā Māori, as a holistic view of health and wellbeing, is a taonga. Accordingly, rather than seeking to regulate it the Crown has an obligation to protect both the practice of rongoā Māori and the continued control and oversight of rongoā by Māori themselves. Te Puni Kōkiri supports this view.

#### **Comment**

##### **The Bill, as introduced, needs to be clear on its interaction with rongoā**

5. We recommend that rongoā Māori is made explicitly exempt from the Therapeutics Products Bill. We understand that the intention of the Bill is not to regulate rongoā, but that current proposals are not sufficiently clear on how rongoā is impacted by the Therapeutic Products Bill.
6. Te Puni Kōkiri supports the view of Te Aka Whai Ora that the explicit exemption should be in the Bill at its introduction. The select committee process is then the most appropriate process to further examine these issues, allowing input from all interested parties and this position can be tested further.

7. Exempting rongoā Māori from being regulated under the Bill in any form will allow a more considered approach to regulating rongoā Māori to be developed in partnership with Māori. This is consistent with the government's wider Te Pae Tawhiti work program focused on enabling Māori to lead in the protection and appropriate use of mātauranga Māori, including rongoā Māori. This also aligns with *Ko Aotearoa Tēnei*, where the consistent theme is that rongoā Māori should be controlled by Māori.
8. We note that drafting the exemption will have its complexities due to the need to outline what is considered as rongoā. We have looked at potential options and consider this is something that can be worked through by Officials and Parliamentary Counsel Office as part of the drafting process.

#### **Fall-back option in relation to rongoā**

9. If a full exception from the Therapeutic Products Bill is not accepted, we note that consideration may be given to utilising the wholesale and non-wholesale thresholds as means to only regulate wholesale rongoā. In this regard, our recommendation would be that any regulation should enable Māori to regulate rongoā.
10. This could be examined further by looking to the Māori Plant Varieties Committee (MPVC) model. However, differences would exist as that kaupapa is focused on protecting the kaitiaki interests of Māori associated with specified taonga species rather than seeking to regulate the use and quality of mātauranga Māori in its own right.
11. We would also recommend policy work on how any decision-making body is appointed and functions, so it is separate from the Crown's role. We note that *Ko Aotearoa Tēnei* stated that the Crown should not and cannot play a quality control role regarding rongoā Māori.

#### **Work programme to consider the interaction between rongoā and therapeutic products**

12. We consider that it is timely to commence work to look at the case for supporting regulation of rongoā, particularly due to the trajectory towards greater commercialisation of rongoā. Accordingly, we consider that officials should focus on working with practitioners/producers to undertake a study of the commercial elements of rongoā. This would include exploring potential future needs relating to qualifications, infrastructure, intellectual property protections, and other elements to actively protect this taonga. This report, alongside discussions with Māori, could then inform any further work that may be needed. The study would need funding likely in the range of \$0.3m-\$0.5m.

#### **Application of te Tiriti through a clause in the Bill**

13. We recommend that a general operative Treaty clause is inserted into the Bill. The general operative clause would explicitly acknowledge the need for the application of te Tiriti in giving effect to the Bill and creating any subordinate legislation. This recognises that the Bill's impacts for Māori interests are broader than rongoā and include equitable access and opportunities (eg, product development). The general operative clause would also assist in providing a durable application of te Tiriti as the regulatory system is developed from the legislation.
14. A clause of broad, general and flexible application across the entirety of the Bill and regulations would provide protection for Māori rights and interests. This would include products produced by Māori but not covered by the proposed rongoā exemption. Given the importance of these matters, the protection should be at the highest level – requiring all those with functions and powers under the legislation to give effect to the Treaty and its

principles. We recommend that this clause is included as part of the Bill as introduced and considered as part of the select committee process.

### Te Puni Kōkiri's role

15. Should you wish for Te Puni Kōkiri to have a role in any work that is commissioned, we will need to consider re-prioritising other mahi in order to support this.
16. You may also wish to consider recommending to Minister Henare that further work on rongoā Māori is aligned with the Pae Tawhiti approach.



Laine Fisher  
Kaiwhakahaere, Te Pae Tawhiti

<b>NOTED</b>
Hon Nanaia Mahuta Associate Minister for Māori Development
Date: ____ / ____ / 2022

## HEI WHAKATAU | BRIEFING

### Te Pae Tawhiti - Legislation Programme Bids

<b>Date:</b>	8 Whiringa-ā-rangi	<b>Priority</b>	Medium
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	46095

<b>Action sought</b>	<b>Date action required by</b>
It is recommended that you: <ul style="list-style-type: none"> <li>Approve the Legislation Programme bids for the Biodiscovery Bill and the Mātauranga Māori Bill for inclusion in the Māori Development portfolio set of proposed bids ahead of Cabinet consideration of the 2023 Legislative Programme</li> </ul>	11 Whiringa-ā-rangi 2022

<b>Contact for telephone discussion (if required)</b>			
Name	Position	Mobile	1 <sup>st</sup> contact
Laine Fisher	Kaiwhakahaere, Te Pae Tawhiti	9(2)(a)	√
Navana Matthews	Kaitohutohu, Te Pae Tawhiti		

<b>Other Agencies Consulted</b>					
<input type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input checked="" type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input type="checkbox"/> MHUD	<input type="checkbox"/> Other				

<b>Attachments</b>	1. 2023 Legislation Programme Bid - Biodiscovery Bill 2. 2023 Legislation Programme Bid - Mātauranga Māori Bill
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Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments:



8 Whiringa-ā-rangi 2022

Associate Minister for Māori Development

## Te Pae Tawhiti - Legislation Programme Bids

### Purpose

1. We seek your approval for two Legislation Programme bids, the Biodiscovery Bill and the Mātauranga Māori Bill, to be included in the Māori Development portfolio set of proposed bids ahead of Cabinet consideration of the 2023 Legislation Programme.

### Background

2. The Cabinet Office guidance for the 2023 Legislation Programme requires that legislation bids are developed for legislative policy work, including:
  - a. bills that are currently undergoing policy development work or are being drafted, and for which there was a successful bid in 2022.
3. The Biodiscovery Bill (previously the Bioprospecting Bill) and Mātauranga Māori Bill were both included in the 2022 Legislation Programme.

### Only minor updates to this year's bids

4. We have made minor updates to this year's bids. The table below outlines the overarching description of the Bills (as described in the bids) and changes we have made to the bids this year as a result of further policy work.

Bill	Brief description	Updates
Mātauranga Māori Bill	A bespoke system to realise the value of our country's national culture and identity by enabling mātauranga Māori to be actively protected and appropriately used in commercial and professional contexts.	Alignment of language to policy work in brief description  Timing updates – policy decisions in July 2023 post engagement.
Biodiscovery Bill	An 'end-to-end' system to standardise biodiscovery practices to enable Aotearoa New Zealand to benefit from its resources while upholding rights and interests in taonga.	Reference to Cabinet's approval of these two areas of work.

### Prioritisation

5. We recommend the Bills have a category 5 priority (instructions to be provided to PCO before the 2023 general election). We note that this timing is tight but aligns with the earliest opportunity for the policy work to result in drafting instructions. Alternatively, the Bills could be placed 'on hold' (category 6) for the purposes of the Legislation Programme 2023.
6. The priorities given to bills for the 2023 Legislation Programme are:

- a. Category 1 must be passed or introduced before the 2023 general election as a matter of law
- b. Category 2 must be passed before the 2023 general election
- c. Category 3 to be passed if possible before the 2023 general election
- d. Category 4 to be referred to a select committee before the 2023 general election
- e. Category 5 instructions to be provided to PCO before the 2023 general election
- f. Category 6 on hold
- g. Category 7 not to proceed.

### **Next Steps and submission process**

7. Following your approval of the Pae Tawhiti Legislation Programme bids, we recommend your Office inform the Office of the Minister for Māori Development of your intention to include the bids in the proposed Māori Development portfolio bids. As with these two bids last year, the bids will be under your name as responsible Minister but within the Māori Development portfolio.
8. We will then include the Pae Tawhiti Legislation Programme bids in the Māori Development portfolio set of bids for Minister of Māori Development to approve ahead of submission to Cabinet Office. The Legislation Programme is being considered earlier this year, with Ministers required to submit bids to Cabinet Office by 10.00am on Monday, 21 Whiringa-ā-rangi 2022.

### **Recommended Action**

It is recommended that you:

1. Approve both the Biodiscovery Bill and the Mātauranga Māori Bill to be provided to the Minister for Māori Development for submission to Cabinet **Yes / No**



Laine Fisher  
Kaiwhakahaere, Te Pae Tawhiti

Hon Nanaia Mahuta  
Associate Minister for Māori Development

Date: \_\_\_\_ / \_\_\_\_ / 2022

Item 11: Attachments 1 and 2 withheld in full under section 9(2)(f)(iv)

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## HEI WHAKATAU | BRIEFING

### Diplomatic Conference - International Instrument on Genetic Resources and Traditional Knowledge

<b>Date:</b>	14 Hakihea 2023	<b>Priority</b>	High
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	47995

<b>Action sought</b>	<b>Date action required by</b>
<p>I recommend that you:</p> <ol style="list-style-type: none"> <li><b>Agree</b> to the recommended approach for engagement regarding Aotearoa New Zealand's position on the negotiation of an international instrument on Genetic Resources and Traditional Knowledge.</li> <li><b>Forward</b> this briefing to the Minister of Commerce and Consumer Affairs for his concurrence.</li> <li><b>Note</b> additional to this briefing, we will provide you with the wider work programme this mahi could sit within.</li> </ol>	12 Kohitātea 2024

<b>Contact for telephone discussion (if required)</b>			
<b>Name</b>	<b>Position</b>	<b>Mobile</b>	<b>1<sup>st</sup> contact</b>
Paula Rawiri	Hautū - Te Puni Hononga Kaupapa Here	9(2)(a)	
Tāmāti Olsen	Kaihautū – Te Puni Hononga Kaupapa Here	9(2)(a)	
Laine Fisher	Kaiwhakahaere – Te Puni Hononga Kaupapa Here	9(2)(a)	x

<b>Other Agencies Consulted</b>					
<input checked="" type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input type="checkbox"/> Other					

<b>Attachments</b>	Appendix 1 – International Treaties, Steps of Ratification
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Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments:



14 Hakihea 2023

Minister for Māori Development

## **Diplomatic Conference - International Instrument on Genetic Resources and Traditional Knowledge**

### **Purpose**

1. The World Intellectual Property Office (“WIPO<sup>1</sup>”) is convening a Diplomatic Conference – International Instrument on Genetic Resources and Traditional Knowledge for 13-24 May 2024 in Geneva, Switzerland.
2. This briefing seeks your agreement to the direction of work for participation in this Diplomatic Conference for the WIPO Intergovernmental Committee’s proposed international instrument relating to genetic resources and indigenous traditional knowledge.

### **Background**

#### ***World Intellectual Property Organisation Intergovernmental Committee***

3. The Intergovernmental Committee was established in 2000 as a forum for WIPO Member States to discuss how international intellectual property law can recognise innovations that utilise indigenous peoples’ traditional knowledge and cultural expressions.
4. Aotearoa New Zealand has, in the past, taken a leading role at the IGC and is regarded as having particular expertise in this area. An Aotearoa New Zealand delegation has attended most sessions since the IGC’s inception, and several Māori groups have been granted observer status at the IGC in the past.
5. You, alongside the Minister of Commerce and Consumer Affairs, are the lead Ministers for the Intergovernmental Committee work. Your lead role is due to the instrument covering the use and provenance of mātauranga Māori in innovations, including biotechnology. Te Puni Kōkiri support this role through advice on both domestic and international matters. We will provide you with further advice on this policy area as part of your Christmas bag.
6. The Minister of Commerce and Consumer Affairs, Hon. Bayly's, portfolio is responsible for Aotearoa New Zealand’s patent and other intellectual property systems.

#### ***Diplomatic Conference on Genetic Resources and Traditional Knowledge***

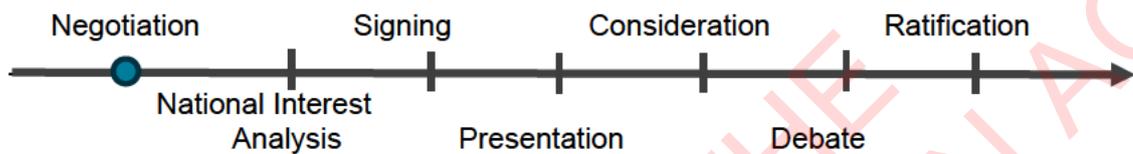
7. In 2022, the WIPO General Assembly<sup>2</sup> agreed to hold a Diplomatic Conference to conclude its proposed international instrument on the disclosure of origin of genetic resources and traditional knowledge in patent applications. The Diplomatic Conference is the final step where the international instrument can be formally negotiated and adopted as an international treaty. Following this, WIPO Member States may sign and/or join the treaty in accordance with their domestic procedures.

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<sup>1</sup> WIPO is an agency of the United Nations.

<sup>2</sup> The General Assembly consists of the 193 United Nations member states.

8. As the Diplomatic Conference is the final step in the negotiation of an international agreement, responsible Ministers are likely to attend given the increased importance of the negotiations.
9. We understand Ministers from other aligned countries, such as Australia and Canada are likely to attend. We will provide you with further advice on potential attendance early next year once we have a more certain understanding of likely Ministerial representation from aligned countries.
10. The international treaty making process is often broken into seven steps as follows below. The blue dot represents the status of this international treaty:



11. A description of each of these steps is annexed. However, for this briefing we seek your decisions on how to conclude the negotiation phase of the international instrument.
12. The subsequent National Interest Analysis phase begins once the international instrument is agreed to at the Diplomatic Conference. This phase includes analysing the costs and benefits of Aotearoa New Zealand becoming a party to the instrument ahead of Cabinet determining whether to sign and join to the instrument in a following step.

### **What the instrument seeks to achieve and how**

13. The proposed WIPO treaty aims to enhance the efficacy of Member States' patent systems relating to protection of genetic resources (e.g., genetic material of plants, animals, or micro-organisms) and associated traditional knowledge (i.e., indigenous knowledge). It also seeks to prevent patents from being granted erroneously for inventions that are not novel or inventive for inventions derived from genetic resources and associated traditional knowledge. The instrument does this by requiring patent applicants, where genetic resources are used, to disclose:
  - a. the country of origin of the genetic resources and/or
  - b. the indigenous people(s) who have provided any traditional knowledge that is directly and materially used in the invention.
14. The disclosure of origin requirement is a transparency measure designed to provide the ability to monitor the use of their genetic resources and traditional knowledge in research and development that results in new inventions.

### *The Domestic Impact for Aotearoa New Zealand*

15. In the Aotearoa New Zealand context, this potentially impacts both the kaitiaki relationships Māori have with indigenous flora and fauna as well as the use of mātauranga Māori in innovations. An internationally enforceable transparency mechanism such as proposed in the WIPO treaty could further encourage collaboration with Māori in global innovations and result in further economic, cultural, and broader benefits for both Māori and Aotearoa New Zealand generally.

16. Disclosure of origin can help to prevent patents being granted over inventions that are based on misappropriated traditional knowledge. The scale of patenting the use of genetic resources endemic to Aotearoa New Zealand is, at this time, minimal. For illustrative purposes, research has shown that, internationally, patents have been sought for products that use a range of endemic/near endemic plant species, such as mānuka, harakeke, kānuka, tōtara, tī kōuka kawakawa and horopito. The research (in 2019) identified approximately 250 total applications related to these species.<sup>3</sup>

### Potential Approaches to Developing the Negotiating Mandate

17. We advise that a Cabinet decision on a mandate for the negotiation of the international instrument at the Diplomatic Conference is sought. This will determine how Aotearoa New Zealand participates in the Diplomatic Conference. We propose this decision be sought in April 2024.
18. Cabinet originally agreed a negotiating mandate for New Zealand's participation in these Treaty negotiations in 2019 [CAB-19-MIN-0287 and DEV-19-MIN-0145 refers]. This mandate only applies to the informal negotiations for the development of the instrument that proceeded the convening of the Diplomatic Conference.
19. We recommend you direct officials to develop a proposal to update the existing 2019 negotiating mandate as it is no longer fit for purpose, and to ensure it aligns with updated policy positions, including on biotechnology.
20. Undertaking this work would also provide an opportunity to assess ways to maximise benefits and minimise costs ahead of any decision by Cabinet to join the instrument.
21. Subject to your agreement, we will work with your office to develop a draft mandate for Cabinet consideration in April 2024.

### Engagement Options

22. Prior to seeking this mandate, your decision is sought on the level of public engagement to be undertaken to feed into the negotiating position. We have been considering engagement options ahead of the Diplomatic Conference to assess if there are any changes in the implications arising from the draft instrument to be negotiated at the Diplomatic Conference for Aotearoa New Zealand
23. We recommend targeted engagement is undertaken. We would do this through our existing networks across Crown research institutes, patent attorneys, intellectual property lawyers, academic researchers, and Māori entities. This engagement would follow on and compliment targeted engagement that took place in late 2022 on this kaupapa and would need to occur in early February to inform our advice to you.
24. The proposed engagement would not require Cabinet approval based on the Cabinet Manual threshold. However, if you agree with this approach, you may still wish to consult with other Ministerial colleagues given the broad interest in biotech issues.
25. We do not recommend undertaking broader engagement at this time. The Ministry of Business, Innovation and Employment undertook public consultation on a disclosure of origin for patents in 2018. While they received a small number of submissions, the issues

<sup>3</sup> Lai et al 2019. "Mātauranga Māori under the Microscope: Appropriation and Patenting of Mātauranga Māori and Related Resources". *Journal of World Intellectual Property* 22 (3-4): 205-233.

have not materially changed in the interim. The feedback from Māori and stakeholders supported the introduction of a patent disclosure of origin requirement in such an instrument and saw it as relevant in responding to Wai 262<sup>4</sup>.

26. The National Interest Analysis phase and Parliamentary treaty examination process will also provide an opportunity for further engagement at a later date.
27. You could also undertake no engagement if you consider the previous engagement is sufficient to inform a position. We do not recommend this approach and consider this adds risk to the quality of the advice and policy process. However, this could be mitigated by broader engagement as part of the National Interest Analysis phase.
28. A table detailing the timing for the two engagement options is outlined below:

Engagement Timeline Options – WIPO Genetic Resources DipCon		
Option	Deliverable	Date
1. Targeted engagement, including with some Māori and other subject matter experts.  <b>RECOMMENDED</b>	Targeted engagement	January 22 – February 12, 2024
	Your consideration/approval of mandate	March, 2024
	Cabinet consideration process	From 1 April, 2024
	Diplomatic Conference	13 May – 24 May, 2024
2. Full engagement, seek a wide range of perspectives  (note this option would require two Cabinet papers – one for public engagement and one for an updated negotiating mandate)  <b>NOT RECOMMENDED</b>	Cabinet consideration process of engagement	From 29 January 2024
	Begin public engagement period	12 February – 4 March, 2024
	Your consideration/approval of mandate	late March, 2024
	Cabinet consideration process	From 8 April, 2024
	Diplomatic Conference	13 May – 24 May, 2024

### Consultation

29. We consulted the Ministry for Business, Innovation and Employment and the Ministry of Foreign Affairs and Trade on this briefing and their advice has been incorporated.

<sup>4</sup> <https://www.mbie.govt.nz/have-your-say/disclosure-of-origin-discussion-document/>

## Recommended Action

30. We recommend that you:

- |   |               |
|---|---------------|
| a. <b>Agree</b> to officials developing a new negotiating mandate to be considered by Cabinet in April 2024 for Aotearoa New Zealand's attendance to the Diplomatic Conference on an international instrument on the disclosure of genetic resources and traditional knowledge in patent applications | <b>YES/NO</b> |
| b. <b>Agree</b> to targeted engagement to inform the development of an updated negotiating mandate ( <b>recommended</b> ).  | <b>YES/NO</b> |
| OR  |               |
| i. <b>Agree</b> to public engagement to inform the development of an updated negotiating mandate  | <b>YES/NO</b> |
| OR  |               |
| ii. <b>Agree</b> to no engagement prior to the development of an updated negotiating mandate  | <b>YES/NO</b> |
| c. <b>Forward</b> this briefing to the Minister of Commerce and Consumer Affairs for his concurrence.   | <b>YES/NO</b> |
| d. <b>Note</b> additional to this briefing, we will provide you with advice on the policy work you might like to prioritise relating to the provenance of mātauranga Māori, including in innovations.   | <b>NOTED</b>  |



Paula Rawiri  
Hautū - Te Puni Hononga Kaupapa Here

Hon Tama Pōtaka  
Minister for Māori Development

Date: \_\_\_\_ / \_\_\_\_ / 2023



## Appendix 1 – International Treaties, Steps of Ratification

1. **Negotiation:** Officials must first obtain a negotiating mandate from Cabinet. Following which, officials would participate in international negotiations (e.g. a DipCon) resulting in the text of an agreement being finalised.
2. **National Interest Analysis:** the lead government agency prepares a Cabinet paper and a National Interest Analysis (NIA), which sets out the advantages and disadvantages, cost and benefits and impacts for New Zealand of becoming a party to the agreement. The lead government agency is responsible for ensuring appropriate consultation is undertaken with other government agencies, Māori and third parties who may have an interest in the treaty.
3. **Signing:** Cabinet approves the final text of the agreement, giving authority for New Zealand to sign the agreement; the presentation of the agreement and NIA to the House of Representatives; and the necessary measures for entry into force (i.e. ratification/acceptance/accession). (Cabinet Manual 2017, paragraph 5.79). Signing the agreement would not make the obligations under the agreement legally binding under international law.
4. **Presentation:** MFAT presents the treaty and its corresponding NIA to the House of Representatives.
5. **Consideration:** a select committee considers the treaty and the NIA. The committee has 15 sitting days in which to report back to the House. If it has recommendations to Government, a government response to these must be tabled within 60 days of the report.
6. **Debate:** if the Government intends for the treaty to be implemented through a bill the select committee's report is set down for debate as a government order of the day (Standing Orders 67(d) and 254(2)(a)). The report is then debated in lieu of a debate during the first reading of the bill that implements the treaty. If the Government does not intend for the treaty to be implemented through a bill the select committee's report is set down as a Members' orders of the day and will only be debated if the Business Committee selects it under Standing Order 254(5).
7. **Ratification:** formal documents are exchanged with the other countries or organisations involved, to bring the treaty into force for New Zealand. As proposed instrument under negotiation at the DipCon would be a WIPO administered agreement, Aotearoa New Zealand's instrument of ratification would be lodged with the Director General of WIPO. These documents confirm domestic procedures have been completed and that the treaty is now in force, subject to any agreement conditions of entry into force being met (such as a minimum number of countries needing to join the agreement).

