

In Confidence

Office of Te Minita Whanaketanga Māori

Chair  
Cabinet Māori Crown Relations: Te Arawhiti Committee

**DEVELOPING A WHOLE-OF-GOVERNMENT STRATEGY FOR WAI 262**

**Proposal**

1. I propose that we develop a whole-of-government strategy to address the issues raised in the Wai 262 claim.

**Executive Summary**

2. The Wai 262 claim was filed in the Waitangi Tribunal in 1991. The claimants sought to establish who, if anyone, owns or controls mātauranga Māori (Māori traditional knowledge), traditional artistic and cultural expressions, the unique characteristics of indigenous flora and fauna, and New Zealand's natural environment more generally.
3. In 2011, the Waitangi Tribunal released its report (the **Wai 262 report**), which recommended changes to the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international treaties and other instruments.
4. The Crown has not made any formal response to the Wai 262 report.
5. A number of existing or upcoming work streams will require the Government to take a position on key Wai 262 issues in the near future. These include the Copyright Act review, the Haka Ka Mate Attribution Act review, the comprehensive review of the resource management system, the government's response to the Supreme Court decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* regarding the strength of section 4 of the Conservation Act, the Plant Variety Rights Act review, the National Policy Statement on Indigenous Biodiversity, the Biodiversity Strategy, free trade agreements and the wider Trade for All agenda.
6. I propose that the Government takes a proactive approach to determining an agenda to progress matters relating to Wai 262 and mātauranga Māori. Given the time that has passed since the report was released, I do

not recommend that the Government formally respond to each of the Waitangi Tribunal recommendations. However, I do consider that there is an advantage in setting out a Government programme of action to address Wai 262 and mātauranga Māori issues against the backdrop of current policy settings such as the progressive trade agenda, accelerating Māori development and implementing the Living Standards framework.

7. This paper:

- details the Crown's current approach to Wai 262 and the problems this has resulted in;
- proposes that I lead the development of a whole-of-government strategy to address the issues raised in the Wai 262 claim, and that I report back to Cabinet in November 2019 with a proposed strategy for consideration and approval;
- seeks in-principle decisions to establish groups of Wai 262 portfolio Ministers on the basis of the following focus areas:
  - i. **Focus Area 1: Taonga works and mātauranga Māori** – Portfolios with strong links to taonga works, te reo Māori or mātauranga Māori;
  - ii. **Focus Area 2: Taonga species and mātauranga Māori** – Portfolios with strong links to taonga species, the environment and mātauranga Māori;
  - iii. **Focus Area 3: International indigenous matters** – Portfolios with strong links to international indigenous matters;
- seeks an in-principle decision to establish a Ministerial oversight group to oversee the work, address key issues and manage high-level Māori-Crown relationships; and
- seeks authority to undertake targeted engagement with key Māori groups and individuals with interests in Wai 262.

### Background

8. Wai 262 was the Waitangi Tribunal's first 'whole-of-government' inquiry. The claim was lodged in 1991 by six claimants on behalf of themselves and their iwi: Ngāti Wai, Ngāti Kuri, Te Rarawa, Ngāti Porou, Ngāti Kahungunu and Ngāti Koata.
9. The claimants sought to establish who, if anyone, owns or controls mātauranga Māori (Māori traditional knowledge), traditional artistic and cultural expressions,<sup>1</sup> the unique characteristics of indigenous flora and

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<sup>1</sup> The Waitangi Tribunal called these "taonga works", which it defined as tangible and intangible expressions of mātauranga Māori that relate to or invoke ancestral connections, contain or

fauna,<sup>2</sup> and New Zealand's natural environment more generally. Although the claim was lodged by specific claimants, it has come to represent the aspirations of 'iwi katoa' to manage and control their mātauranga and taonga. Similar issues have also been raised over the years by Māori in other forums.<sup>3</sup>