## HEI WHAKATAU | BRIEFING

### Provenance across the value chain – unlocking Māori innovation opportunities here and abroad

<b>Date:</b>	19 Hakihea 2023	<b>Priority</b>	Medium
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	47996

<b>Action sought</b>	<b>Date action required by</b>
<p>It is recommended that you:</p> <p><b>Note</b> the significant opportunities to boost productivity and innovation in Aotearoa New Zealand's economy through developing better recognition of mātauranga Māori in government systems.</p> <p><b>Provide</b> your decisions on the prioritisation of work related to mātauranga Māori focused on provenance across the value chain to unlock Māori innovation opportunities here and abroad.</p>	21 December 2023

<b>Contact for telephone discussion (if required)</b>			
<b>Name</b>	<b>Position</b>	<b>Mobile</b>	<b>1<sup>st</sup> contact</b>
Paula Rawiri	Hautū - Te Puni Hononga Kaupapa Here	9(2)(a)	
Tāmati Olsen	Kaihautū – Te Puni Hononga Kaupapa Here	9(2)(a)	
Laine Fisher	Kaiwhakahaere – Te Puni Hononga Kaupapa Here	9(2)(a)	x

<b>Attachments</b>	<ol style="list-style-type: none"> <li>Existing Cabinet agreed cross government approach.</li> <li>Policy into Practice summary.</li> </ol>
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Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments:



19 Hakihea 2023

Te Minita Whanaketanga Māori

## **Provenance across the value chain – unlocking Māori innovation opportunities here and abroad**

### **Purpose**

1. This briefing seeks your agreement to prioritise work regarding the provenance of mātauranga Māori across the value chain. This work will enable greater opportunities for iwi and Māori to innovate and create productivity gains, while protecting against inappropriate use of mātauranga Māori. We propose a package of policy initiatives for your consideration.
2. The proposed policy initiatives are focused on where the biggest growth is for the Māori economy. The proposals also align with domestic and international policy discussions around the need for regulatory tools to enable Māori/indigenous-led innovation.

### **Opportunities to boost productivity and innovation**

3. Research has highlighted the importance of Māori businesses and the Māori economy to our country's broader economic prosperity. Māori businesses represent a rapidly growing segment of the wider New Zealand economy. The Māori economy<sup>1</sup> has grown significantly, with the Māori asset base in 2018 estimated to be \$68.7 billion in value, up from \$36.9 billion in 2010. Discussions across Māori business organisations are focused on how to get the Māori asset base to \$100 billion in the next 10-15 years.
4. The Māori economy, through the appropriate use of mātauranga Māori, provides an opportunity to boost productivity and innovation levels across the economy. Our country's productivity levels continue to be below expected levels, which is leading to poor economic outcomes.
5. Research into the productivity issues in Aotearoa New Zealand show that innovation is the key to unlocking our economy's full potential. Global datasets such as the Global Innovation Index are useful tools to monitor our country's general performance. In 2023, Aotearoa New Zealand ranked 24<sup>th</sup> in global innovation inputs and 31<sup>st</sup> in global innovation outputs. Our key weaknesses in innovative output include:
  - High-tech manufacturing – the percentage of high and medium-high tech manufacturing of the country's total manufacturing (ranked 74<sup>th</sup>)
  - Creative goods exports – the percentage of creative goods exports of the country's total trade (ranked 65<sup>th</sup>)
  - High-tech exports – the percentage of high-tech exports of the country's total trade (ranked 64<sup>th</sup>)
  - Cultural and creative services exports – the percentage of creative service exports of the country's total exports (ranked 43<sup>rd</sup>).

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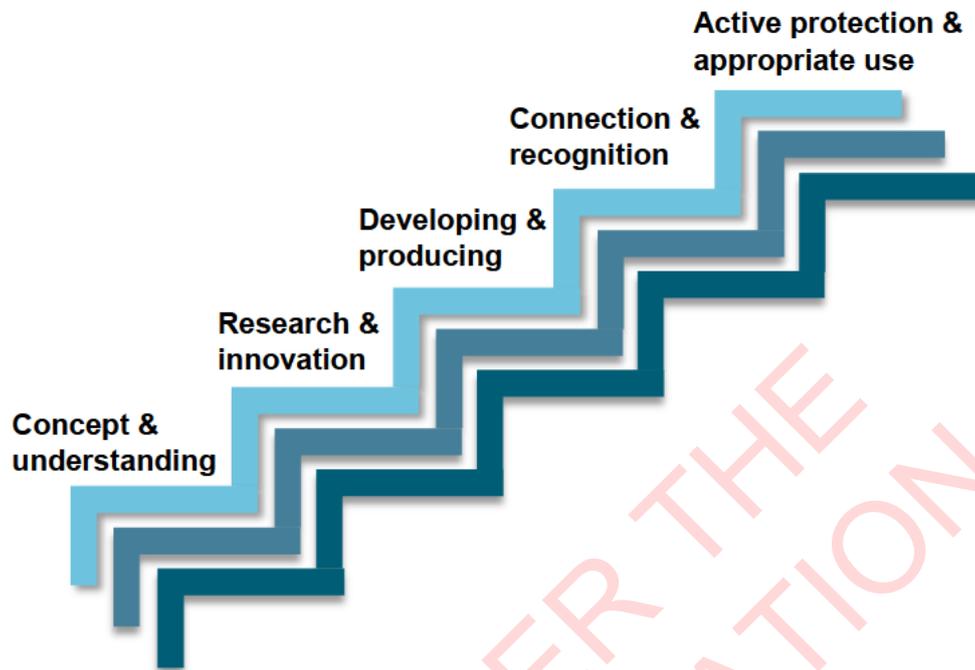
<sup>1</sup> The Māori economy is broadly defined as those privately owned and collectively owned businesses who acknowledge their whakapapa Māori.

6. Our analysis indicates that government regulation hampers the ability for iwi and Māori to achieve economic gains, including through appropriate use of mātauranga Māori. Early modelling shows that regulatory changes to enable the use of mātauranga Māori could achieve up to \$7 billion in simple economic benefits (Roskrug et al., 2022).
7. There is notable untapped potential in the Māori economy for high and medium technology and cultural/creative goods and services. Our joint research with Business and Economic Research Limited (BERL) highlights that approximately two-thirds of the Māori economy is dependent on or influenced by the skills and knowledge encompassed by mātauranga Māori. However, the Māori asset base and GDP output is largely reflective of the broader economy in that it is concentrated in agriculture, forestry, fisheries, real estate and property, manufacturing and construction.
8. Globally, there is increasing demand from consumers for sustainably and ethically produced goods and services. Research also suggests people are willing to pay a premium for authentically produced Māori products and services. This illustrates how mātauranga Māori and Māori brand distinctiveness are significant assets for the broader Aotearoa New Zealand economy. Further, Māori firms often take a long-term intergenerational approach, apply multiple bottom-lines, and utilise Māori values and principles. This leads to positive broader cultural, social and environmental outcomes.
9. Māori participation in export markets continues to rise and provides a basis for further opportunities. From 2017 to 2022 total exports of goods by Māori authorities grew 21% from \$630 million to \$761 million. Traditional Māori exports remain strong (such as those in the primary sector), and there are growing opportunities for diversification as we expand our reach into markets,.

### **Our Role and Approach**

10. Te Puni Kōkiri is the government's principal policy advisor on Māori wellbeing and development. A key component of this role is about enabling Māori to appropriately leverage the use of mātauranga and Māori brand distinctiveness in the global marketplace. We have a dual role relating to these matters:
  - a. Leading, both domestically and internationally, in the development and stewardship of policy on cultural and intellectual property relating to mātauranga Māori, and
  - b. A system leadership role in leading and driving a cross-government approach to matters relating to mātauranga Māori.
11. We work with business, research, whānau, hapū, iwi and Māori and government agencies. We have also developed networks internationally with agencies leading on similar mahi to protect indigenous knowledge, including through the World Intellectual Property Organisation (WIPO).
12. We have developed a poutama-based model to show how government policy can effectively protect mātauranga Māori to enable the economic and cultural (and broader) benefits that can flow from this. Overleaf is a simplified version of the model.

**Diagram: Simplified value-chain/poutama – approach to provenance for mātauranga Māori**



13. The model outlines the value chain and how provenance across these steps is vital to the authenticity and integrity of the use of mātauranga Māori. In terms of each step, they refer to:
- Concept & understanding – awareness of mātauranga, its sensitivities and value is integral to appropriate use. This includes how Government can support Māori to achieve education outcomes in Māori-focused learning.
  - Research & innovation – undertaking research and innovating with mātauranga Māori, including alongside other knowledge, can highlight both established as well as create new understandings. This includes how Government incentivises and enables Māori-led research and development.
  - Developing & producing – how mātauranga Māori contributes to goods and services being developed and produced, increasing their value in both domestic and export markets. This includes how Government enables businesses to maintain and protect their point of difference at scale.
  - Connection & recognition – how goods and services are recognised or marketed as utilising mātauranga Māori is important to maintaining authenticity and integrity of mātauranga. This includes how Government protects against misappropriation of intellectual property, including ‘passing off’ goods and services as utilising mātauranga Māori.
  - Active protection & appropriate use – value of mātauranga Māori, economically and more broadly, is realised by Māori at the end of the value chain through protection and appropriate use. This includes how Government enables the economic and broader benefits to be realised by Māori through macro system settings.

14. The Waitangi Tribunal's 2011 report *Ko Aotearoa Tēnei*, reporting on the Wai 262 inquiry highlighted the shortcomings and failures of policy and regulatory settings to adequately protect taonga, including mātauranga Māori. This report and the broader claim provide an understanding of key issues for work across government, including the areas we lead.

### **How Te Puni Kōkiri's mahi can unlock this potential**

15. We have considered the Government's priorities and your key focus areas for your portfolio. We recommend progressing a package of policy proposals to reflect these. The policy proposals are targeted at where the biggest benefits are for Māori, balanced with the need for foundational policies that are durable over time.
16. Our recommended work programme is based off kōrero with iwi and hapū organisations, Māori businesses, research institutions and others working across a range of fields, including biotech, agriculture, horticulture, aquaculture, tourism and the arts and culture sectors.
17. There is strong support for this mahi, particularly within Māori sectors. There is also broad consensus on the need for greater protection of taonga and certainty on the process for enabling appropriate use.
18. The priorities we suggest are focused on lifting the ability of Māori to succeed in the economy domestically and internationally, including:
- i. Lifting our productivity through creating clearer pathways for mātauranga Māori-based innovation;
  - ii. Strengthening our country's international brand and collaboration on indigenous matters;
  - iii. Taking an evidence-based approach to realising the broad benefits of mātauranga Māori;
  - iv. Enabling Māori to lead in realising the economic and cultural benefits of mātauranga Māori, including locally led approaches.

### **Our proposed package of policy workstreams**

19. In our policy stewardship and development role, we see four key areas that can achieve your goals for progressing our economy. These are:
- a. Development of a sui generis system: enabling appropriate use of mātauranga in commercial settings;
  - b. Development of a biodiscovery system: enabling appropriate use of mātauranga in biotechnology;
  - c. International collaboration: enabling Māori aspirations on the global stage and strengthening Aotearoa New Zealand's international reputation;
  - d. Using insights and indicators: measuring and evaluating the success of the work undertaken.
20. The following sections outline the proposed mahi in more detail, including proposed timeframes for delivery. Our proposals include engagement processes to enable us to test the workability of proposals and design key elements with Māori.

### Enabling appropriate use of mātauranga Māori in commercial settings (*Sui generis*)

21. We propose the main priority, for the work area described in this briefing, to be the development of a system to protect and enable the appropriate use of mātauranga Māori in commercial settings.
22. The system would enable Māori to protect intellectual property in commercial innovations where they have utilised mātauranga Māori. <sup>9(2)(f)(iv)</sup>  
[REDACTED]  
[REDACTED]
23. A sui generis system will provide benefits to Māori businesses and Aotearoa New Zealand businesses by:
  - a. Allowing Māori businesses to innovate and use mātauranga Māori as the point of difference in the global market; which in turn will provide benefits for Aotearoa New Zealand's market and trade overall;
  - b. Ensuring that Aotearoa New Zealand does not lose out in trade opportunities due to regulatory limitations and misappropriation;
  - c. Protecting Aotearoa New Zealand's reputation in the market as consumers can have reassurance that what is being sold is authentic and has integrity;
  - d. Expanding opportunities for Māori entities to partner with other businesses to innovate and lift productivity therefore increase economic outcomes for Aotearoa; and
  - e. Protecting Māori and other businesses in Aotearoa New Zealand due to more clarity and certainty about what is and is not misappropriation.
24. Internationally, these are referred to as sui generis (or bespoke) systems. This recognises that conventional intellectual property systems place requirements on innovators that cannot be met by those utilising indigenous traditional knowledge. These requirements include:
  - a. Originality – the requirement to be a new idea, whereas traditional knowledge is passed on through generations.
  - b. Original ownership – the requirement to be able to determine the original creators, whereas the origin of traditional knowledge may not be known or are often numerous and have developed over time.
  - c. Fixation – the requirement for the original idea to be fixed to something tangible, whereas traditional knowledge may be known and therefore intangible or not 'fixed' to a specific good or service.
  - d. Term – the requirement for the innovation to only be protected for a specific time period since it was created, whereas the creation date is unknown and rights holders continue beyond that time period.
25. Australia is developing a sui generis system. Australia's modelling to date shows that the benefit to cost ratio would be at minimum 2:1. Their modelling shows that they expect to gain total benefits of \$3.5 million, with costs at approximately \$1.75 million. Existing

international examples of sui generis systems exist in Peru, Kenya, Cook Islands and South Africa.

26. An Aotearoa New Zealand sui generis system would create increased pathways for Māori to appropriately utilise mātauranga Māori across a range of sectors. The system could also create a means to protect the integrity and authenticity of products and ensure Māori businesses are not undercut. This would result in growth of the Māori and wider Aotearoa New Zealand economy, while creating further opportunities to compete in global markets. We intend to create a model to understand the cost and benefits of the system as part of the policy development for your consideration.
27. Subject to your agreement to this priority, we would work with the Ministry of Business, Innovation and Employment (MBIE) and Intellectual Property Office of New Zealand (IPONZ) who are responsible for the policy and delivery, respectively, of the conventional intellectual property system. We would look at ways to ensure the sui generis system is 'user-focused' for Māori to minimise barriers to appropriate innovations. We would also look to ways the system can leverage existing intellectual property system settings to create efficiencies in design and delivery.

***International component of this mahi***

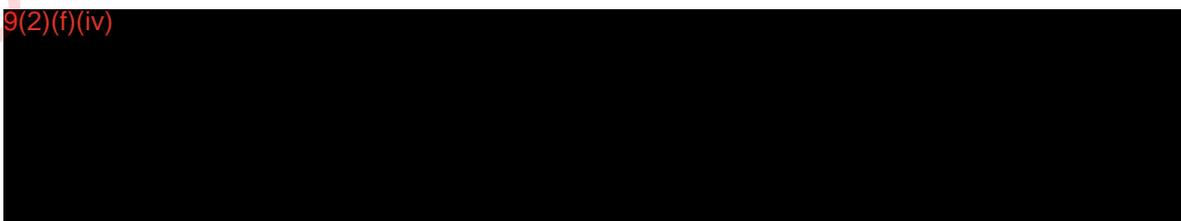
28. We would design the sui generis system in a way that it is portable with the international legal instrument under development at the United Nations WIPO Intergovernmental Committee (IGC). This would enable any mātauranga protected under the sui generis system to be protected in countries that become signatories to the international mechanism. The timing for the conclusion of this mechanism is yet to be determined, but it is likely to conclude in 2025.
29. We recommend we continue the work negotiating an international mechanism alongside of this as part of our work programme. The most significant risk of misappropriation of mātauranga continues to be internationally. The international instrument being considered at WIPO is the most effective means to address this. We have briefed you on our immediate work at WIPO separately (Briefing 47995 refers).

***Other options considered for this mahi***

30. 9(2)(f)(iv) 9(2)(j)



31. 9(2)(f)(iv)



 <b>Summary of proposal – Sui generis system</b>	
	<b>Domestic focus:</b> 9(2)(f)(iv) [redacted] [redacted] [redacted]
	<b>International focus:</b> Contribute to the development of an international agreement at the World Intellectual Property Organisation on protecting indigenous traditional knowledge and traditional cultural expressions from misuse.
	<b>Timing for deliverables:</b> <ul style="list-style-type: none"> <li>9(2)(f)(iv) [redacted]</li> <li>[redacted]</li> <li>[redacted]</li> <li>[redacted]</li> <li>[redacted]</li> <li>[redacted]</li> <li>[redacted]</li> <li>[redacted]</li> <li>Negotiate an international instrument at WIPO IGC (2024-25)</li> </ul>
	<b>Proposed output by October 2026:</b> <ul style="list-style-type: none"> <li>9(2)(f)(iv) [redacted]</li> <li>International agreement concluded/ratified.</li> </ul>
	<b>Potential outcomes:</b> Based on other countries' experiences, we would predict similar outcomes to Australian modelling. Potentially 2:1 benefit to cost ratio and \$3.5 billion in total benefits. However, our work will help understand our outcomes further.
	<b>Risk to mitigate:</b> The main challenge is finding policy settings that provide certainty, while having the agility to accommodate Māori rights and interests across sectors. This will be mitigated by working closely with those in the sectors to identify workable options and utilising Waitangi Tribunal findings.

<b>Recommendations</b>	1. 9(2)(f)(iv) [redacted]	Yes/No
	2. <b>Agree</b> to prioritise negotiations at the World Intellectual Property Organisation to agree a multilateral international agreement where sui generis systems are mutually recognised by signatory countries.	Yes/No

Comments	
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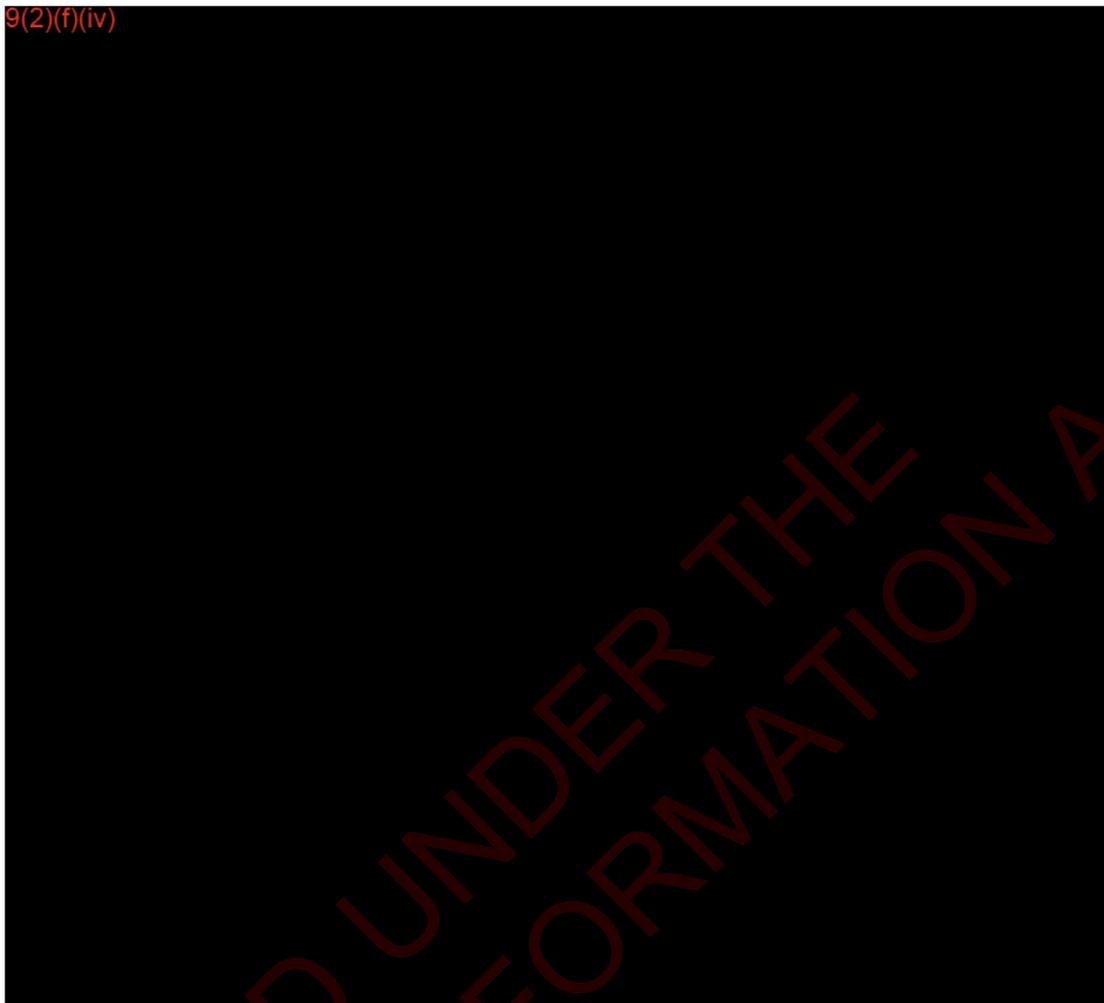
***Enabling appropriate use of genetic resources in biotechnology (Development of a Biodiscovery System)***

32. We propose to prioritise the development of a biodiscovery framework to provide clear pathways for the appropriate use of genetic resources and mātauranga Māori in biotechnology.
33. The Government's prioritisation of biotechnology provides the opportunity to maximise partnerships with Māori and align our practices with international standards. A biodiscovery framework would provide a framework for research into biological resources (e.g. plants, animals, micro-organisms) for features that may be of value for commercial use. The use of mātauranga Māori can help to increase the success rate of research processes by using knowledge and experience with flora and fauna to narrow research parameters.
34. Internationally, 141 countries have put in place biodiscovery or bioprospecting systems, this includes the European Union and its member states, India and Japan. The Nagoya Protocol under the Convention on Biological Diversity (CBD)<sup>2</sup> sets the standards for biodiscovery systems and enables recognition of the systems across the 141 parties to the Protocol.
35. The Nagoya Protocol seeks to create greater legal certainty and transparency for both providers and users of genetic resources by:
- a. Establishing more predictable conditions for access to genetic resources.
  - b. Helping to ensure benefit-sharing when genetic resources leave the country providing the genetic resources.
36. The Nagoya Protocol also covers the use of traditional knowledge associated with genetic resources and access to genetic resources where indigenous people and local communities have the established right to grant access to them. Accordingly, our domestic system would achieve the Nagoya goals while enabling Māori to benefit from the appropriate use of taonga and mātauranga Māori.
37. Being a party to the Nagoya Protocol provides our country with the ability to benefit from the structures within the international system, namely access to the:
- a. International clearinghouse function that efficiently connects users and providers of genetic resources to advance biotechnology, and
  - b. Ability to utilise existing biotechnological advancements across international technical and scientific research and development programmes.

<sup>2</sup> We and all United Nations member states (excluding the United States of America) are parties to the Convention on Biological Diversity.

38. A biodiscovery framework in Aotearoa New Zealand will ensure anyone wanting to access genetic resources and utilise associated traditional knowledge has a clear pathway to do this. This includes Māori who want to be able to create economic and other benefits (e.g. conservation or health) from mātauranga but want to protect the knowledge from misappropriation. The system will ensure there is transparency around how providers and users of genetic resources will interact within the system. We predict this will lead to greater innovation and efficiencies as it will provide pathways for industry and Māori to work together under mutually agreed terms, and ultimately lead to greater commercial and economic output across a range of sectors.
39. A biodiscovery framework would operate as part of a broader biotechnology system and would be developed in parallel with other biotechnology initiatives. The biodiscovery system would complement the Government's priority biotechnology initiatives by providing the mechanisms to appropriately use mātauranga in biotechnology innovations and research. This would also address risks around misappropriation of genetic resources in these processes.
40. We would look at initiatives such as the proposed biotechnology regulator work being led by MBIE. We would also look to align with other agency timeframes on the wider biotechnology work programme to ensure there is consistency in approach to cross-cutting issues. We are actively considering the implications of the broader biotechnology work programme on this specific mahi and may provide further advice on the timeframes for deliverables to ensure greater alignment and collaboration across government.
41. Biodiscovery and bioprospecting activities have led to the development of high-value products and applications across agricultural, botanical, cosmetic, food and beverage industrial biotechnology and pharmaceutical sectors. A system to appropriately undertake biodiscovery will provide pathways to benefit Māori from our unique place in the world through the development of high-value products and new technologies.
42. The system would provide companies with parameters and tools to appropriately use genetic resources in their research and innovation step within the value chain. This is necessary to ensure efficiencies in these processes. The efficiencies come from having a system to enable research and innovations that are culturally and environmentally appropriate rather than it being addressed on a case-by-case basis. This is important when some studies show that searching for a single potentially commercially viable medicinal species requires examination of at least 5,000 plants.
43. A biodiscovery system would put in place tools to provide certainty and transparency for those seeking to utilise genetic resources and how to work with Māori on these matters. This will likely lead to more appropriate use of genetic resources, generating monetary and non-monetary benefits for Māori. This would strengthen Aotearoa New Zealand's ability to take advantage of biodiscovery opportunities, and lead to further commercial and economic growth for the economy.
44. In designing a system, one of the key objectives is to address the recommendations from the *Ko Aotearoa Tēnei*. It provides a strong evidence base for this kaupapa. We would also look to align with the broader work on biotechnology across government and utilise international case studies to help inform policy options. There have been two previous public consultations on the development of such a system, in 2002 and 2007. We would look to build off these two public engagements.
45. The main components, adapted from the CBD work, are provided in an overview:

9(2)(f)(iv)



46. The costs and benefits of such a system would be analysed as part of our policy work. Previous work has highlighted the potential for non-monetary benefits (such as the growth and sharing of knowledge of our biological assets) and monetary benefits (such as payment of royalties and licence fees for the use of biological material). However, previous work was unable to determine the likelihood of these being realised and the implications on innovation and economic outputs.
47. The development of biodiscovery policy options will also help mitigate any potential environmental and ecological impacts resulting from biodiscovery activity. This will help protect Aotearoa New Zealand's biodiversity, taonga species, threatened ecosystems, as well as archaeological and wāhi tapu sites of cultural significance to Māori.

***International component of this mahi***

48. The CBD and the Nagoya Protocol are intended to facilitate access to genetic resources and share benefits between the parties seeking access to the resource.
49. The Nagoya Protocol provides the main international connection for this work. However, the international instrument being considered at the upcoming Diplomatic Conference at WIPO will form part of the system design. Previous public consultation in 2018 has demonstrated that there is clear support, including among Māori, both for the

implementation of a domestic disclosure of origin requirement, and a new disclosure of origin regime in the international patents system.

50. A disclosure of origin mechanism will be an important component to be considered as part of the domestic framework because it will ensure there is greater transparency across the system when genetic resources and traditional knowledge is being utilised. This will be an important and necessary step to help facilitate the negotiation of any access and benefit sharing that may also arise from the utilisation of genetic resources and/or traditional knowledge in the development of a commercial invention.

**Other options**

51. Subject to your agreement, we would brief you on potential scope options for the biodiscovery system in April 2024. 9(2)(f)(iv)

[Redacted text block]

 <b>Summary of proposal – Biodiscovery system</b>	
	<p><b>Domestic focus:</b> Design and support the passage of a 9(2)(f)(iv) system to create clear pathways for partnerships with Māori relating to the use of genetic resources in biotechnology. Seek alignment with international standard under the Nagoya Protocol.</p>
	<p><b>International focus:</b> Negotiate and finalise an international treaty on the disclosure of origin of genetic resources and any associated traditional knowledge in the patent system.</p>
	<p><b>Timing for deliverables: (subject to alignment with wider biotechnology work)</b></p> <ul style="list-style-type: none"> <li>• February 2024 to November 2024 – Targeted engagement with experts in the Māori genomics and intellectual property space.</li> <li>• May 2024 – Conclude negotiations at the WIPO Diplomatic Conference on an international legal instrument on the disclosure of origin of genetic materials and any associated traditional knowledge in the patent system.</li> <li>• 9(2)(f)(iv)</li> <li>• [Redacted]</li> <li>• [Redacted]</li> <li>• [Redacted]</li> <li>• [Redacted]</li> </ul>

	<p><b>Proposed output by October 2026:</b></p> <ul style="list-style-type: none"> <li>• 9(2)(f)(iv)</li> <li>• [Redacted]</li> </ul>
	<p><b>Potential outcomes:</b> The development of a biodiscovery framework will generate and optimise the capture of both monetary and non-monetary benefits, including increased scientific and public knowledge of genetic resources. This will allow Aotearoa New Zealand to take advantage of bioprospecting opportunities, which will lead to further commercial and economic growth, particularly within the biotechnology and Māori sectors.</p> <p>Another outcome of this work will lead to the further protection of Aotearoa New Zealand’s biodiversity, taonga species, threatened ecosystems, as well as archaeological and wāhi tapu sites of cultural significance to Māori.</p>
	<p><b>Risk to mitigate:</b> There are a range of perspectives on what appropriate use of genetic resources looks like for Māori. Research shows that Māori are, generally, less supportive of biotechnology than non-Māori. Any policy work in this area could lead to polarising views on the appropriateness of biotechnology for Māori. However, we would seek to create pathways that enable Māori to consider opportunities and maximise benefits where the respective iwi and hapū see appropriate. This would reinforce existing decision-making rights rather than override them. Clear communications and taking the time to kōrero will be important mitigating factors.</p>

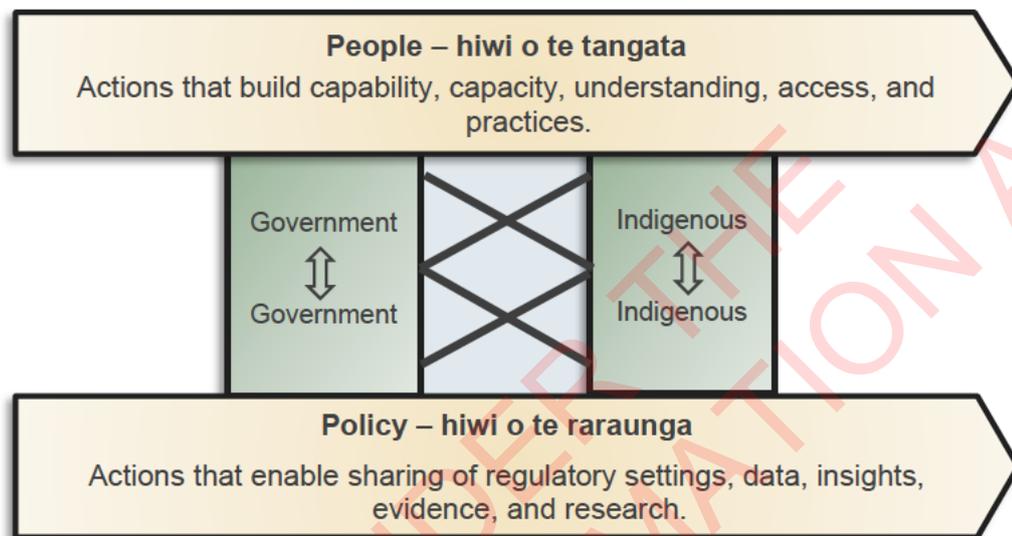
<p><b>Recommendations</b></p>	<p>3. 9(2)(f)(iv)</p>	<p><b>Yes/No</b></p>
<p><b>Comments</b></p>		

**Enabling Māori Aspirations on the Global Stage (International Collaboration)**

52. Aotearoa New Zealand’s point of difference on the global stage is inherently linked to our country’s indigenous, Māori, culture. Te Puni Kōkiri has a role in ensuring that the gains made on the international stage flow back to benefit whānau Māori. We also have a role in enabling Māori to achieve their aspirations on the global stage. Our main lever is through government-to-government relationships both bilaterally and multilaterally.
53. We propose to prioritise work on existing and potential future Indigenous Collaboration Arrangements (ICAs). ICAs are tools to enable further collaboration and innovation opportunities between our Government, Māori and the respective countries’ governments and indigenous peoples.

54. Aotearoa New Zealand has existing ICAs with Australia and Canada. The ICAs are government-to-government agreements that enable indigenous-led activities between the two countries. The ICAs create the platform for priority activities between indigenous peoples and governments to create mutual benefits. These benefits are to both people and policy as shown in the following waka hourua model, with two hulls (ngā hiwi) being connected by the relationships between governments and indigenous peoples.

**Model of Indigenous Collaboration Arrangements – approach to growth**



55. Given the increased engagement of indigenous peoples on the global stage, the ICAs are a key international relationship tool for the Māori Development portfolio with other counterpart indigenous policy portfolios overseas. Increasingly, ICAs and indigenous collaboration are a core part of our international relationships, sitting alongside Free Trade Agreements, the Closer Economic Relations (CER) agreement with Australia and IPETCA.
56. The two existing ICAs are the first of their kind and we have worked on seeking to maximise indigenous priority outcomes. We have created strong relationships with Australia and Canada and this is now bearing fruit in key policy areas. The next step is to progress collaboration in areas of priority to our respective indigenous peoples, for example business collaboration, access to capital, indigenous land management, and indigenous intellectual property.
57. We would continue conversations with business, academic and other groups to raise awareness of the ICA and seek feedback on the priority activities. For example, in July this year we held a policy workshop on the Australia ICA alongside the Australia-NZ Leadership Forum Indigenous Business Sector Group. The workshop identified small indigenous businesses as a key area the ICA can add value, given the shared challenges those businesses face on both sides of the Tasman.
58. We propose working with key Māori and indigenous peoples in Australia and Canada to:
- a. Agree key mutual priorities for the next two years<sup>3</sup>

<sup>3</sup> We propose two years based on the general work cycle we have developed with Australia and Canada.

- b. Deliver 3 key initiatives under each ICA that achieve priority outcomes, and
- c. Support your engagement with Ministerial counterparts in Australia and Canada (each ICA contains a commitment to annual Minister-level engagements).
59. Given Aotearoa New Zealand's leadership in this area, other countries have expressed interest in having an ICA with us. We seek your agreement to look into these opportunities and brief you once they further develop over the coming months. The three countries that have expressed some interest in arrangements like ICAs are Chile, Sweden, and the United States of America.
60. To complement the ICAs we also see value in continuing to work with the Ministry of Foreign Affairs and Trade (MFAT) to strengthen Māori involvement in offshore representation. This follows Waitangi Tribunal litigation on these matters in Wai 262 and Wai 2522.
61. Simple steps we could take to improve transparency and accountability include systematising the sharing of information on upcoming international treaty negotiations. This could be a web-based notification system for interested parties to sign-up to across all iwi and Māori, which notes when key international hui are taking place, the focus of the sessions and the key contact in government in an easily accessible format. All the information shared would be unclassified. Subject to your agreement, we would work with MFAT on the development of policy options for such tools and seek your agreement mid next year.
62. Alongside the above we have given thought to broader work to increase Māori engagement and participation in international instruments and fora. This longer-term work would include looking at the 2001 Strategy for Engagement with Māori on International Treaties.
63. If you agree to these priority actions, we will provide you with a follow-up briefing on these matters by July 2024.

	Summary of proposal – Enabling Māori aspirations on the global stage
	<b>Domestic focus:</b> Development of tools to increase Māori engagement and participation in international instruments and fora.
	<b>International focus:</b> Realising the benefits of the existing and future Indigenous Collaboration Arrangements (ICAs).
	<b>Timing for deliverables:</b> <ul style="list-style-type: none"> <li>• Early 2024 – undertake engagements with Australia and Canada under the ICAs to identify priorities.</li> <li>• Mid 2024 – programme of work under the ICAs and key initiatives underway.</li> <li>• July 2024 – Advice on tool to improve Māori participation in international negotiations and fora.</li> </ul>

	<p><b>Proposed output by October 2026:</b></p> <ul style="list-style-type: none"> <li>• A new ICA with another country, with priorities achieved through key indigenous-led activities under the existing ICAs.</li> <li>• Implementation of improvements to international instrument and fora processes through new tools to lift Māori engagement and participation.</li> </ul>
	<p><b>Potential outcomes:</b> We expect stronger relationships formed in Canada and Australia and growth in the people (access, capacity, capability) and policy (insights, settings, research) aspects of the ICAs. We expect new and stronger relationships and reputation with other countries through better engagement with Māori domestically to form our positions internationally.</p>
	<p><b>Risk to mitigate:</b> The main risk with the ICAs is a reputational one where misaligned priorities or limited capacity to deliver impacts our relationship with the Australian and Canadian governments, Māori and other indigenous peoples. We mitigate this by clear communications about the afforded priority and available funding for activities as far as possible.</p> <p>The risk with our domestic work is that it is not ambitious enough for Māori. We intend to mitigate this by advising you on the longer-term pathway for further work and clear communications about the intention to prioritise practical tools.</p>

<p><b>Recommendations</b></p>	<p>4. <b>Agree</b> to prioritise Indigenous Collaboration Arrangements, both existing and potential future arrangements <b>Yes/No</b></p> <p>5. <b>Agree</b> to prioritise the development of systematic tools to improve Māori participation in international instruments and fora <b>Yes/No</b></p>
<p><b>Comments</b></p>	

**Using insights and indicators – measuring and evaluating the success of the work undertaken.**

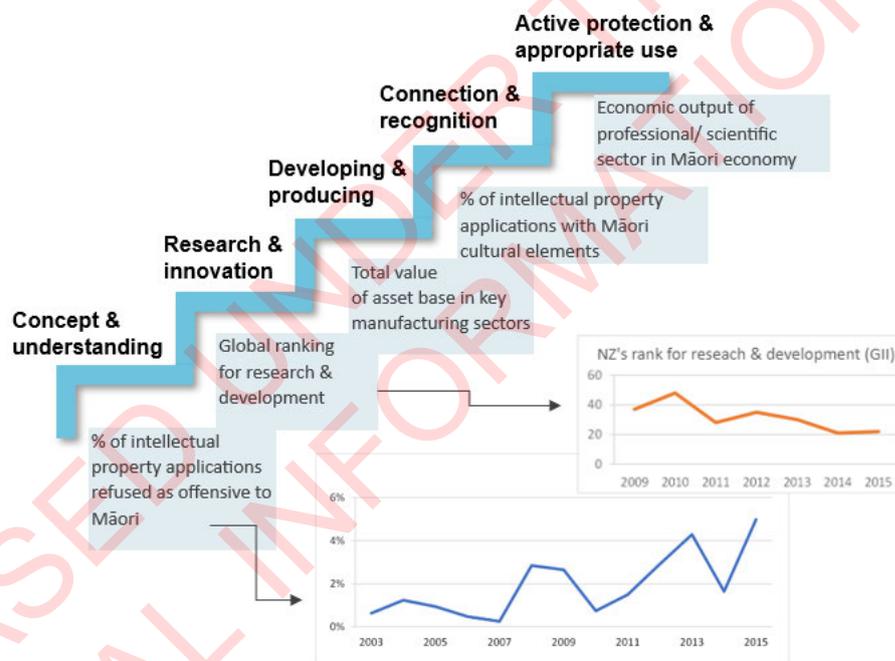
64. We propose to prioritise the development of insight and indicator tools to sit alongside our mahi that provides the ability to monitor progress and identify areas for further targeted intervention. We propose the development of two products that will assist in the monitoring and evaluation of outcomes:

- a. Indicators – quantitative and qualitative measures to assess outcomes across each step in the value chain – both domestically and internationally. The primary audience would be you and key Ministers to monitor outcomes.

- b. Maturity framework – a framework to enable agencies to measure their practices and policies relating to mātauranga Māori to identify improvements to enable Māori to better access, protect and utilise their mātauranga that is in the Government's care. The primary audience would be government agencies and their respective Ministers.

65. The prioritisation of indicators would create the ability to monitor trends relating to use of mātauranga Māori across the value chain. We would look at options for the indicators for your consideration, with these aligning with government priorities and any strategic approaches that are developed.

66. These would likely include a strong focus on enhancing economic, environmental, and cultural benefits. We would develop an initial set of indicators then build off these through progressing means to improve data through addressing gaps in data availability and quality. Below is an illustrative example of how we could measure key data points at each step of the value chain.



67. The indicators would be complemented by a maturity framework that we would build, prototype, and then build out across government agencies. We would work with Māori on these two products to identify ways that could provide Māori with greater insight into both inputs and outcomes government is seeing relating to mātauranga Māori. The increased transparency and coherency of government practices is intended to lead to a shift towards increased trust by Māori in how Government protects mātauranga Māori. This will also help strengthen accountability across government agencies.

68. Implementation of better monitoring and evaluation across the government will also enable efficiencies through the better targeting of resources to priority issues. This includes identifying regulatory barriers to achieving outcomes and measuring the effectiveness of interventions to achieve government goals such as improved innovation outcomes.