10. In 2011 – 20 years after the original claim was filed – the Waitangi Tribunal released its report entitled '*Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*' (the **Wai 262 report**). The Wai 262 report recommended changes to the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international instruments. The Waitangi Tribunal has said that the objective of many of the proposed reforms was to establish genuine partnerships – including through the creation of new partnership bodies – in which the interests of Māori and other New Zealanders are fairly and transparently balanced.
11. **Appendix 1** is a summary of the key findings of the Wai 262 report. **Appendix 2** is a summary of the Crown's progress in implementing the Wai 262 recommendations, as included in my 2017/18 report under section 8I of the Treaty of Waitangi Act 1975.<sup>4</sup>
12. The Crown has not made any formal response to the Wai 262 report. Nor has it discussed with the claimants, or iwi/hapū more generally, what steps the Crown should take in response to it as a whole.
13. Waitangi Tribunal recommendations are not legally binding. However, the Crown does have a positive duty to act in good faith, fairly, reasonably and honourably towards its Treaty partner (the partnership principle). The partnership principle requires the Crown to have regard to any relevant Waitangi Tribunal recommendations when making decisions relevant to those recommendations.
14. The Wai 262 report is directly relevant to key Government priorities like building a closer partnership with Māori and improving how the public sector responds to Māori issues. The Waitangi Tribunal provides extensive

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reflect traditional narratives or stories, possess mauri and have living kaitiaki in accordance with tikanga Māori.

<sup>2</sup> The Waitangi Tribunal called "taonga species", which it defined as the species over which whānau, hapū or iwi claim kaitiakitanga (guardianship) obligations, and whose basis, history and content are set out in mātauranga Māori.

<sup>3</sup> These include the Convention on Biological Diversity, the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, the United Nations Declaration on the Rights of Indigenous Peoples, the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and the United Nations Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples.

<sup>4</sup> Section 8I of the Treaty of Waitangi Act 1975 requires me to report to the House each year on the progress that the Crown is making in the implementation of Waitangi Tribunal recommendations.

guidance in the report on how the Crown could take a Treaty-based approach to establishing partnership mechanisms that enable appropriate levels of shared decision-making on important issues.

15. In the chapter on te reo Māori, for example, the Waitangi Tribunal found that te reo Māori is a taonga, the survival of te reo Māori is of paramount importance, and this means that the Crown has a significant obligation as a Treaty partner to protect te reo Māori. Te Ture mō Te Reo Māori Act 2016 and the establishment of Te Whare o te Reo Mauriora reflects the intent of a partnership approach to reo revitalisation.
16. Addressing issues raised in Wai 262 would also contribute to wider Government priorities, such as: building a productive, sustainable and inclusive economy; open, transformative and compassionate government; valuing who we are as a country; and creating an international reputation we can be proud of. Progressing these issues will help us meet our pledge to be accountable as the Government to Māori and all New Zealanders more broadly.

### **The Crown's current approach to Wai 262**

17. Although the Crown has made some progress on issues related to Wai 262 (often through the Treaty settlement process), it has not sought to directly address the key issues underlying the Wai 262 claim in the 27 years since it was made. These include questions about who has the right to make decisions, or participate in decisions, that affect mātauranga Māori, taonga works, taonga species and New Zealand's natural environment.
18. The Crown does not have an express strategy for approaching the issues raised in the Wai 262 report or coordinating work streams related to it. There is therefore significant variance between the way agencies and portfolio Ministers are approaching Wai 262 issues. Greater co-ordination and coherence would support the Crown in having a consistent approach and meeting its obligations.
19. **Appendix 3** sets out the governance arrangements established by the previous Government in 2010 for responding to the Wai 262 report [DOM Min (10) 10/2; Cab Min (10) 24/5 refers]. These governance arrangements fell into abeyance some years ago. Coordinated government action in response to Wai 262 is unlikely to occur unless some sort of governance structure is re-established.
20. In my view, the current approach is not delivering satisfactory outcomes for Māori or the Crown. Agencies are managing the Crown's response to the Wai 262 report largely in the absence of clear and coordinated direction from Ministers. Among other things, the current approach has resulted in:
  - uncertainty about whether agencies have authority to develop policy in Wai 262 policy areas;