69. We consider that there is a lack of visibility of the impact government agencies policies have on mātauranga Māori. This stifles both understanding of what works and also the ability to understand the scale and scope of issues and their resulting outcomes. These issues were traversed in the Wai 262 Waitangi Tribunal claim around the need for the government to better understand its role and outcomes. If the data-driven approach is successful in growing the maturity of government practices this will assist in reducing the fiscal risk of further Waitangi Tribunal claims.

 Summary of proposal – Using insights and indicators	
	<b>Domestic focus:</b> Developing indicators and a maturity framework to assess and monitor trends, while enabling the targeting of any further policy interventions based on government priorities.
	<b>International focus:</b> Utilising established international frameworks and measurements, such the Global Innovation Index and Sustainable Development Goals, in our approach as appropriate.
	<b>Timing for deliverables:</b> <ul style="list-style-type: none"> <li>• July 2024 - Initial indicator deck for your consideration</li> <li>• December 2024 – Maturity framework for your consideration and approach to improving data availability and quality.</li> <li>• 2025-2026 – regular reporting on measurement indicators and maturity framework, including prototype and any staged roll out of the maturity framework.</li> </ul>
	<b>Proposed output by October 2026:</b> <ul style="list-style-type: none"> <li>• Supporting indicators complete, tested, and reported to Government.</li> <li>• Maturity framework developed and prototyped by key agencies.</li> </ul>
	<b>Potential outcomes:</b> We expect increased trust and insight from Māori in Government practices. We also expect improved accountability and increased efficiencies through targeting of services and understanding of what works.
	<b>Risk to mitigate:</b> The risk is that the data may not be effective in showing progress in the short to medium term, which could compound the lack of recognition of any work underway. We would mitigate this through ensuring that data is triangulated with qualitative information from people involved in the systems and any literature or supporting research.

Recommendations		
	6. <b>Agree</b> to prioritising the development of key indicators to guide government work relating to mātauranga Māori	<b>Yes/No</b>
	7. <b>Agree</b> to prioritising the development of a maturity framework to assess and guide practices relating to mātauranga Māori	<b>Yes/No</b>

Comments	
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### **Opportunities from a system leadership perspective**

70. In our system leadership role, Te Puni Kōkiri has developed a cross-government approach to build coherence in how government takes opportunities and addresses issues relating to mātauranga Māori. This approach also seeks to address many of the concerns raised about government practices raised through the Waitangi Tribunal Wai 262 Inquiry.
71. We are interested in how you might like to continue this role, including how you might like to build coherence across Ministerial portfolios and work with key iwi.

### ***Cross-government approach***

72. The existing Cabinet-agreed cross-government work programme is annexed for your information. This work programme has largely operated at an agency-to-agency level to build practice across agencies.
73. We recommend a refreshed, prioritised cross-government work programme which you have oversight of. We also recommend this work programme includes a vision, clear outcomes, and success measures. This will enable us to build coherence across the work and focus resources efficiently.
74. We recommend the work programme is supported by a Ministerial oversight group, convened by you, to take any collective decisions, monitor and drive progress. We would support your role in a secretariat and policy capacity.
75. If you agree with this approach, we recommend you, at the appropriate time, write to key Ministers seeking key work they would like to include in this approach and any input on key targets. We can subsequently brief you on a potential vision, outcomes, and success measures for the work for you to consider. This should include the portfolios of Research, Science and Innovation, Education, Resources, Arts, Culture and Heritage, and Internal Affairs.
76. We also consider it is timely to reconsider how this work is branded. To date, the term Te Pae Tawhiti has been utilised as the approach to describe work on mātauranga Māori and key Wai 262 issues. As this work continues to evolve, a durable term is needed. It needs its own brand to be distinguished from the Wai 262 claim (the Waitangi Tribunal claim which is used interchangeably for this work) and other Te Pae Tawhiti government work (e.g., Ministry of Social Development's information technology upgrades).
77. If you agree, we will provide you with some options for this in a follow-up briefing.

### ***Working with iwi, hapū, Māori and representatives of the original claimants***

78. In Budget 2022, \$11.4 million was provided for Māori leadership on mātauranga Māori matters. The pūtea was provided for two purposes:

- Policy into practice fund - \$4.01 million over two years – to learn from whānau, hapū, iwi and Māori-led initiatives about what works and what is needed from government to enable locally-led initiatives.
- Building Māori capacity - \$7.38 million over three years – to enable Te Taumata Whakapūmau (representatives of the descendants of the original six claimants of Wai 262) to engage iwi and Māori on this kaupapa and build understanding.

79. The Policy into Practice fund has been a success in highlighting a broad range of kaupapa across the motu that can create mātauranga Māori-based benefits for generations to come. We have funded 19 initiatives which are summarised in annex two. We will provide you with regular updates on these projects and encourage you to visit some of them to hear about their mahi. The projects are funded until 30 June 2024. Please indicate any you are particularly interested in, and we can work with your office to arrange a visit or answer any pātai.
80. The Policy into Practice fund was a prototype on building case studies and insights on mātauranga Māori initiatives. The locally led, government-enabled approach has been successful to date and something we see further value in. We will provide you with advice on potential options relating to the policy-into-practice approach as part of Budget 2024 advice should you wish to develop it further.
81. Our work has been a priority for the National Iwi Chairs Forum for the last three years. The work has sat under Pou Tahua given the potential economic benefits. The previous Government focused on working with the descendants of the original claimants (named as Wai 262 Te Taumata Whakapūmau) to progress the work from a claim to an iwi, hapū-led model.
82. The funding for Te Taumata Whakapūmau has enabled them to continue the mauri of the claim and connect a range of iwi and hapū with the kaupapa. We have a contract with Te Taumata Whakapūmau in place until 30 June 2025 with \$4.3 million remaining on the contract.
83. Our approach to working with and for whānau, hapū and iwi across the breadth of this work programme is a critical component to its success. You will see we have been doing this in a variety of ways to advance our work to date, and moving into a new phase will require clarity and certainty about the role of government. Once we understand how you might like to work with iwi and hapū, we can provide you with some options to support this.

Summary of proposal – System leadership	
 <b>Ministerial oversight</b> – establish Ministerial rūpū to oversee prioritised cross-agency work programme.	<b>Prioritised cross-agency work programme</b> – create prioritised work programme with key measures. 
 <b>Māori leadership</b> – discuss approach to working with Māori leaders and technicians.	<b>Branding of strategic approach</b> – create durable approach to mātauranga Māori mahi across government. 
 <b>Policy into practice</b> – engage with Māori practitioners as part of the prototype process	

<b>Recommendations</b>	<p>8. <b>Agree</b> to establish a Ministerial rūpū, chaired by you and supported by Te Puni Kōkiri, that oversees priority work across government relating to mātauranga Māori</p> <p>9. <b>Agree</b> to Te Puni Kōkiri developing a cross-government prioritised work programme to be agreed to by Cabinet</p> <p>10. <b>Agree</b> to the rebranding of the cross-government approach to mātauranga Māori</p> <p>11. <b>Indicate in annex two</b> any of the key initiatives, that are part of the policy into practice initiative, which you would be interested in visiting in the short-term</p> <p>12. <b>Discuss</b> with officials your desired approach to working with Māori leadership and technicians</p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>
<b>Comments</b>		

### Next Steps

84. We are available to meet at your convenience to discuss any of the content in this briefing, or any other whakaaro you might have on this kaupapa.
85. Once you have provided us with your decisions, we can provide you with key material to support your kōrero with key Ministers and other stakeholders. We will also develop any further advice, subject to your decisions in this briefing.

86. We will keep you updated on progress of this mahi on a regular basis through weekly reports and officials' hui. This will provide you with an opportunity to ask us any pātai as the work progresses.



Paula Rawiri  
Hautū, Te Puni Kaupapa Here | Deputy Secretary, Policy Partnerships

Hon Tama Potaka  
Te Minita Whanaketanga Māori

Date: \_\_\_\_ / \_\_\_\_ / 2023

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## Annex One – Previous Cabinet approved work programme

Area of focus	Prioritised mahi (lead agency)	Aligned mahi (lead agency)
System levers	<ul style="list-style-type: none"> <li>• Research, science and innovation reform (MBIE)</li> <li>• Sui generis intellectual property system for mātauranga Māori (TPK)</li> <li>• Evaluation framework to measure outcomes related to mātauranga Māori (TPK)</li> </ul>	<ul style="list-style-type: none"> <li>• Māori Data Governance (Statistics NZ)</li> <li>• Vision mātauranga Māori policy (MBIE)</li> </ul>
Domestic levers	<ul style="list-style-type: none"> <li>• Development of a bioprospecting regime (TPK)</li> <li>• Exploring biodiversity incentives through Te Mana o te Taiao (MfE)</li> <li>• Protection and promotion of key mātauranga collections (DIA)</li> <li>• Continuing progress of te reo Māori (TPK)</li> <li>• Review of the Wildlife Act and other conservation policies (DoC)</li> </ul>	<ul style="list-style-type: none"> <li>• National Policy Statement for Freshwater Management (MfE)</li> <li>• Review of Haka Ka Mate Attribution Act (MBIE)</li> <li>• Mātauranga Maori Te Awe Kotuku (MCH)</li> <li>• Plant Variety Rights Act (MBIE)</li> <li>• Aquaculture strategy and plan (MPI)</li> <li>• Te Mana o te Taiao (MfE)</li> <li>• Resource Management Act reform (MfE)</li> </ul>
International levers	<ul style="list-style-type: none"> <li>• Māori engagement in international instruments and fora (MFAT)</li> <li>• Pōkai Ao and Indigenous Collaboration Arrangements (TPK)</li> </ul>	

## Annex Two – Policy into Practice initiatives for potential visit

(Suggested priorities to visit in kahurangi)

Name and Location	Funded mahi and opportunity	Sector
Te Weu <i>Ruatoria</i>	<p>This project seeks what knowledge is embodied in taonga Māori that can help navigate and mitigate the combined effects of the climate crisis and inappropriate land use.</p> <p>The marae Te Pa o Penu and Ohinewaiapu along with two Māori land blocks (Totaranui A1D2B2B and Te Kautuku Station) will work out how to utilise the mātauranga in these taonga to help solve the environmental problems faced.</p>	Horticulture/ Agriculture
Tohu Media <i>Auckland</i>	Project to deliver an AI powered software (prototype) to create unique fingerprints of indigenous video content as a practical tool towards cultural and intellectual property protection and use.	Multimedia
Wakatū <i>Nelson</i>	Whānau, hapū and iwi in Te Taihū are developing a tikanga-led process to progress the formal naming of the 69 endemic plant species that are not yet formally recognised, as a model for wider application across other species.	Horticulture
Te Tira Whakamātaki <i>Christchurch</i>	Suite of projects that contribute to the revitalisation of traditional Māori seed saving practices by creating tikanga-based seed conservation resources; offering seed conservation training to Māori; and providing equipment to save seeds at place.	Horticulture/ Agriculture
Ngā Āhuatanga o Te Kai <i>Whakatāne</i>	Preparing the next generation of parents to understand what is involved in a taonga Māori kai system, and reconnecting parents with mātauranga kai so they can raise their pēpi with Māori kai practices and allows for inter-generational change.	Tamariki/ whanau- centered wellbeing
Ngā Toki Whakaruru- ranga <i>Tauranga</i>	This project will build understanding of the international domain for Māori, including the opportunities in Free Trade Agreements. Alongside Ngā Toki, Te Waka Kai ora will help develop strategies and initiatives to achieve more effective protection and increased benefits from mātauranga Māori internationally.	International / Multimedia
Te Rūnanga o Te Rarawa <i>Kaitiāia</i>	Toheroa are a taonga in Te Oneroa a Tōhe and are in critical decline due to historic overharvesting. This project prioritises locations for Toheroa regeneration by creating a predictive model of Toheroa abundance and impacts using machine learning that weaves local knowledge, historical information, mātauranga Māori with scientific data and spatial imagery.	Fisheries
Te Waka Kai Ora <i>Palmerston North</i>	Explore ways of effective and active protection of mātauranga Māori with a specific focus on Hua Parakore and Kai Atua, to mitigate misappropriation and theft of Māori knowledge. This is particularly important as the Hua Parakore is the world's first Indigenous verification system for Kai Atua (Indigenous organics).	Horticulture/ Agriculture

Ngāti Kurī <i>Kaitiāia</i>	Uplift traditional knowledge as a method to manage ngahere and to prevent large scale bush fires. Understand the lens their tupuna had and origins of fire, to develop a collaborative plan on how to support whānau when a large-scale fire occurs.	Forestry/ Biodiversity
Rangiwaho Marae – Whareonga- onga <i>Gisborne</i>	Identify options for how benefits from taonga species can be utilised appropriately, with a focus on plants and fungi considered prohibited plants under the Misuse of Drugs Act.	Rongoā
Te Roroa <i>Dargaville</i>	This project will deliver an online content management and repository system for environmental information to support adaptive management by Indigenous communities. This system will allow the organisation to keep records of how we apply the data, knowledge and mātauranga to achieve positive environmental outcomes needed.	Horticulture/ Agriculture/ Tourism
Ngāti Koata <i>Nelson</i>	A project to strengthen kaitiaki approach to Takapourewa and its unique ecosystem. This includes review of co-management operations, storing of pūrākau and mātauranga, and revitalising their kaitiaki plan for Takapourewa.	Biodiversity/ Conservation
Pūtiki Wharenuī <i>Hawkes Bay</i>	This project, underpinned by mātauranga tuku iho, will undertake case studies on Te Runanganui o Heretaunga - Flora and fauna with the intent of forming a guide on how to protect them. This will help inform development of an authoritative and functioning Cultural and Creative Protection System for whānau and hapū.	Horticulture
Ngaati Koroki Kahukura <i>Cambridge</i>	A project to undertake mana whenua-led hikoi with maunga guides to capture and share detailed, technical and iwi experience direct to kaitiaki and rangatahi. Working across traditional mahinga kai areas for tuna, watercress, kumara, rīwai, and rongoā and assess broad population and stocking rates within the catchment area of Arapuni and Karaapiro.	Whanau- centered/ Horticulture
Nga Tirairaka o Ngati Hine <i>Waipapa</i>	This project offers a very credible pathway forward in supporting Māori and kaitiaki to come to the aid of the infected taonga rākau (Kauri) with a rongoā approach. Aiming to reverse the physical manifestations of the disease and provide protection against infection using mōhiotanga/mātauranga-a-te Māori.	Forestry/ Biodiversity
Ngā Rangatahi ā Iwi <i>National</i>	Striving to elevate the voices of whānau, hapū, and iwi Māori in the context of taonga protection relevant to the Wai 262 claim. The work seeks to amplify the voices of pakihi Māori and toi Māori committed to advancing taonga protection in their work. This partnership focuses on intergenerational dialogue, understanding, and action, specifically concerning taonga protection in modernity.	Multimedia/ Tamariki/ whanau- centered
Te Rūnanga o Te Rarawa - <i>Whenua Census</i>	The Whenua Census Project provides a comprehensive snapshot of land tenure arrangements, considering cultural requirements and socioeconomic status to determine priorities for land use.	Conservation

<i>Kaitiaia</i>	Appropriate use and protection of taonga Māori and mātauranga will empower whānau to preserve their cultural stories and proactively plan for their future needs	
Kahu Aronui: 100 Creatives Project  <i>National</i>	The 100 Creatives Project will be a step change in providing visibility to the issues Māori working across creative industries experience in terms of protecting their creative works.  Success will be measured by raising awareness of the issues with Māori creatives, profiling their experiences and perspectives and being able to recommend actions, including policy and legal reform, to address fixable issues.	Multimedia

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02 May 2024

Te Minita Whanaketanga Māori

## HE PĀRONGO | AIDE MEMOIRE

### World Intellectual Property Organisation – Diplomatic Conference

Te Puni Kōkiri contact: Laine Fisher, Kaiwhakahaere

Phone: 9(2)(a) [REDACTED]

TPK tracking no: 48586

#### Purpose

1. To provide you and other key Ministers with further background information on the international instrument relating to disclosing the source of Genetic Resources and Associated Traditional Knowledge in patent applications, being concluded at the World Intellectual Property Organization Diplomatic Conference in May 2024.
2. This paper has been drafted in collaboration with, and supported by, the Ministry of Business, Innovation and Employment.

#### Context for the international instrument

3. The World Intellectual Property Organization (WIPO) is a self-funding agency of the United Nations, with 193 member states. The WIPO provides a forum and international bureau for international cooperation on intellectual property matters.
4. International cooperation on intellectual property matters is a key component of trade and sustainable development. It enables businesses to recognise and protect their intellectual property in countries in which they sell their products and services, and within the broader international marketplace.
5. Intellectual property systems provide businesses and organisations with the ability to protect their innovations and creations so they may receive fair economic benefit from their intellectual property. The system recognises the individual owner or creator of an innovation or creative expression and provides an exclusive right to control and use it for commercial advantage, for a limited period of time.
6. Many of the treaties agreed in WIPO have sought to make it simpler and faster to protect intellectual property across different countries. Much of this has been achieved through standardisation of processes. It is also commonplace in trade agreements, including for New Zealand, to seek further recognition of intellectual property rights and protect intellectual property that is unique to that respective country.

#### Traditional Knowledge

7. The international cooperation work in WIPO, and other international fora<sup>1</sup>, has identified the limitations of conventional regulatory systems to recognise and protect other forms of

<sup>1</sup> Such as the World Trade Organisation and Convention on Biological Diversity.

intellectual property. Whilst intellectual property systems generally recognise an individual owner or creator of an innovation or creation for limited periods of time, creations and works held collectively by communities or groups (e.g., iwi and hapū), in perpetuity, lack protection. Commonly this type of knowledge is held by indigenous people, as well as local communities, and developed through the interaction with their local environment. For example, Māori traditional practices relating to mamaku/tree fern.

8. The expanding international marketplace has increased opportunities for indigenous people and local communities to economically benefit from this knowledge and practices they have developed utilising this knowledge. This is often through cultural services/experiences (e.g., tourism) or cultural goods (e.g., traditional art). These goods and services often receive a premium when they have provenance to traditional approaches. Internationally, the knowledge held by indigenous groups and local communities has been termed “traditional knowledge”. Often the traditional knowledge is only known within these indigenous groups or local communities.
9. Conventional intellectual property regulatory systems require innovations and creations to be new or novel for them to receive protection. Traditional knowledge, because it is neither new nor novel, is unable to be protected under these systems.
10. There have been several instances where intellectual property rights have been erroneously granted for inventions that are neither new nor novel because they have been based on traditional knowledge. (e.g., the use of turmeric in healing wounds being patented in the United States of America when it in use in India as a traditional healing practice). Because the use of turmeric for healing purposes was already known, the patent should not have been granted.
11. In the New Zealand context, traditional knowledge and practices adds value to our national identity. For example, the primary reason that between approximately 7% and 9% of international visitors travel to New Zealand each quarter is to see the unique indigenous culture<sup>2</sup>.
12. It also adds value to our economy through the production of goods and services that have provenance to traditional knowledge. This includes traditional art, weaving, carving, medicines, tattooing and massage practices. Using existing economic models, it is difficult to isolate the economic value add of traditional knowledge to the economy. However, progress is being made in this regard. Simple market analyses of products are also useful guides, such as what consumers are willing to pay for pounamu jewellery from the Arahura River compared with imported jadeite jewellery.
13. Some countries have created laws to facilitate misappropriate use of traditional knowledge to occur whilst appropriately maintaining the provenance to the traditional practice. This maintains the premium and point of difference for those people and the country. Australia’s modelling of their approach to this change to regulation shows that it could lead to economic gains of between \$1.05 and \$1.75 billion for their economy.

### **The instrument and the efficacy of the patent system**

14. The key objectives of this instrument are to:

- (a) enhance the efficacy, transparency, and quality of the patent system with regard to genetic resources and traditional knowledge associated with genetic resources, and

<sup>2</sup> Quarterly International Visitor Survey

- (b) prevent patents from being granted erroneously for inventions that are not novel or inventive with regard to genetic resources and traditional knowledge associated with genetic resources.
15. The key proposal in the instrument is a “disclosure of origin” requirement. This would improve the ability to assess the application for its inventive and novel nature. The information will identify if any traditional knowledge is used and the country of origin. This will then enable the assessor to see whether it meets the patent test. The instrument focuses on the source or origin of the Genetic Resource and/or the Traditional Knowledge, rather than the ownership of it.
16. For example, the disclosure may reveal the patent application is for something neither new, nor novel – in which case, it should not be granted. In other cases, the disclosure will not stop the patent being granted because, despite the use of Genetic Resources and Traditional Knowledge, it is still sufficiently new and novel.
17. Additionally, the instrument recognises and reaffirms the role the intellectual property system plays in promoting innovation, transfer and dissemination of knowledge and economic development, to the mutual advantage of providers and users of Genetic Resources and Traditional Knowledge associated with genetic resources.
18. Member states have, to date, been unilaterally supportive of this instrument progressing given that it will improve the efficacy of their respective patent systems, as well as other benefits. The instrument was supported unanimously to be taken to Diplomatic Conference to complete negotiations. It is likely to pass given its broad support, so it is important we utilise our role to influence its finalisation. New Zealand is a highly respected member state at WIPO, and we have a lot of influence despite our size. Many others will be looking to us to support this instrument. It is beneficial to our international reputation that we do. Some key trade partners are strongly supportive of the proposal, including India and UAE.

### **Ownership of genetic resources**

19. A Genetic Resource, in its broadest sense, refers to plants, animals, and microorganisms such as bacteria and algae, and the material within those that have beneficial properties that can be derived, extracted, or otherwise harvested from them.
20. The Traditional Knowledge associated with Genetic Resources often provides researchers with valuable information that can, for example, lead to isolating new and valuable active compounds to treat diseases and pests.
21. This instrument would not create any ownership rights for indigenous peoples and other local communities. It seeks only to ensure information about the source of the Genetic Resource and the associated Traditional Knowledge when used towards creating an invention, for which a patent has been applied for.
22. Implementation of a domestic disclosure of origin regime in the Patents Act (if that was what the Government agreed to do) after conclusion of the Diplomatic Conference would not involve the creation of any property rights over Genetic Resources.



# HEI WHAKATAU | BRIEFING

## Biotechnology Value Chain – Landscape and Opportunities

<b>Date:</b>	11 September 2024	<b>Priority</b>	Medium
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	49383

Action sought	Date action required by
<p>It is recommended that you:</p> <ol style="list-style-type: none"> <li><b>Note</b> the mahi Te Puni Kōkiri is leading to explore the potential for a national biodiscovery framework to strengthen the biotechnology value chain, which connects to your Māori Development and Conservation portfolios.</li> <li><b>Note</b> this follows support from Ministers in the Gene Technology Ministerial Group for Te Puni Kōkiri to further explore the potential for a national biodiscovery framework and Cabinet agreement on progressing the first set of gene technology reforms on 12 August 2024.</li> <li><b>Agree</b> to the next steps and timeframes proposed including a report back to you in late 2024 on our targeted external discussions and seeking your decisions on next steps for this mahi.</li> </ol>	24 September 2024

Contact for telephone discussion (if required)				
Name	Position	Telephone	Mobile	1 <sup>st</sup> contact
Paula Rawiri	Hautū, Te Puni Kaupapa		9(2)(a)	
Laine Fisher	Kaiārahi Kaupapa Here			√

Other Agencies Consulted					
<input checked="" type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input checked="" type="checkbox"/> MPI	<input checked="" type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input checked="" type="checkbox"/> Other (EPA)	<input checked="" type="checkbox"/> Department of Conservation				

Attachments
<ol style="list-style-type: none"> <li>Overview of the biotechnology landscape across the value chain</li> <li>Proposed key messages for Ministerial colleagues (Appendix 2)</li> </ol>

Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments:

11 September 2024

Te Minita Whanaketanga Māori

## Biotechnology Value Chain – Landscape and Opportunities

### Purpose

1. This briefing provides an outline of New Zealand's biotechnology landscape and the mahi Te Puni Kōkiri is leading which explores the potential for a national biodiscovery framework. This follows Cabinet agreement on progressing the first set of gene technology reforms on 12 August 2024.
2. This mahi intersects your Māori Development and Conservation portfolios. It connects to the government's priority of biotechnology and plan to accelerate Māori economic development in New Zealand. The international aspect of this mahi will explore whether New Zealand should ratify the Nagoya Protocol and the new World Intellectual Property Organisation (WIPO) Treaty on Disclosure of Origin of Genetic Resources and Associated Traditional Knowledge in patent applications.

### Background

#### *New Zealand's biotechnology landscape*

3. New Zealand has notable unrealised potential in biotechnology. Biotechnology encompasses the use of biological and genetic resources like fungi, animals and plants for research and often commercial purposes. The global biotechnology market is worth over \$1.2 trillion.<sup>1</sup>
4. Despite our size, in 2020 we were ranked fourth globally for innovation potential in biotechnology, with \$2.7 billion in revenue from 211 biotech companies.<sup>2</sup> This potential is based off our ability to innovate using traditional knowledge (mātauranga Māori) and our range of unique resources. New Zealand is internationally regarded for our rich and unique biodiversity, contributing an estimated 80,000 native species to global biodiversity, many of which are endemic.
5. As part of our role as principal policy advisor on Māori development and wellbeing, Te Puni Kōkiri leads advice on how regulation can enable iwi and Māori to benefit from the appropriate use of mātauranga Māori and taonga/indigenous species. In biotechnology, this pertains to how mātauranga Māori and taonga/indigenous species are used in biodiscovery and commercial processes.

<sup>1</sup> Biotech New Zealand, *Aotearoa Boosted by Biotech, Innovating for a Sustainable Future*. See [Biotech-Report-2020\\_online.pdf](#) ([biotechnz.org.nz](http://biotechnz.org.nz)), pg. 10.

<sup>2</sup> *Ibid*, pg. 12.

*New Zealand's current biodiscovery settings*

6. Biodiscovery is commonly known as the examination of genetic resources for features that may be of value for commercial and non-commercial uses. Policy mahi on biodiscovery has ebbed and flowed over the years, exploring a range of issues including kaitiaki relationships, protection of mātauranga Māori and taonga/indigenous species, as well as how to unlock capital, expertise and regulatory pathways across the value chain.
7. Despite the rich and unique genetic resource base, New Zealand has no cohesive national biodiscovery framework to streamline access, use, and development of biological and genetic resources. Anecdotally, New Zealand is perceived as difficult to collaborate with due to our complex regulatory settings, which impede the level of foreign investment in our biotechnology system.
8. There are various legislative regimes that interact in the processes of biodiscovery across different agencies. However, the lack of coherency has implications for New Zealand. These include the inability to effectively capture the benefits of biodiscovery activities, protect the kaitiaki interests and associated mātauranga Māori of taonga/indigenous species, and enable or require the sharing of benefits derived from the use of these resources.
9. Additionally, the scale of biodiscovery that has occurred or is underway within New Zealand is unknown. We also do not know what innovation is hampered or prevented by not having a framework.

**There are a range of biotechnology activities underway which intersect with your Māori Development and Conservation portfolios**

10. Despite the lack of a cohesive regulatory system, there are positive community-led initiatives underway to enable whānau, hapū, iwi and Māori to benefit from the appropriate use of mātauranga Māori and indigenous species. These initiatives intersect your Māori Development and Conservation portfolios and sit broadly within the phases of collection of genetic resources (e.g., Systematics Collections Data Portal<sup>3</sup>), research and development (e.g., Genomics Aotearoa<sup>4</sup>) and commercialisation (e.g., Hikurangi Bioactives<sup>5</sup>).
11. Appendix 1 sets out a visual overview of the current New Zealand biotechnology landscape across the value chain. It illustrates a range of domestic iwi and Māori-led and government-led mahi underway and the platform of international standards for biotechnology. Based on what we know so far, it articulates potential key benefits a national biodiscovery framework could unlock for New Zealand, iwi and Māori if utilised to strengthen the biotechnology value chain.

*Gene technology regulation reforms*

12. The Ministry of Business Innovation and Employment (MBIE) is leading the gene technology regulation reforms. MBIE's mahi has the potential to unlock wider benefits for New Zealand and may lead to an increase in biodiscovery activities. However, because

<sup>3</sup> See [Systematics Collections Data](https://www.landcareresearch.co.nz/) » Manaaki Whenua ([landcareresearch.co.nz](https://www.landcareresearch.co.nz/)).

<sup>4</sup> See [genomics-aotearoa.org.nz](https://genomics-aotearoa.org.nz/).

<sup>5</sup> See [Hikurangi Bioactives](https://www.hikurangi.govt.nz/).

New Zealand does not yet have a national biodiscovery framework in place, this limits the ability for iwi and Māori to fully benefit from enhanced gene technology processes.

*World Intellectual Property Organisation (WIPO) treaty*

13. As you know in May 2024, we contributed to the successful conclusion of the international treaty on Disclosure of Origin of Genetic Resources and Associated Traditional Knowledge in patent applications (GRATK Treaty). The GRATK Treaty was agreed to by consensus by the 193 member states and, to date, 36 countries have signed it.
14. The GRATK Treaty sets an international standard for protecting intellectual property and genetic resources used in biotechnology in commercial settings. It includes a new disclosure of origin mechanism, ensuring greater transparency across the system when genetic resources and traditional knowledge are utilised. This mechanism could enhance New Zealand's current settings by facilitating the negotiation of any access and benefit sharing arising from the use of genetic resources and/or mātauranga Māori in the development of commercial inventions.
15. As part of our broader biotechnology mahi, we will prepare advice on whether New Zealand should ratify the GRATK Treaty and provide options for doing so. The GRATK Treaty would require only minor legislative and administrative changes. Updated economic modelling that shows the cost of implementation is minimal and the benefits far outweigh the costs. We will consider this as part of ongoing policy development.

*Te Mana o Te Taiao mahi*

16. The Department of Conservation (DoC) is leading Te Mana o Te Taiao implementation plan to preserve and protect New Zealand's unique biological landscape through driving conservation action at a national, regional and local level. We will continue to work with DoC to explore what potential impacts a national biodiscovery framework might have on biodiversity, conservation and native species in New Zealand through policy development.
17. The current Te Mana o Te Taiao implementation plan captures 13 objectives across five government agencies (including Te Puni Kōkiri) and local authorities. At this time, Te Puni Kōkiri is responsible for objectives 2 and 5 which involve progressing mahi on regulation related to the protection of taonga works, taonga taiao, taonga species and New Zealand's biodiversity. Development of a national biodiscovery framework actively aligns with these objectives.

**International standards for New Zealand's biotechnology sector**

18. The Nagoya Protocol and the Kunming-Montreal Global Biodiversity Framework under the Convention on Biological Diversity (CBD) lay out international standards for the broader biotechnology sector.

*New Zealand's interest in the Nagoya Protocol*

19. The Nagoya Protocol is a supplementary agreement to the CBD. Currently, 141 countries have ratified the Protocol and have put in place domestic biodiscovery systems. This includes the European Union, India and Japan.
20. The Nagoya Protocol sets the standards for biodiscovery systems and enables recognition of the systems across parties to the Protocol. New Zealand has an interest in the Nagoya Protocol as both a user and provider of genetic resources but has not yet ratified it, as a

requirement to do so is to have a domestic biodiscovery framework. We will consider the potential to ratify the Nagoya Protocol as part of policy development.

*New Zealand's commitments under the Global Biodiversity Framework (GBF)*

21. The GBF supports the achievement of sustainable development goals and sets out a pathway to reach the global vision of a world living in harmony with nature by 2050. In adopting the GBF, all parties committed to setting national targets to implement it.
22. New Zealand is committed to achieving the GBF targets through implementation of Te Mana o Te Taiao, led by DoC. This includes goals and targets relating to genetic resources, traditional knowledge, and benefit sharing. Therefore, development of a national biodiscovery framework actively aligns with New Zealand's targets under the GBF.

**A national biodiscovery framework could bring together the biotechnology activities that are underway now**

23. Within the government's priority of biotechnology and plan to accelerate Māori economic development in New Zealand, and within the context of the international mahi, there is an opportunity to explore the potential for a cohesive national biodiscovery framework that could enable New Zealand, iwi and Māori to capture benefits from biodiscovery for commercial settings through bringing together the biotechnology activities that are underway now.
24. We are aware through previous engagement that Māori have generally expressed interest in progressing this mahi.<sup>6</sup> Ministers attending the recent Gene Technology Ministerial Group hui on 27 June expressed their support for Te Puni Kōkiri to further explore the potential for a national biodiscovery framework.
25. Based on what we know so far, a national biodiscovery framework has the potential to deliver a range of benefits, including:
  - a. **Broad sector benefits** – standardising biodiscovery practices in New Zealand through a framework could provide certainty and transparency, enabling both New Zealand and Māori to benefit from genetic resources. A framework could also protect mātauranga Māori and taonga/indigenous species from misappropriation, including through intellectual property protection and provenance mechanisms which recognise kaitiaki relationships with, and the Crown's role in respect of, mātauranga Māori and taonga/indigenous species.
  - b. **Accelerate Māori economic development outcomes** – a framework could establish a clear pathway for Māori to create economic and other benefits (e.g., conservation or health) from mātauranga Māori and taonga/indigenous species while protecting against misappropriation.
  - c. **Enhance the government's priority biotechnology initiatives** – developing a framework focused on mātauranga Māori and taonga/indigenous species is a potential action under the Māori economic action plan in development. This

<sup>6</sup> For example, MBIE, *Summary of submissions on Disclosure of origin of genetic resources and traditional knowledge in the patents regime: discussion paper*, 2018. See [Summary of submissions on Disclosure of Origin Discussion Document \(mbie.govt.nz\)](#) pg. 3.

framework could provide a clear pathway to connect the steps in the biotechnology value chain.

26. Further engagement with key stakeholders and agencies will help us to better understand the context of New Zealand’s current biodiscovery settings, and what the opportunities are to strengthen those settings. Engagement with iwi and Māori is critical, since they are already on the ground innovating with mātauranga Māori and indigenous/taonga species and creating opportunities with established organisations to invest in outcomes for Māori through biodiscovery.
27. Te Puni Kōkiri is planning to carry out targeted external discussions with Māori-led pakihi, Crown and other research institutes this year to gather insights to inform ongoing policy development. We will report back to you on insights and outcomes from this engagement in late 2024.

### Proposed next steps

28. We propose the following next steps:

	Take	Āhea
1	Te Puni Kōkiri leads <b>targeted external discussions</b> with iwi <sup>7</sup> , Māori-led pakihi, Crown and other research institutes to gather anecdotal evidence to inform policy development.  Te Puni Kōkiri leads <b>ongoing engagement with Te Taumata Whakapūmau<sup>8</sup> and agencies</b> to progress policy development.	September – October 2024  Ongoing
2	Te Puni Kōkiri <b>reports back to you on insights from engagement</b> which may inform actions outlined in the Māori Economic Action Plan. We will seek your <b>decisions on next steps</b> .	Late 2024
3	Depending on your decisions for next steps, <b>Te Puni Kōkiri progresses development</b> of policy options for a national biodiscovery framework, <b>9(2)(f)(iv)</b> [REDACTED]	<b>9(2)(f)(iv)</b> [REDACTED]

### Proposed key messages

29. Appendix 2 includes some key messages you may wish to share with your Ministerial colleagues around biotechnology or the biodiscovery mahi, as they arise in general, through your other portfolios in particular your Conservation portfolio.

<sup>7</sup> Our initial targeted external discussions in September – October capture iwi representatives on Te Taumata Whakapūmau, however we plan to broaden iwi engagement as we progress with policy development.

<sup>8</sup> Te Taumata Whakapūmau are the representatives of the descendants of the original claimants and their six iwi, Ngāti Kurī, Te Rarawa, Ngāti Wai, Ngāti Porou, Ngāti Kahungunu & Ngāti Koata. They have been funded by Te Puni Kōkiri through to June 2025. The funding enables engagement with Māori, within the rangatiratanga axis of Te Tautuhi-ō-Rongo, to identify what works for Māori in relation to the protection of culture and mātauranga Māori. We will work with Te Taumata Whakapūmau to identify key findings from their mahi to feed into our policy thinking.

**Recommended Action**

30. It is recommended that you:

1. **Note** the mahi Te Puni Kōkiri is leading to explore the potential for a national biodiscovery framework to strengthen the biotechnology value chain, which connects to your Māori Development and Conservation portfolios.
2. **Note** this follows support from Ministers in the Gene Technology Ministerial Group for Te Puni Kōkiri to further explore the potential for a national biodiscovery framework and Cabinet agreement on progressing the first set of gene technology reforms on 12 August 2024.
3. **Agree** to the next steps and timeframes proposed including a report back to you in late 2024 on our targeted external discussions and seeking your decisions on next steps for this mahi.

**Yes / No**



Paula Rawiri  
 Hautū, Te Puni Kaupapa | Deputy Secretary, Policy

Hon Tama Potaka Te Minita Whanaketanga Māori
Date: ____ / ____ / 2024

# Overview of the Biotechnology landscape across the Value Chain

Exploring a **National Biodiscovery Framework** for NZ, iwi and Māori to benefit from a strengthened biotechnology value chain



 **E.g. Māori landowner partnership – Kānuka cream.** Hikurangi Bioactives Limited Partnership (HBLP) project on kānuka species situated on Māori land in and around the Waipuu Valley.

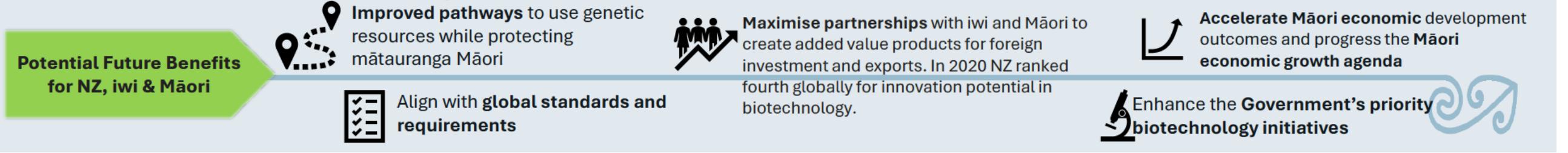


 **E.g. Iwi-business partnership – Te Rūnanga o Ngāti Whātua and Roche Pharmaceuticals** have recently set up Tū Kotahi, a new partnership that envisages modern medicine meeting traditional Māori values and practices. Working together to address Māori health inequity to create modern healthcare solutions.



- International standards**
- Convention on Biological Diversity
  - Kunming-Montreal Global Biodiversity Framework
  - Nagoya Protocol
  - WIPO IGC

## Opportunities within a National Biodiscovery Framework



IN CONFIDENCE

## Appendix 2 - Proposed key messages for Ministerial colleagues

Overarching kōrero	Further detail
What is biodiscovery?	<ul style="list-style-type: none"> <li>• Biodiscovery encompasses the examination of biological and genetic resources (e.g. plants, animals and microorganisms) for features that may be of value for commercial development.</li> <li>• These features may include chemical compounds, genes and their products. This term is often used in tandem with 'bioprospecting', which is the term for accessing or taking of biological material.</li> </ul>
There are some key community-led initiatives underway, which are examples of the future Māori economy.	<ul style="list-style-type: none"> <li>• For example, Hikurangi Bioactives Limited Partnership's research project on kānuka species involved working alongside Māori landowners in drafting a tikanga-based intellectual property agreement that recognises the inherent kaitiaki relationship between Māori landowners and kānuka. In working together, they were able to identify opportunities for Māori landowners to engage in commercialisation while also guaranteeing benefits and royalties during the production of the kānuka oil.</li> <li>• Another example is the recently new partnership, Tū Kotahi, between Te Rūnanga o Ngāti Whātua and global pharmaceutical company Roche Pharmaceuticals that envisages modern medicine meeting traditional Māori values and practices. They are working together to address Māori health inequity to create modern healthcare solutions.</li> </ul>
New Zealand has notable unrealised potential in biotechnology.	<ul style="list-style-type: none"> <li>• The global biotechnology market is worth over \$1.2 trillion.</li> <li>• In 2020 New Zealand was ranked fourth globally for innovation potential in biotechnology, with \$2.7 billion in revenue from 211 biotech companies.</li> <li>• This potential is based off our ability to innovate using traditional knowledge (mātauranga Māori) and our range of unique resources.</li> <li>• New Zealand is internationally regarded for our rich and unique biodiversity, contributing an estimated 80,000 native species to global biodiversity, many of which are endemic.</li> </ul>

<p>Biodiscovery mahi continues to happen around us, both internationally and domestically.</p>	<ul style="list-style-type: none"> <li>• Other countries have adopted regulatory frameworks to address how biological and genetic resources are accessed including for commercial development, such as the European Union, India and Japan.</li> <li>• New Zealand is yet to establish a comprehensive regulatory framework, which means we are missing out on key economic, cultural and environmental outcomes.</li> </ul> <p><i>International standards</i></p> <ul style="list-style-type: none"> <li>• Biotechnology is a live and active topic internationally.</li> <li>• The new World Intellectual Property Organisation treaty sets an international standard for protecting intellectual property and genetic resources used in biotechnology in commercial settings.</li> <li>• The Nagoya Protocol and the Kunming-Montreal Global Biodiversity Framework under the Convention on Biological Diversity lay out international standards for the broader biotechnology sector.</li> </ul> <p><i>Domestic</i></p> <ul style="list-style-type: none"> <li>• Māori in the community are doing their best to navigate our system to innovate and use taonga/indigenous species.</li> <li>• Policy development on biodiscovery in New Zealand has ebbed and flowed over the years, exploring a range of issues including kaitiaki relationships, protection of mātauranga Māori and taonga/indigenous species, as well as how to unlock capital, expertise and regulatory pathways across the value chain.</li> </ul>
<p>The complexity of our current settings discourages people and companies to engage in biodiscovery in New Zealand, so we are losing the potential economic and other benefits from this.</p>	<ul style="list-style-type: none"> <li>• Anecdotally, New Zealand is perceived as difficult to collaborate with due to our complex regulatory settings, which impede the level of foreign investment in our biotechnology system.</li> <li>• There are various legislative regimes that interact in the processes of biodiscovery across different agencies.</li> <li>• The lack of coherency means we are unable to fully capture the benefits of biodiscovery activities, or know the true scale of biodiscovery that has occurred or is underway within New Zealand.</li> </ul>

	<ul style="list-style-type: none"> <li>We also do not know what innovation is hampered or prevented by not having a framework.</li> </ul>
<p>A cohesive national biodiscovery framework would bring existing government mahi together and could streamline access, use, and development of biological and genetic resources.</p>	<ul style="list-style-type: none"> <li>This mahi would be led by Te Puni Kōkiri. We are well placed for this because we understand the unique circumstances of mātauranga Māori and Māori kaitaki relationships with taonga/indigenous species. We can balance this with the economic goals of the Government.</li> <li>It would bring together wider mahi that is progressing right now in government that envelops biotechnology to unlock wider benefits for New Zealand and provide an increased transparency of biodiscovery activities. For example, MBIE's gene technology regulation reforms, and on a wider scale DoC's Te Mana o te Taiao.</li> <li>A framework would establish a clear pathway for Māori to create economic and other benefits (e.g., conservation or health) from mātauranga Māori and taonga/indigenous species while protecting against misappropriation.</li> </ul>
<p>This mahi fits well with progressing the government's priority of biotechnology and plan to accelerate Māori economic development in New Zealand.</p>	<ul style="list-style-type: none"> <li>Developing a framework focused on mātauranga Māori and taonga/indigenous species is a potential action under the Māori economic action plan in development. This framework would provide a clear pathway to connect the steps in the biotechnology value chain.</li> </ul>
<p>Te Puni Kōkiri is developing policy options for me to consider in mid-2025, that will be informed by targeted engagement.</p>	<ul style="list-style-type: none"> <li>Te Puni Kōkiri will lead targeted engagement with Māori-led pakihi, Crown and other research institutes to gather insights to inform ongoing policy development.</li> <li>It will start in September 2024, and I will receive a report back on this engagement at the end of this year.</li> <li>9(2)(f)(iv)</li> <li>TPK will work with other agencies such as MBIE and DoC to make sure any policy options connect with the other mahi that is going on in government in the biotechnology space.</li> </ul>

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OFFICIAL INFORMATION ACT

## Ministerial consultation on integrated artificial intelligence work programme

From: Minister of Science, Innovation and Technology and Minister for Digitising Government

Contact: Laine Fisher, Kaiārahi Kaupapa Here, Te Pae Tawhiti, Te Puni Kōkiri, 9(2)(a)

Due: 16 Mahuru 2024 (49563)

### Context

1. You have received a copy of the Cabinet paper regarding the cross-portfolio work programme and approach to Artificial Intelligence (AI) in Aotearoa New Zealand for Ministerial consultation.
2. Hon Judith Collins KC, as Minister of Science, Innovation and Technology, and the Minister for Digitising Government is presenting the cross-portfolio work programme to address the technological advancement of AI to Cabinet Economic Policy Committee (ECO) on 25 September/Mahuru 2024.
3. Ministerial and interdepartmental consultation is occurring in parallel. We have provided this feedback to the Ministry of Business, Innovation and Employment and understand they are generally comfortable subject to the provision of your feedback.

### Purpose of the Cabinet paper and why is it relevant?

4. The cross-portfolio work programme seeks to support a more productive economy, as AI has the potential to drive innovation and economic growth and allow the safe and responsible use of AI.
5. The technological advancement of AI presents significant opportunities to unlock innovation, boost productivity and growth for iwi, Māori, pakihi Māori and the Māori economy more broadly.
6. The proposed AI work programme, as drafted, does not recognise the cultural risks and opportunities for Māori. Accordingly, we recommend 9(2)(g)(i)

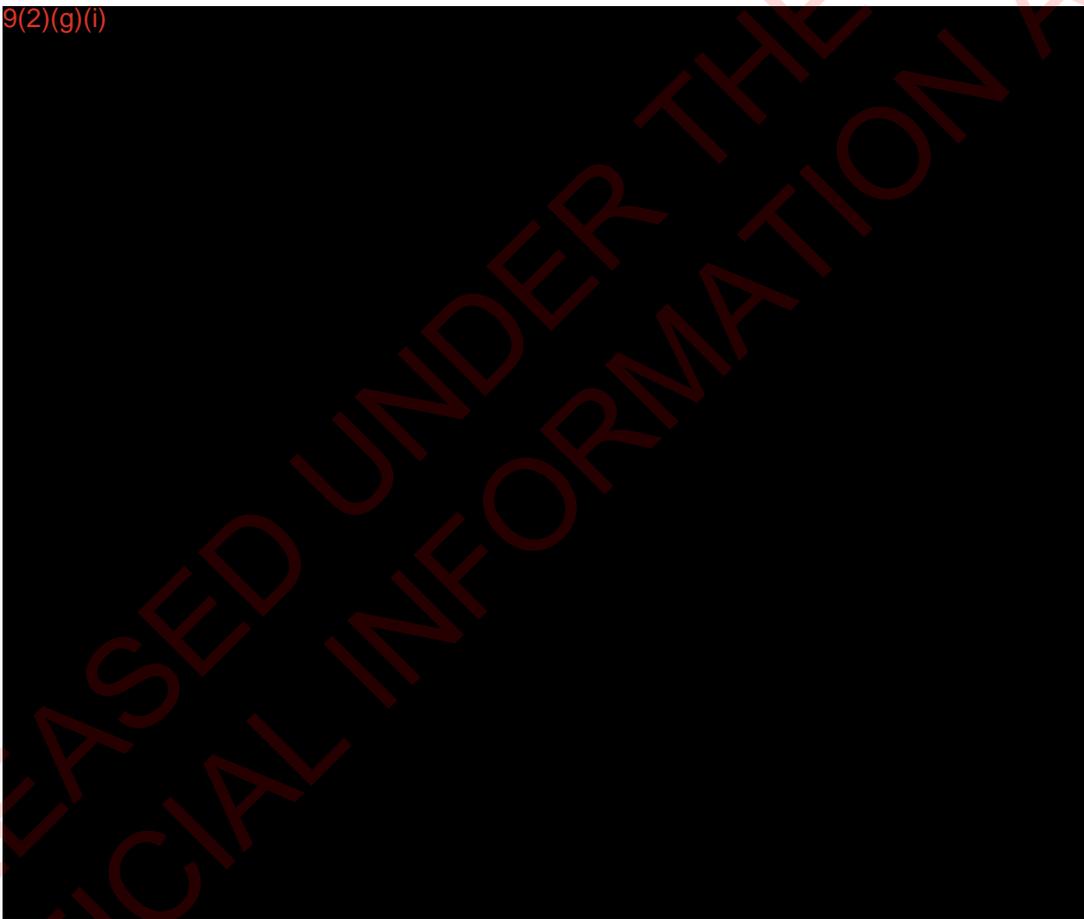
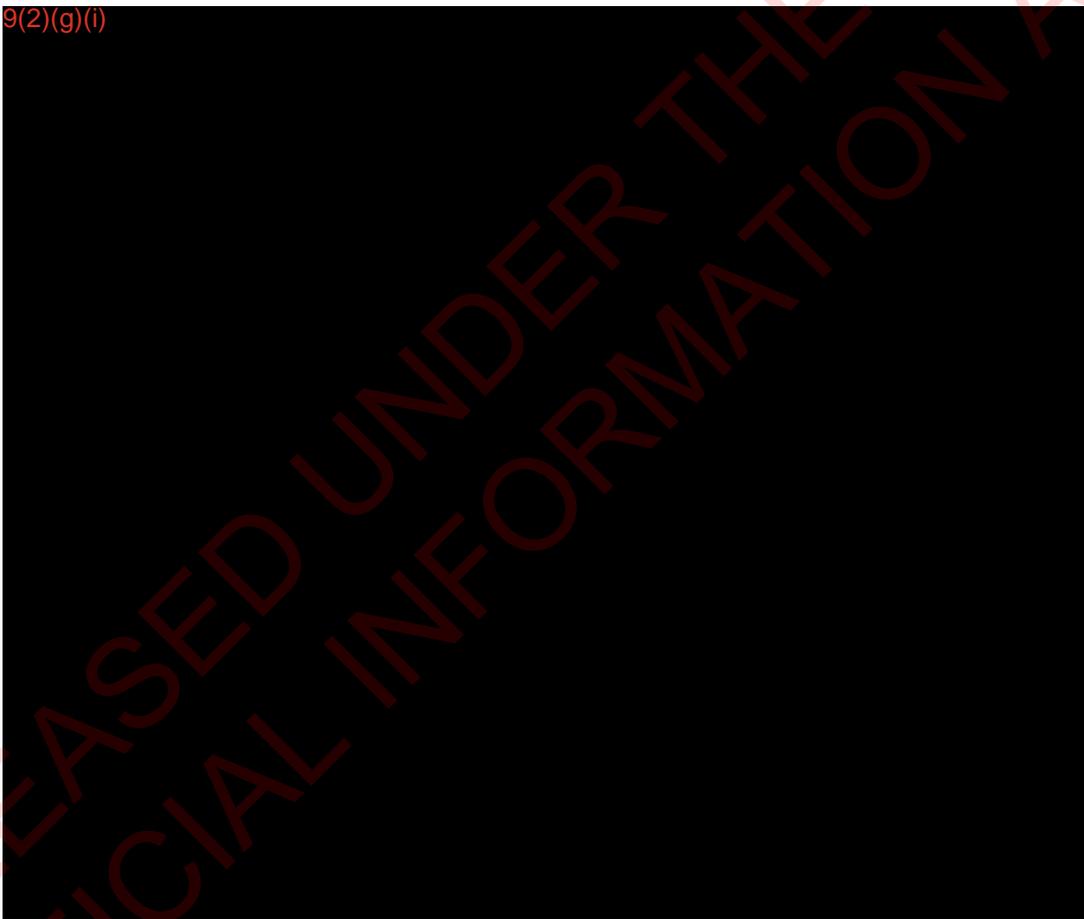
### AI and Māori culture and knowledge

7. The growth of AI provides significant opportunities for Māori to benefit commercially through increases in productivity and innovative goods and services. However, the growth of AI will exacerbate existing regulatory limitations that protect individual intellectual property, but not collective cultural intellectual property. This is both at a domestic and international level.
8. The use of AI to replicate components of Māori culture and traditional knowledge without appropriate attribution has significant implications for Māori development and Te Tiriti o Waitangi/the Treaty of Waitangi.
9. The use of Māori culture and knowledge in AI for personal use will be difficult to regulate and will likely be addressed through social and cultural norms. The commercial use of this is the main area that government can actively protect taonga through removing regulatory barriers to the registration of cultural intellectual property.

**Examples of pakihi Māori use of AI**

- 10. As part of our mahi on provenance, we previously invested in Tohu Media Limited who operate in the motion picture, video, sound and recording industries. Our investment has enabled Tohu Media to build, test and deliver an AI powered prototype software to recognise and label taonga within different forms of media. This creates provenance between, for example people on screen, and their iwi, hapū and whanau. This helps to prevent the media from being subsequently misused. Legally, however, an individual's copyrighted media is only protected for 50 years after the media was produced.
- 11. Recently, Te Hiku Media was listed as one of the top tech leaders in the Time100 AI 2024 list for their reo Māori transcription software. This demonstrates the potential for pakihi Māori to harness innovation and strengthen their global brand through appropriate use of AI.

**Suggested action**

- 12. 9(2)(g)(i) 
- 13. 

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**Ministerial Consultation on *Amplify: A Creative and Cultural Strategy for New Zealand 2024-2030*****From: Hon Paul Goldsmith, Minister for Arts, Culture and Heritage****Contact: Laine Fisher (Kaiārahi Kaupapa Here Te Pae Tawhiti, Te Puni Kōkiri)****Due: 24 Mahuru 2024 (49633)****Context**

1. Hon Paul Goldsmith, as Minister for Arts, Culture and Heritage is undertaking Ministerial consultation on *Amplify: A Creative and Cultural Strategy for New Zealand 2024-2030* (Strategy).
2. The Cabinet paper seeks approval to undertake public consultation on the Strategy. The Cabinet paper will be considered at the Cabinet Social Outcomes Committee on 16 Whiringa-ā-nuku 2024.
3. The Strategy has important implications for your Māori Development portfolio, as the Māori arts and creative industry will play a key role in the future Māori economy. In particular, there is an opportunity to leverage the mahi Te Puni Kōkiri (TPK) is progressing on settings to remove regulatory barriers that hinder the appropriate use of cultural intellectual property (IP) and protect from commercial misappropriation.
4. TPK was consulted on the Strategy and feedback was broadly incorporated. We recommend you raise one minor change to the version you have been provided.

**Purpose of the Cabinet paper and its relevance to the Māori Development portfolio**

5. The paper proposes a cross-portfolio Strategy which seeks to maximise the Government's investment into the creative and cultural sectors. This includes addressing ineffective regulation that is limiting productivity and leveraging the potential for these sectors to contribute to the National Growth Agenda, for example in doubling the value of Aotearoa's exports.

***Importance of aligning the Strategy to the Māori Development portfolio***

6. The Māori creative sector has a key role within the future Māori economy and assisting with the diversification and sustainability of economic outputs. The Māori creative sector is a significant contributor to the domestic economy, delivering \$1.55B to Aotearoa's GDP in 2023, outpacing other sectors in terms of growth, and employing around 11,345 Māori<sup>1</sup>.
7. The recent Economic Taumata you hosted recognised the need for importance of this sector in supporting our economy's diversification in trade and contribution to regional development. As such, it is important that the economic aspects of your Māori Development portfolio and the Strategy are well aligned to amplify the benefits across both work programmes.
8. Intellectual property rights are time limited and, generally, linked to individuals. For Māori artists and creatives, this limits their ability to protect against reproduction of their mahi, resulting in a wide range of fakes and forgeries in the market. As such,

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<sup>1</sup> National Iwi Chairs Forum Pou Tahua Māori Economic Development A3 (2024)

it limits the willingness for artists and creatives to produce to scale given the increasing risk of misappropriation, particularly online or in foreign markets where there are different understandings of cultural norms.

9. Addressing the regulatory barriers to cultural IP protection would support artists and creatives to obtain premiums from their mahi, particularly through the export of authentic goods and services. Research, including by the Ministry of Primary Industries<sup>2</sup>, shows that there is a strong international demand for cultural-based products.
10. Australia is developing a bespoke cultural IP system. Modelling to date shows the benefit to cost ratio would be at a minimum 2:1 and that they expect to gain total benefits of \$3.5B over 20 years<sup>3</sup>. International examples of bespoke IP settings already exist in countries such as Peru, Kenya, Cook Islands, and South Africa.
11. The consideration of legislative and non-legislative options to protect and enable the appropriate use of cultural IP, including toi Māori, is a key facet within your draft Māori Economic Development Action Plan. In particular, capturing and growing Aotearoa's reach into overseas markets and strengthening our unique identity and international reputation. This mahi sits under the goal '*Maximise International Connections to double the value of exports in 10 years*'.
12. The cultural IP mahi, for which TPK is responsible for, is referenced in the Strategy's third pillar, '*Reducing barriers to growth*'. This mahi will also inform other key actions contained within the Strategy including the Copyright Act review and cross-government approach to artificial intelligence.
13. Additionally, you have directed TPK to work across the government and with Te Māori Manaaki Taonga Trust to develop a plan to relaunch Te Māori. This is an additional lever aligned with an action in the Strategy to identify opportunities that showcase our unique international identity and boost cultural tourism. We are also aware of cross-portfolio policy matters relating to the New Zealand Māori Arts and Crafts Institute, which may be considered as part of the Strategy.

#### *Te Puni Kōkiri consultation and minor suggested amendments*

14. TPK has provided feedback into the Strategy which was broadly incorporated into the draft Strategy excepting a minor change which we suggest you raise.
15. The Strategy contains pātai that request respondents rank the importance of the five strategic principles which underpin the Strategy. This includes the principle '*Government acknowledges ngā toi Māori and te ao Māori as taonga and important to Aotearoa New Zealand's culture and identity, and empowers Māori to achieve their aspirations for ngā toi*'.
16. We recognise that the intention of this pātai is to test support for the principles that MCH has developed. However, this is likely to be perceived as the government willing to prioritise other matters over the Treaty of Waitangi/Te Tiriti o Waitangi commitments to Māori.

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<sup>2</sup> Ministry for Primary Industries (2024) Māori brand origin stories: Exploring consumer demand opportunities for Māori brands, <https://www.mpi.govt.nz/resources-and-forms/economic-intelligence/market-insights-for-the-primary-sector/>.

<sup>3</sup> Ninti One Limited (2023) Scoping study on standalone legislation to protect and commercialise Indigenous Knowledge, <https://consultation.ipaustralia.gov.au/policy/stand-alone-legislation-for-indigenous-knowledge>.

17. We see the Strategy's principles as interconnected and instead propose question 5 is omitted. We prefer omitting the question as questions 6-11, which focus on the actions which make up the roadmap, will provide more valuable insights into the prioritisation of elements of the Strategy. However, question 5 could be reframed to ask whether the principles reflect the key areas where government should focus its efforts.

### Recommended actions

18. **Consider highlighting your support** for the opportunity for TPK's mahi, identified in the Strategy, to support Māori artists and creatives in realising monetary and non-monetary outcomes through protecting and enabling the appropriate use of cultural IP. TPK will provide you with key messages as a part of its omnibus briefing that you may wish to use at Cabinet Social Outcomes Committee on 16 Whiringa-ā-nuku 2024.
19. **Suggest** a minor amendment is made to the *Questions for public input*. Specifically, omit question 5 which asks respondents to rank the key principles that underpin the Strategy in order of priority. We think questions 6-11, which focus on the actions which make up the roadmap, will provide more valuable insights into the prioritisation of elements of the Strategy. Or alternatively, recommend that question five is reframed to seek feedback on whether the principles reflect the key areas that government should focus its efforts.

## In-confidence: Candidates for Appointment

Te Rā 22/10/2024

### Whakapānga kōnae

<b>Ki a</b>	Dave Samuels, Secretary for Māori Development, Te Puni Kōkiri
<b>Nā</b>	Paula Rawiri, Deputy Secretary, Policy
<b>Kaupapa</b>	Plant Variety Rights: Māori Plant Varieties Committee – Proposed candidates for appointment
<b>Attachment/s</b>	<ul style="list-style-type: none"> <li>a. Attachment One: Letter to Secretary for Māori Development</li> <li>b. Attachment Two: Draft acknowledgement letter to Plant Variety Rights Commissioner</li> <li>c. Attachment Three: Plant Variety Rights – Signed Memorandum 20 June 2024</li> </ul>

### Purpose

This memorandum:

1. forwards a copy of a letter dated 14 October 2024 from Ross Van Der Schyff, Plant Variety Rights Commissioner, requesting the appointment of Aroha Mead, Dale Stephens and Graeme Atkins to the Māori Plant Varieties Committee by 8 November 2024, for your (endorsement/approval/comment). Supporting material and a draft response letter are attached.

### Recommendations

2. It is recommended that you:
  - a. **Agree** with the proposed candidates for appointment to the Māori Plant Varieties Committee from the Plant Variety Rights Commissioner (refer Attachment One)
  - b. **Review, sign and date** the proposed letter from you to the Plant Variety Rights Commissioner agreeing to the appointments of the proposed candidates (refer Attachment Two)

### Background / Context

3. Since June 2024, Te Puni Kōkiri has been working with Ministry of Business & Employment (MBIE) and the Intellectual Property Office of New Zealand (IPONZ), to fulfil its obligations under the Plant Variety Rights Act 2022 (**the Act**).
4. The main purpose of the Act is “to protect kaitiaki relationships with taonga species and mātauranga Māori in the plant variety rights system.” The Act seeks to achieve this by requiring the Plant Variety Rights Commissioner (**the Commissioner**) to:

- establish a Māori Plant Varieties Committee (**the Committee**) that has functions and a role to support protection of kaitiaki relationships in the Plant Variety Rights (**PVR**) system.
- to consult with the Chief Executive of Te Puni Kōkiri (Secretary for Māori Development) on proposed appointments before making an appointment.

### **Your role as Secretary for Māori Development related to the Act**

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5. As per the requirements in the Act, the Commissioner is required to consult with the Chief Executive (Secretary for Māori Development) on the proposed appointments to the Committee under s57(3) of the Act, before appointing a person.
6. In your role as Secretary for Māori Development, you will be required to engage in any future consultation processes for reappointments to the Committee as per s57(2) of the Act. Reappointment will be made at the Commissioner's discretion.

### **Summary of recruitment and appointment**

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#### *Recruitment and appointment activities since June 2024*

7. The working group (MBIE, IPONZ and Te Puni Kōkiri) developed a recruitment and appointment approach (**the approach**) for agreement by the Commissioner, which included the following sections:
  - competency criteria and position description
  - advertisement approach
  - interview panel and process
  - candidate consideration (including interview options and questions)
  - appointment process
  - conflicts of interest
  - remuneration assessment (in accordance with the Cabinet Fees Framework)
  - draft terms of reference.
8. The Commissioner approved the approach for recruitment and appointment in June 2024.
9. A memo detailing the approach was endorsed by me on 21 June 2024. A copy of the memo was provided to your office on 27 June 2024 (refer to Attachment Three).
10. During August and September 2024, the panel convened and conducted interviews to appoint at least three members to the Committee. A total of twenty-five 'expressions of interest' submissions were received, of which seven candidates were shortlisted and five interviewed. Two out of the seven candidates withdrew from the interview process.
11. The interview panel consisted of Māori and technical experts from MBIE, IPONZ and Te Puni Kōkiri. Te Puni Kōkiri panel representatives were Tata Lawton and Tikitu Tutua-Nathan.

12. Further details pertaining to the recruitment and appointment including summaries of each interviewed candidate is attached for your information (refer to Attachment One, Annexes One-Four).

### **Proposed candidates for appointment**

13. Following panel consensus, three candidates were recommended for appointment to the Committee by the panel. The Commissioner agreed with the recommendations and would like to progress the following **three candidates for appointment** to the Māori Plant Varieties Committee:
- Aroha Mead (four-year term)
  - Dale Stephens (two-year term)
  - Graeme Atkins (four-year term).
14. The candidates all have the necessary skills and expertise to make up a well-rounded committee to support protection of kaitiaki relationships with taonga species and mātauranga Māori within the plant variety rights system.
15. The Commissioner is proposing to vary the terms of appointment (as shown above) of the candidates to support the continuity of the Committee's knowledge and membership, i.e., the two-year term of Dale Stephens.
16. Te Puni Kōkiri supports the recommendations from the Commissioner to appoint all three candidates to the Māori Plant Varieties Committee. The Commissioner is seeking your endorsement of the proposed appointments by **8 November 2024**.

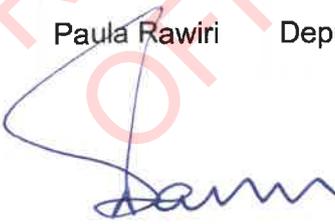
### **Next Steps**

17. A draft acknowledgement letter has been prepared for you to review, sign and date should you agree with the recommendations (refer to Attachment Two). A signed copy is due to the Māori Public Policy team by **6 November 2024**.
18. Once returned, a copy of the letter will be sent to the Commissioner. The Commissioner will then inform the successful candidates of their appointment to the Committee no later than **18 November 2024**.

### **Deputy Secretary / Acting Deputy Secretary Sign-Off**

This paper has been reviewed and approved by Deputy Secretary:

<b>Name</b>	<b>Position</b>	<b>Date</b>
Paula Rawiri	Deputy Secretary, Policy	22/10/2024

  
Dave Samuels

Te Tumu Whakarae mō Te Puni Kōkiri | Secretary for Māori Development

## HEI WHAKATAU | BRIEFING

### World Intellectual Property Organization Intergovernmental Committee: agreement on approach and simplified mandate

<b>Date:</b>	22 November 2024	<b>Priority</b>	High
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	71626

Action sought	Date action required by
<p>It is recommended that you:</p> <ol style="list-style-type: none"> <li>Forward this paper onto the Minister of Commerce and Consumer Affairs</li> <li>Agree to the approach and simplified mandate for the upcoming WIPO IGC sessions</li> </ol>	28 November 2024

Contact for telephone discussion (if required)				
Name	Position	Telephone	Mobile	1 <sup>st</sup> contact
Paula Rawiri	Deputy Secretary, Policy Puni		9(2)(a)	
Laine Fisher	Manager, Te Pae Tawhiti, Policy Puni			√
George Wardle (MBIE)	Acting Manager, Corporate Governance and Intellectual Property Policy	9(2)(a)		Minister Bayly

Other Agencies Consulted					
<input checked="" type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input type="checkbox"/> MHUD	<input type="checkbox"/> Other				

Attachments
1. Appendix one: New Zealand's current negotiating mandate [CAB-23-MIN-0213 refers]

Minister's office to complete:

Comments:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

22 November 2024

Te Minita Whanaketanga Māori  
The Minister of Commerce and Consumer Affairs

## **World Intellectual Property Organization Intergovernmental Committee: agreement on approach and simplified mandate**

### **Purpose**

1. This paper seeks joint Ministerial approval on the proposed approach and refreshed mandate to continue negotiating the development of an international legal instrument to protect Traditional Knowledge, Traditional Cultural Expressions<sup>1</sup> and Folklore at the upcoming World Intellectual Property Organization (WIPO) Intergovernmental Committee (IGC). The next WIPO IGC sessions are being held on the 29 November 2024 and 2 – 6 December 2024.
2. The work of the WIPO IGC is one of the key international forums to focus global efforts on establishing inclusive, balanced and effective intellectual property systems that enable the interests of member states, Indigenous Peoples and local communities, and other stakeholders. The development of this international legal instrument would result in the ability to prevent and minimise the misuse of indigenous knowledge in goods and services and would enable pathways to address fakes and forgeries as an example.

### **New Zealand leadership at WIPO**

3. As you know, New Zealand is one of 193 countries who are WIPO member states. New Zealand delegates have been actively involved in WIPO since 1984.<sup>2</sup> The IGC was established to enable member states to discuss and address key intellectual property issues that have arisen in relation to genetic resources, traditional knowledge, traditional cultural expressions and folklore. We have had a key role in the WIPO IGC since its inception in 2001 and have been participating in negotiations for over 15 years.
4. New Zealand is seen as a key leader and broker of solutions at the WIPO IGC. This was reiterated at the recent IGC Diplomatic Conference where the delegation received positive commendation from key countries from regions across the globe, as well as key Māori technicians/pūkenga, and the indigenous caucus.

### **Why WIPO IGC is an important mechanism for New Zealand**

5. The development of this international legal instrument would address existing limitations of conventional regulatory systems to enable the interests of Indigenous Peoples as traditional knowledge holders and enabling the economic benefits to arise of Indigenous Peoples intellectual property.

<sup>1</sup> In the context of New Zealand, traditional knowledge is comparable to mātauranga Māori, and traditional cultural expressions, which are akin to tangible or intangible expressions of mātauranga Māori, such as, haka, tā moko, or waiata. Mātauranga Māori is a taonga, and forms a central part of the identity of whānau, Hapū, Iwi and hapori Māori

<sup>2</sup> [www.wipo.int/directory/en/details.jsp?country\\_code=NZ](http://www.wipo.int/directory/en/details.jsp?country_code=NZ)

6. There are significant opportunities for New Zealand in relation to the effective use and protection of cultural intellectual property both here and abroad. International research suggests intangible assets including intellectual property account for almost 80 percent of business value.<sup>3</sup> Despite global economic fluctuations and crises, intangible asset levels have continued to grow at record rates and significantly contribute to local GDP growth.<sup>4</sup> The focus on a knowledge-based economy for New Zealand means that intellectual property needs to be managed well.
7. In New Zealand, the value of traditional knowledge and traditional cultural expressions is largely unrealised and untapped. The development of this international instrument is an opportunity to take steps to better recognise and protect cultural intellectual property, creating increased economic and social outcomes for Māori and all of New Zealand. This is particularly important in the Government's priority reform underway within the areas of biotechnology, science as well as the arts and culture strategy. The development of this legal instrument would also result in the ability to prevent and minimise the misuse of indigenous knowledge in goods and services which would enable better pathways to address fakes and forgeries for example.
8. Recent research commissioned by Te Puni Kokiri indicates effective protections of, and innovation with, mātauranga Māori and Māori cultural goods and services, could in future provide economic gains anywhere from \$34 million to \$340 million to the New Zealand economy each year.<sup>5</sup> Further research exploring consumer demand for Māori Brands suggests that 31 percent of consumers ranked culturally authentic products as one of the most important factors when deciding what to buy.<sup>6</sup> Similarly, Australia is also undertaking significant work to protect their cultural intellectual property. Recent modelling shows the benefit to cost ratio for a bespoke cultural intellectual property system would be at a minimum 2:1 and they could expect to gain total benefits of \$3.5 billion over 20 years.<sup>7</sup>

*Recent conclusion of an international instrument on Genetic Resources and associated Traditional Knowledge*

9. As you know, in May 2024, the IGC convened a Diplomatic Conference relating to the conclusion of the international treaty on a Disclosure of Origin requirement of Genetic Resources and associated Traditional Knowledge within patent applications (**GRATK Treaty**).
10. The GRATK Treaty sets an international standard for protecting intellectual property and genetic resources used in biotechnology in commercial settings and provides greater transparency across the system. It does not create any ownership rights for Indigenous Peoples and local communities. It seeks to acknowledge the source of the genetic resource and the associated traditional knowledge when used towards creating an invention, for which a patent has been applied for.

<sup>3</sup> Ogier, J (2016). *Intellectual property, finance and economic development*. [www.wipo.int/wipo\\_magazine/en/2016/01/article\\_0002.html](http://www.wipo.int/wipo_magazine/en/2016/01/article_0002.html).

<sup>4</sup> WIPO and Luiss Business School (2024). *World intangible investment highlights: better data for better policy*. [www.wipo.int/publications/en/details.jsp?id=4744](http://www.wipo.int/publications/en/details.jsp?id=4744)

<sup>5</sup> Roskrige et al., (2022). *Understanding the economic value of Māori Taonga: a scoping study*. [www.tpk.govt.nz/en/omatou-mohiotanga/maori-enterprise/te-au-rangahau-maori-business-research](http://www.tpk.govt.nz/en/omatou-mohiotanga/maori-enterprise/te-au-rangahau-maori-business-research)

<sup>6</sup> Ministry for Primary Industries (2024). *Māori brand origin stories*. <https://www.mpi.govt.nz/resources-and-forms/economic-intelligence/market-insights-for-the-primary-sector/#maori>

<sup>7</sup> Prepared for IP Australia. *Scoping study on standalone legislation to protect and commercialise Indigenous knowledge*. [www.ipaustralia.gov.au/tools-and-research/professional-resources/data-research-and-reports/publications-and-reports/-/-/media/Project/IPA/IPAustralia/PDF/Publications-and-reports/Scoping-study-on-standalone-IK-legislation-final.pdf](http://www.ipaustralia.gov.au/tools-and-research/professional-resources/data-research-and-reports/publications-and-reports/-/-/media/Project/IPA/IPAustralia/PDF/Publications-and-reports/Scoping-study-on-standalone-IK-legislation-final.pdf)

11. The GRATK Treaty is an important mechanism that could enhance New Zealand's current biotechnology settings by facilitating the negotiation of any access and benefit sharing arising from the use of genetic resources and/or mātauranga Māori in the development of commercial inventions. New Zealand is considering domestic ratification through the policy work Te Puni Kōkiri is leading within the broader biotechnology priority (BP 49383 refers) and will update you accordingly.

### **New Zealand's current WIPO IGC negotiating mandate**

12. The Government's negotiating mandate has been similar since 2010. New Zealand's current mandate for the WIPO IGC negotiations was agreed by Cabinet in June 2023 [CAB-23-MIN-0213] and is **attached in appendix one**. The current mandate was established due to progress in domestic policy and international negotiations.
13. Prior to the existing mandate, Officials used an 'interim' negotiating position from 2010-2023, which was agreed by responsible Ministers. The decision to extend and retain an interim mandate, at that time, reflected the slow progression of issues internationally and domestically, including in responding to the Waitangi Tribunal's report *Ko Aotearoa Tēnei*.

### **We seek your decision on how New Zealand manages the approach to WIPO IGC negotiations**

14. The current mandate remains in place and can be used for negotiations. However, we seek your direction on how to approach the negotiations given their link to ongoing domestic policy development.

15. 9(2)(j)



16. The simplified approach recognises the Government's work on treaty settlements and unlocking regulatory barriers to economic growth for Māori, while recognising the trade opportunities through harmonisation of policies internationally.

17. 9(2)(j)



9(2)(j)



18. The last time member states met at the WIPO IGC 47<sup>th</sup> session, the New Zealand delegation indicated there were still divergent views on core issues that will require time for member states to work through. We expect the upcoming IGC sessions to be focussed on continuing to work through these divergent views and move towards a text that might be considered for finalisation in the next two years.
19. Because we plan to attend most of the upcoming sessions online only, we are unlikely to be able to take a lead role in facilitating progress between member states with divergent views, as we did in May 2024. We consider because of New Zealand's less significant role at the upcoming sessions, the approach to the mandate will be sufficient.

*Alternative option of seeking Cabinet agreement to negotiating mandate*

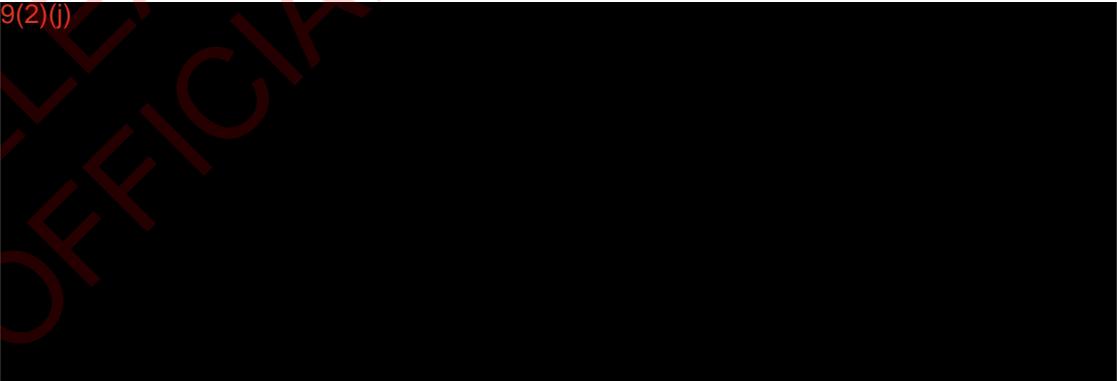
20. It is routine to continue mandates across changes in government priorities (as has been the case at WIPO). Nonetheless, you could seek Cabinet agreement to an updated negotiating mandate. This would provide some small benefit to officials with a more detailed mandate with Cabinet support. However, given the time and resource required to progress a Cabinet paper at a time when Cabinet Committees are at capacity, we consider the costs outweigh the benefits.

**Consultation**

21. Due to the intersectionality of this work, this paper has been developed by Te Puni Kōkiri and the Ministry of Business, Innovation and Employment (**MBIE**).
22. The Minister for Māori Development alongside the Minister of Commerce and Consumer Affairs are the lead Ministers for the WIPO IGC work. As the Minister for Māori Development, your lead role is due to the instrument covering the use, protection and provenance of mātauranga Māori within the intellectual property system. The Minister of Commerce and Consumer Affairs portfolio is responsible for New Zealand's intellectual property system.
23. The Ministry of Foreign Affairs & Trade has been consulted on this paper and the proposed approach.

**Recommended Action**

24. It is recommended that you:

1. Forward this paper onto the Minister of Commerce and Consumer Affairs
2. <sup>9(2)(j)</sup> 

<sup>9</sup> Including by the use of third parties. For example, international non-Māori businesses who use Māori designs, images or te reo Māori for commercial gain without understanding or acknowledging the significance to Iwi and Hapū.

c. 9(2)(j)



- 3. Minister for Māori Development, **agree** to the above approach of a simplified negotiating mandate **Yes / No**
- 4. Minister of Commerce and Consumer Affairs, **agree** to the above approach of a simplified negotiating mandate **Yes / No**



George Wardle  
 Acting Manager, Corporate Governance and Intellectual Property Policy | Ministry of Business  
 Innovation & Employment

Paula Rawiri  
 Hautū, Te Puni Kaupapa | Deputy Secretary, Policy

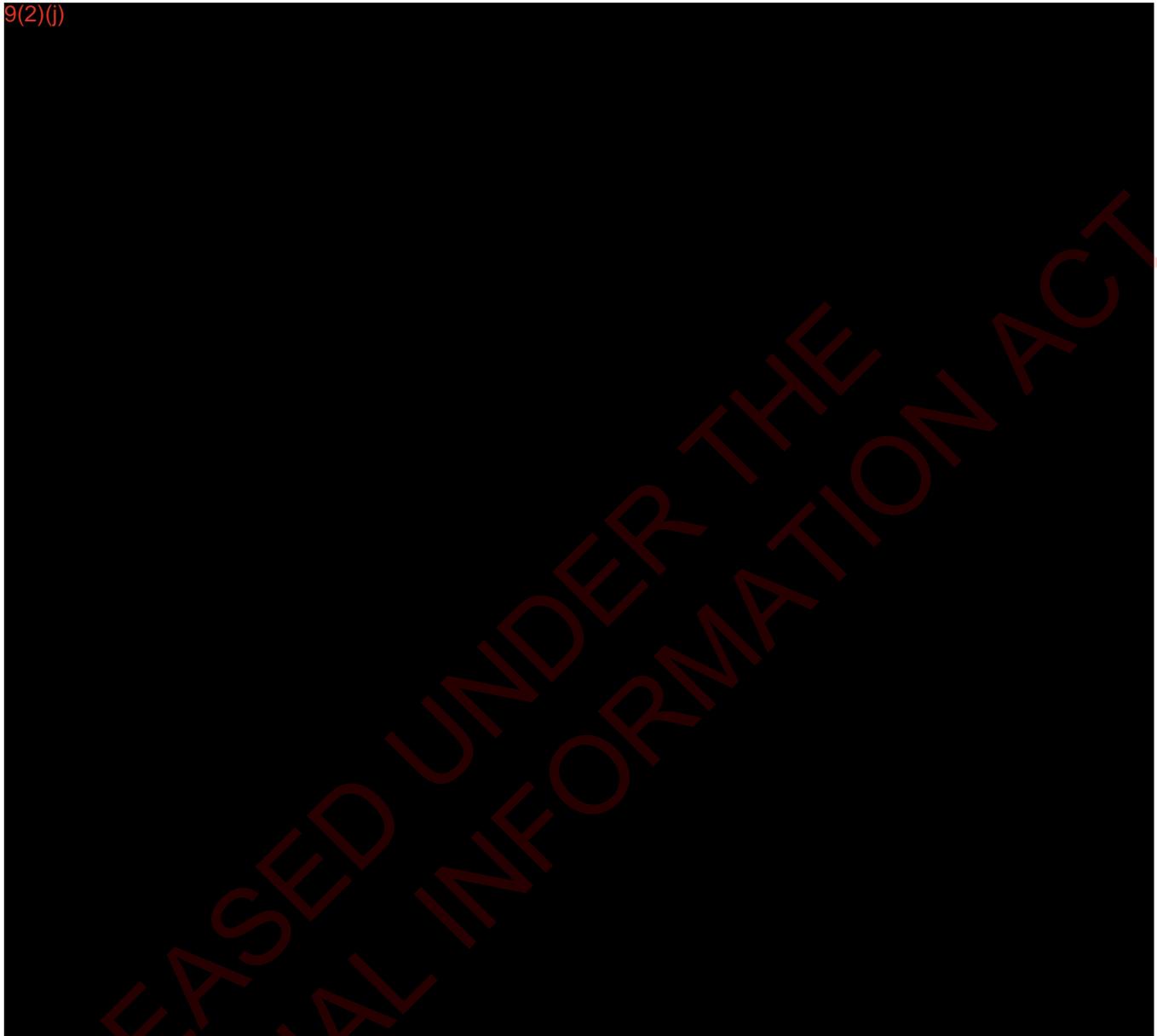
<p>Hon Tama Potaka          Te Minita Whanaketanga Māori</p>
<p>Date: ____ / ____ / 2024</p>

<p>Hon Andrew Bayly          The Minister of Commerce and Consumer Affairs</p>
<p>Date: ____ / ____ / 2024</p>

RELEASED UNDER THE OFFICIAL INFORMATION ACT

**Appendix one: New Zealand's current negotiating mandate [CAB-23-MIN-0213 refers]**

9(2)(i)



RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

# HEI WHAKATAU | BRIEFING

## Biodiscovery Framework – Engagement Report Back and Next Steps

<b>Date:</b>	16 December 2024	<b>Priority</b>	Medium
<b>Classification</b>	In Confidence	<b>Tracking Number</b>	71696

Action sought	Date action required by
<p>It is recommended that you:</p> <ol style="list-style-type: none"> <li><b>Agree</b> to forward this briefing to the Minister for Science, Innovation and Technology for her consideration alongside the Gene Technology and Science, Innovation and Technology workstreams that are underway.</li> <li><b>Provide your views</b> on the proposed vision, principles, outcomes and core mechanisms to guide our further engagement and development of policy options for a biodiscovery framework.</li> </ol>	24 January 2025

Contact for telephone discussion (if required)				
Name	Position	Telephone	Mobile	1 <sup>st</sup> contact
Paula Rawiri	Hautū, Te Puni Kaupapa		9(2)(a)	
Laine Fisher	Kaiārahi Kaupapa Here			√

Other Agencies Consulted					
<input checked="" type="checkbox"/> MBIE	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input checked="" type="checkbox"/> MPI	<input checked="" type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> Treasury	<input type="checkbox"/> MoH
<input checked="" type="checkbox"/> Other (EPA)	<input checked="" type="checkbox"/> Department of Conservation				

Attachments
Attachment 1 - Proposed future state for biodiscovery in Aotearoa New Zealand

Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments:

16 December 2024

Te Minita Whanaketanga Māori

## Biodiscovery Framework – Engagement Report Back and Next Steps

### Purpose

1. This briefing updates you on progress Te Puni Kōkiri is making towards developing policy options for a biodiscovery framework in Aotearoa New Zealand to support a fast-growing and adapting bioeconomy.
2. It seeks your views on next steps for this policy work, including some key aspects we will be investigating further in early 2025.

### Background

3. In September 2024, we provided an outline on how the biodiscovery policy work Te Puni Kōkiri is leading fits within the wider domestic and international biotechnology landscape and the opportunities this policy work presents for Hapū, Iwi, Māori and Aotearoa New Zealand (BP 49383 refers).
4. You agreed to the next steps and timeframes for this policy work, including to receive a briefing in late 2024 which reports on insights from our engagement in September – November 2024 and seeks your decisions on next steps for this work.
5. This policy work connects with the Government's priorities for the Aotearoa New Zealand economy, Biotechnology, and the Science, Innovation and Technology (SI&T) system. It is one of the actions within your draft Māori Economic Development Action Plan.
6. We will ensure this work maintains alignment with the broader work on Gene Technology, the SI&T system, trade, and overseas investment. This includes considering how this work contributes to supporting the intended outcomes of the broader work, for example by:
  - a. creating pathways to better link Gene Technology and gene editing processes with native species or non-indigenous species of significance (**taonga species** or **species of significance**)<sup>1</sup> and associated mātauranga Māori to other key steps in the biotechnology value chain, in particular ensuring appropriate access to these species;
  - b. creating pathways for international investment and collaboration in indigenous biotechnology; and
  - c. addressing regulatory barriers to appropriate commercialisation of biotechnology products derived from taonga species or species of significance and associated mātauranga Māori.

<sup>1</sup> This framing of genetic and biological resources in “native species and non-indigenous species of significance”, which we then refer to as “**taonga species**” in this briefing, is based on the scope and framing of section 56 of the Plant Variety Rights Act 2022. In this sense, it is intended to capture genetic and biological resources in both indigenous and non-indigenous flora and fauna species of significance which Hapū, Iwi and Māori consider taonga and have kaitiaki relationships with. We intend to test this scope and terminology through further engagement.

## Biodiscovery with taonga species is well underway in New Zealand

7. Our early engagement and research show a range of ways Hapū, Iwi, Māori, research institutes and science organisations are pursuing biodiscovery research and development activities with genetic and biological resources in taonga species and associated mātauranga Māori.
8. Without a biodiscovery framework in place, Aotearoa New Zealand is missing out on opportunities to attract investment in research and innovations that may be commercially viable. It also inhibits the ability to collaborate with, and benefit from the expertise of, overseas researchers.
9. For example, we are hearing Aotearoa New Zealand is out of step with countries that have already ratified the Nagoya Protocol which is the international standard for how to facilitate cross-border biodiscovery. Those countries can work together and collaborate more freely within the shared framework the Nagoya Protocol provides. Furthermore, there are few restrictions to prevent overseas interests from commercialising our unique genetic and biological resources without benefits accruing to Hapū, Iwi, Māori and Aotearoa New Zealand.
10. We are hearing the biggest challenge for people undertaking biodiscovery activities in Aotearoa New Zealand is identifying a pathway to commercialisation which appropriately recognises kaitiaki relationships. This is mostly due to:
  - a. the current system limiting investment in biodiscovery research, particularly due to insufficient protection and certainty within Aotearoa New Zealand's current research and patent settings;
  - b. no cohesive mechanisms to engage with kaitiaki and appropriately realise and share benefits; and
  - c. limited capacity, funding and capability for Hapū, Iwi or Māori organisations, whereas for Crown Research Institutions (CRIs) or organisations who want to do the right thing it is resource intensive because of the lack of guidance or framework.
11. These findings confirm a biodiscovery framework could create pathways that stimulate more investment into biodiscovery and commercialisation activity, systematise ethical and reputable practice, and appropriately realise the benefits of biodiscovery for Hapū, Iwi, Māori and Aotearoa New Zealand while protecting our unique biodiversity.

### *Who we have engaged with*

12. Over the past few months, we have met with a range of Hapū, Iwi, Māori, Crown agencies, research institutes, independent science entities, biotech industry representatives and overseas Government officials to gather anecdotal evidence and insights into current domestic settings and what is happening overseas.<sup>2</sup>

### *What we have heard so far*

<sup>2</sup> During September – November 2024, we met with Te Kotahi Research Institute, Matawai Bio, Kahu Aronui (the expert technical advisory group to Wai 262 Te Taumata Whakapūmau), Cawthron Institute, Plant & Food, and had initial discussions with South Africa High Commission and a representative of Biotech New Zealand.

13. Our early engagement has started to paint a picture of where the biggest challenges and opportunities are for Hapū, Iwi and Māori within current biodiscovery settings.

**Collection of genetic and biological resources for biodiscovery is happening within New Zealand's terrestrial, freshwater and marine environments<sup>3</sup>**

14. We are seeing a focus on opportunities to develop pharmaceuticals, natural ingredients for functional foods and cosmetics. For example, Matawai Bio has recently begun harvesting native berries with involvement of Hapū and Iwi and is connecting with a New Zealand company to determine a product development pathway.<sup>4</sup> However, we are hearing not all of Aotearoa New Zealand's access settings are fit for purpose. For example, conservation legislation provides key biodiversity protections around access but was not designed with biodiscovery in mind.

**We are seeing a lot of biodiscovery research and development happening with flora**

15. For example, a Tairāwhiti Hapū is leading a study rooted in te ao Māori to explore using the indigenous *Psilocybe weraroa* fungus as a potential treatment for those dealing with methamphetamine addiction.<sup>5</sup> Furthermore, preliminary patent research shows an increase of 8-10 times the number of annual patent applications over the last 15 years that use native flora, including Mānuka, Harakeke, Kōkihi, Kānuka, Totara, Kawakawa, Horopito and Mamaku. Nearly all of these patents are issued in the United States of America to businesses based in Asia, Europe and North America.<sup>6</sup>

**The biggest challenge is progressing from research and development into commercialisation without sufficient investment and mechanisms to protect intellectual property, realise and share benefits**

16. We know anecdotally that CRIs have been approached by overseas research organisations, such as Chile, to utilise data they have developed from biodiscovery research to pursue commercialisation opportunities. Without sufficient intellectual property and benefit sharing arrangements in place, CRIs have not yet been able to progress these collaborations.

**Despite this, we are seeing many examples of initiatives demonstrating 'good practice'**

17. For example, Hikurangi Bioactives Limited Partnership (**HBLP**) is a project on Kānuka species situated on Māori land in the Waiapu Valley. Māori landowners are guaranteed to receive royalties and benefits that HBLP generates during the production of Kānuka oil.<sup>7</sup>
18. Plant & Food Research are partnering with various Hapū, Iwi and other rōpū Māori under their Tono strategy to pursue biodiscovery research and commercial opportunities with native flora. These partnerships are underpinned by the Mātauranga and Taonga Principles they have developed to recognise their role and responsibilities under Te Tiriti o Waitangi/the Treaty of Waitangi and mechanisms under the Nagoya Protocol including free, prior and informed consent and fair and equitable benefit sharing.<sup>8</sup>

<sup>3</sup> From both 'in-situ' (natural environments) and 'ex-situ' (private and public collections).

<sup>4</sup> [Matawai Bio](#) – A pakihi Māori developing extraction processes with native berries to make natural ingredients for functional foods, pharmaceuticals and cosmetics.

<sup>5</sup> [NZ Drug Foundation](#) - The Tairāwhiti hapū exploring indigenous psilocybin to treat methamphetamine addiction.

<sup>6</sup> Ministry of Business, Innovation and Employment 2023, *Creating Beauty from New Zealand: Supporting Investment in the Emerging Natural or Bio-based Cosmetics Platform*, pg. 6.

<sup>7</sup> [Hikurangi Bioactives](#).

<sup>8</sup> [www.plantandfood.com/en-nz/principles-for-working-with-taonga-and-matauranga-maori](http://www.plantandfood.com/en-nz/principles-for-working-with-taonga-and-matauranga-maori).

**New Zealand’s biodiscovery practices should learn from overseas experiences, be aligned with international best practice and be consistent with international obligations**

19. For example, the biodiscovery economy of South Africa is a significant economic contributor. For illustrative purposes, in 2012 South Africa’s modelling suggested that the size of their bioprospecting industry was approximately \$208 million NZD and is projected to grow between \$58 and \$77 million NZD over five years.<sup>9</sup> South Africa has many mechanisms we can learn from and implement in a domestic context. This includes seven bespoke management plans for their key native flora species. The aim of these management plans is to ‘ensure the long-term survival of the species in habitat, whilst ensuring that the livelihoods of the stakeholders are respected’.<sup>10</sup>
20. Additionally, we are aware of many WIPO member states taking domestic steps to ratify the international Treaty on Disclosure of Origin of Genetic Resources and Associated Traditional Knowledge in patent applications (**GRATK Treaty**). To date, 38 member states have signed the GRATK Treaty, including South Africa.<sup>11</sup>

**We need to carefully consider how a biodiscovery framework can balance use and protection elements**

21. We are hearing a spectrum of views from Hapū, Iwi and Māori we have met with so far on the role of a biodiscovery framework. These range from creating more opportunities for kaitiaki to use and develop taonga species through biodiscovery and commercial processes, to creating mechanisms which better protect those taonga and the relationships kaitiaki have with them. We also need to consider how these views relate to existing legislative frameworks that provide protections for some taonga species.

**We are starting to lay the foundations for further engagement and policy development**

22. Appendix One proposes a working draft of the potential vision, principles, outcomes and core mechanisms for a biodiscovery framework. We have developed these using findings from our early engagement and research.<sup>12</sup> We intend to draw on these concepts as the foundations for our ongoing policy development and will continue to test and refine them through engagement with Hapū, Iwi, Māori and other stakeholders. <sup>9(2)(f)(iv)</sup>

<sup>9</sup> [Bioprospecting Economy | Department of Environmental Affairs](#). We will continue working with the South Africa High Commission in 2025 to gather updated statistics.

<sup>10</sup> [Bioprospecting | Biodiversity Sector Investment Portal](#). See also, Department of Forest, Fisheries and the Environment, *Biodiversity Management Plan for Aloe Ferox and Honey Bush Species*. National Environmental Management: d Biodiversity Act 2004.

<sup>11</sup> On 29 November 2024, Te Puni Kōkiri attended WIPO IGC 48 (BP 71626 refers). The purpose of this hui was to stocktake progress made on implementing the GRATK Treaty post the Diplomatic Conference in May 2024. Many member states took the floor to further encourage others in the forum to ratify and implement this Treaty domestically as it better connects patent systems internationally.

<sup>12</sup> Waitangi Tribunal’s 2011 *Ko Aotearoa Tēnei* report; governmental reports on Biotechnology and Bioprospecting (e.g. Ministry of Economic Development and the Ministry of Research, Science and Technology); international provisions (e.g. CBD’s Bonn Guidelines and Nagoya Protocol); Māori-led organisations and research institutes (e.g. Te Kotahi Research Institute and Wai 262 Taumata Whakapūmau).

23. Our work to date highlights that there is a case for a new regulatory framework for all genetic and biological resources in Aotearoa New Zealand to ensure coherency in approaches. However, given the complexities and existing policies relating to human and fauna genetic/biological material, our working assumption is that biodiscovery of flora should be the priority for Te Puni Kōkiri. This phased approach allows the policy work to build and grow over time, enabling us to remain focused on where the biggest benefits are for Hapū, Iwi and Māori in biodiscovery, balanced with the need for foundational policies that are durable. We will further test this through engagement in early 2025.
24. We also note that, for Māori economic development, the priority should be on biodiscovery and commercial processes relating to taonga species that are flora and associated mātauranga Māori. We are seeing many examples of ‘good practice’ research and development already happening in collaboration with kaitiaki that a framework could uplift. We are also seeing a growth in patent activity with these species, primarily overseas, that does not yet appropriately take account of kaitiaki relationships. We will continue to test our thinking on this starting scope through engagement in early 2025.
25. The policy options we develop for your consideration in June 2025 will seek to align to:
- a. **The Government’s priority on biotechnology.** This includes considering how a biodiscovery framework may complement the Gene Technology Bill and mitigate some of the notable issues regarding kaitiaki relationships through regulatory recognition of these relationships to taonga species;
  - b. **The Government’s Economic Growth Agenda.** As this is an action within your Māori Economic Development Action plan, we will maintain alignment with the broader work on Gene Technology, the SI&T system, trade, and overseas investment;
  - c. **Current legislative settings** that control the taking and use of some taonga species.<sup>13</sup> We understand that the Department of Conservation (**DOC**) is currently reviewing the Wildlife Act 1953, which provides an opportunity to consider implications for a potential biodiscovery framework; and
  - d. Aotearoa New Zealand’s existing **international obligations** and related international agreements as potential standards to consider.<sup>14</sup>
26. We are mindful this work must not affect the ability of Hapū, Iwi and Māori to protect and utilise taonga species, or their knowledge of these species, for other purposes. For example, for conservation purposes or having access to rongoā rākau.

<sup>13</sup>Conservation legislation protects many species and places, which is a key enabler for biodiscovery. However, this legislation was not designed with biodiscovery in mind, which involves taking and using parts of taonga species. For example, the Conservation Act 1987 protects plants and animals on public conservation land, the Marine Mammals Protection Act 1978 protects all marine mammals, and the Wildlife Act 1953 protects all terrestrial indigenous vertebrate animals and some invertebrate and marine fish species wherever they are found.

<sup>14</sup> Existing international obligations include the Convention on Biological Diversity, the World Trade Organisation Trade-related Aspects of Intellectual Property Rights Agreement, International Convention for the Protection of New Varieties of Plants, the Agreement on Marine Biodiversity of Areas Beyond National Jurisdiction, and the Cartagena Protocol. Related international agreements under consideration include the Nagoya Protocol and the WIPO GRATK Treaty.

### **We need to continue engagement to progress this policy work**

27. Our engagement so far has given us a deeper understanding of how a biodiscovery framework could enhance Aotearoa New Zealand's current access and research and development settings. Now we need to further investigate how and where a biodiscovery framework could unlock commercialisation opportunities.
28. We are planning more engagements in early 2025 with Hapū, Iwi, Māori, biotechnology industry groups and universities who are involved or interested in pursuing commercialisation opportunities. This will help us to start stress testing our initial policy thinking and get a better sense for how a biodiscovery framework should, as a starting point, interact with commercial processes resulting from biodiscovery with taonga species that are flora and associated mātauranga Māori.<sup>15</sup>
29. We are also looking to procure an independent report outlining the opportunity and data around how taonga species/species of significance alongside Māori culture/identity are a core part of the successful Aotearoa New Zealand bioeconomy.

### **Te Tautuhi-ō-Rongo considerations**

30. This policy work is located within the kawatanga axis of Te Tautuhi-ō-Rongo framework and requires us to consider how the Crown can enable Hapū, Iwi and Māori, within Tapatoru – Taura Here, to exercise rangatiratanga and tiakitanga in respect of their taonga through effective kawatanga.
31. This includes exploring options for regulatory recognition of kaitiaki relationships that Hapū, Iwi and Māori have with taonga species and associated mātauranga Māori through a biodiscovery framework for all genetic and biological resources in New Zealand.
32. As part of Taumarumarū – Quality Participation and recognising the dual identity of Māori within Tapatoru – Dual Identity, we are prioritising our engagement with Hapū, Iwi and Māori engaged in biodiscovery to ensure our work is centred on maximising outcomes for Hapū, Iwi and Māori within a framework for Aotearoa New Zealand. We are planning ways we can continue to broaden our engagement with Hapū and Iwi beyond those represented by Kahu Aronui and Te Taumata Whakapūmau in early 2025, to ensure we can build those broader perspectives into our policy work as it progresses.
33. Recognising the complexity of issues outlined in the *Ko Aotearoa Tēnei* report,<sup>16</sup> we continue to address the tenets of the report through this policy work and other Te Pae Tawhiti workstreams related to the protection and appropriate use of mātauranga Māori.

<sup>15</sup> We plan to do this with the support of Te Puni Kōkiri regional tari, Kahu Aronui, Te Taumata Whakapūmau through their connections to Pou Tahu National Iwi Chair's Forum, Biotech New Zealand, The University of Auckland and Victoria University of Wellington.

<sup>16</sup> Waitangi Tribunal. *Ko Aotearoa Tēnei*: a report into claims concerning New Zealand law and policy affecting Māori culture and identity. [Internet]. Wellington, N.Z.: Legislation Direct; 2011. Report No.: WAI 262 Volume 2. Available from: [forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_68356606/KoAotearoaTeneiTT2Vol2W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68356606/KoAotearoaTeneiTT2Vol2W.pdf).

## Next steps

34. We propose the following next steps:

	Take	Āhea
1	<b>Continued engagement</b> with Te Taumata Whakapūmau, other Hapū, Iwi, Māori, biotech industry groups and universities pursuing commercialisation opportunities with taonga species and associated mātauranga Māori.	January – April 2025
2	<b>Further cross-agency consultation</b> , to ensure alignment with Government priority workstreams.	Ongoing
3	9(2)(f)(iv)	

## Consultation

35. The feedback we received during agency consultation from the Ministry of Business, Innovation and Employment (**MBIE**), DOC and the Ministry of Foreign Affairs and Trade (**MFAT**) was broadly supportive, with some specific points we have woven into this briefing:

- a. MBIE – alignment of this work with the Government’s priority on boosting the economy through stimulating increased investment into biodiscovery and enabling benefits to be realised and shared. We continue to work closely with MBIE to align this policy work with the Gene Technology and SI&T workstreams they are leading;
- b. DOC – highlight biodiversity underpins biodiscovery. DOC will consider implications for biodiscovery as part of their current review of the Wildlife Act 1953 and the review of the Trade in Endangered Species Act planned for 2025; and
- c. MFAT – provided further context on Aotearoa New Zealand’s international obligations as they relate to biodiscovery.

**Recommended Action**

36. It is recommended that you:

a. **Agree** to forward this briefing to the Minister for Science, Innovation and Technology for her consideration alongside the Gene Technology and SI&T workstreams that are underway; and **Yes/No**

b. 9(2)(f)(iv) [Redacted] **Yes/No**



Paula Rawiri  
Hautū, Te Puni Kaupapa | Deputy Secretary, Policy

Hon Tama Potaka Te Minita Whanaketanga Māori
Date: ____ / ____ / 2024

RELEASED UNDER THE OFFICIAL INFORMATION ACT

VISION

9(2)(g)(i)



Core mechanisms across the value chain

We are hearing there needs to be a **clear pathway** for biodiscovery through the value chain for the use of genetic and biological resources derived from native species and non-indigenous species of significance (**taonga species**) to create biotechnology products.

The role of Government is to build and strengthen system approaches and tools to ensure appropriate use and ongoing development of taonga species and mātauranga Māori. To achieve the biggest impact in the domestic biotechnology system, **TPK can lead policy changes** in the following value chain steps: **Research & Innovation, Connection & Recognition, and Active Protection & Appropriate Use.**

Hapū, Iwi and Māori involvement in biodiscovery

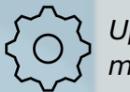
A framework will need to:

- **enable Hapū, Iwi and Māori** to innovate and progress biodiscovery opportunities through the value chain,
- **recognise a spectrum of Hapū, Iwi and Māori involvement**, from recognition of kaitiaki relationships within core mechanisms to Māori-led implementation of them.

Concept & understanding

**Building capacity to appropriately access resources from natural environments and collections.**

- Building **awareness** of taonga species and associated mātauranga Māori, the kaitiaki relationships Hapū, Iwi and Māori have with these taonga and their potential for biodiscovery. This includes how to appropriately access resources (e.g. on Māori land) for commercial purposes. E.g. existing **guidelines** on how to identify kaitiaki and appropriately collect and use genetic and biological resources derived from taonga species for biodiscovery.



*Uplift existing mechanisms*

Research & innovation

**Resources are examined for potential development of biotechnology products to enable innovation.**

- Providing a **clear pathway** to enable companies and research organisations to collaborate with Hapū, Iwi and Māori in innovation, including providing access to scientific infrastructure and capability internationally. This includes how to realise broad benefits from research (such as regional capability and capacity can be strengthened). E.g. streamlined pathways for commercially viable and/or high impact research to: **government funding levers, foreign investment opportunities** (US Bio, AusBiotech, China Bio, Bio Japan, Bio Europe), use of international standards with **ABS arrangements** based on Mutually Agreeable Terms and **free, prior and informed consent**.

Developing & producing

**Production of biotechnology products is scaled up for commercialisation.**

- Processes to access resources and manufacture products meet domestic and international standards while maintaining their provenance and point of difference. This includes supporting regional development through simplified processes to encourage these processes to occur close to the resource. E.g. standards and mechanisms in key sectors such as food/beverage & cosmetic products.



*Uplift existing mechanisms*

Connection & recognition

**Biotechnology products are marketed locally and globally.**

- Consumers, including 'cultural consumers', can have confidence about the provenance of products and how to use them appropriately. The regulatory tools provide the ability to differentiate indigenous/premium authentic products from basic products. E.g. ability to recognise a wider range of **intellectual property** in the patent and trademark systems.

Active protection & appropriate use

**How biotechnology products are used appropriately and benefits are distributed.**

- Regulatory tools simplify and systematise ways for companies selling biotechnology products to work with Hapū, Iwi and Māori. This includes internationally recognised tools such as access and benefit sharing mechanisms (**ABS**) and patent transparency provisions. E.g. standardising what is disclosed (**WIPO GRATK Treaty**) and streamlined agreements (**ABS arrangements**).

Intersections with other govt-led mahi

- Gene technology, SI&T reforms and AI (MBIE)
- WIPO GRATK Treaty (TPK)
- Global Biodiversity Framework targets (DOC)
- Te Mana o Te Taiao (DOC)
- BBNJ Treaty ratification and FTAs (MFAT)

9(2)(f)(iv)