- agencies not responding to the Wai 262 report at all, or responding in an uncoordinated, ad hoc manner rather than strategically and on the basis of high-level partnership principles;
- difficulty in seeking protections for mātauranga Māori and taonga works internationally, in the absence of a domestic regime;
- kaitiaki Māori who have kaitiaki obligations in respect of their taonga but face significant legal, social and practical limitations on their ability to discharge those obligations;
- continued misuse of mātauranga Māori, taonga works and taonga species, often because people do not know how to use them appropriately;
- missed opportunities to use mātauranga Māori, taonga works and taonga species in socially, culturally and economically beneficial ways because people do not know who to contact to ensure their proposed use is appropriate and permissible;
- a perception that the Crown does not value mātauranga Māori or taonga Māori; and
- anger and frustration among Māori that the Crown has not 'fronted up' on these issues, leading to a loss of mana for, and trust in, the Crown.

21. The lack of traction on Wai 262 preceded the mandate of our Government. It is incumbent on us to ensure that our approach is the result of deliberate and informed Cabinet decisions that provide us with a coherent strategy in this area. We have an opportunity to establish clear priorities and sequence our efforts to deliver improved progress and outcomes alongside Māori.

### **Developing a whole-of-government strategy for Wai 262**

22. I propose that we develop a whole-of-government strategy to address the issues raised in the Wai 262 claim that aligns with the Government's priorities. I intend to report back to Cabinet in November 2019 to seek approval for the proposed strategy.

23. I anticipate that the proposed strategy would include:

- a high-level organising framework that enables the Crown to organise and coordinate its response across the numerous portfolio issues raised in the Wai 262 claim (see paragraphs 24-27 below);
- a Proposed Plan of Action for each focus area that details:
  - i. the key Crown objectives for the focus area;
  - ii. the overarching principles that will guide the Crown's work in the focus area, including how the partnership principles recently

considered by Cabinet [MCR-19-MIN-0003; CAB-19-MIN-0077 refer] might be applied;

- iii. a proposed approach for prioritising, sequencing and coordinating key focus area work streams; and
- iv. a proposed operating and governance model for each Ministerial focus group;
- the proposed functions of the Ministerial oversight group (see paragraphs 26-27 below); and
- an engagement plan and communications strategy detailing how the Crown will engage with Māori and the wider public on each focus area's Proposed Plan of Action and on the higher-level issues the Ministerial oversight group is considering.

### Ministerial focus groups

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

Focus Area	Portfolios	Ministers	Wai 262 Chapters
<b>Focus Area 1:</b> Taonga works and mātauranga Māori	Minister for Arts, Culture and Heritage Associate Minister of Education (Māori Education) Associate Minister for Arts, Culture and Heritage Minister for Māori Development; Minister of Local Government Minister of Internal Affairs Minister of Commerce and Consumer Affairs; Minister of Broadcasting, Communications and Digital Media Minister of Statistics	Rt Hon Jacinda Ardern Hon Kelvin Davis Hon Grant Robertson Hon Nanaia Mahuta Hon Tracey Martin Hon Kris Faafoi Hon James Shaw	Chapter 1 (Taonga Works and Intellectual Property) Chapter 5 (Te Reo Māori) Chapter 6 (When the Crown Controls Mātauranga Māori)
<b>Focus Area 2:</b> Taonga species and mātauranga Māori	Minister of Energy and Resources; Minister of Research, Science and Innovation Minister of Health	Hon Dr Megan Woods Hon Dr David Clark	Chapter 2 (Genetic and Biological Resources of Taonga Species)

	Minister for the Environment	Hon David Parker	Chapter 3 (Relationship with the Environment)
	Minister for Māori Development; Minister of Local Government; Associate Minister for the Environment	Hon Nanaia Mahuta	Chapter 4 (Taonga and the Conservation Estate)
	Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	Chapter 7 (Rongoā Māori)
	Minister for Climate Change	Hon James Shaw	
	Minister of Conservation	Hon Eugenie Sage	
<b>Focus Area 3:</b> International indigenous matters	Minister of Foreign Affairs	Rt Hon Winston Peters	Chapter 8 (The Making of International Instruments)
	Minister for Trade and Export Growth	Hon David Parker	
	Minister for Māori Development	Hon Nanaia Mahuta	
	Minister of Commerce and Consumer Affairs	Hon Kris Faafoi	
	Minister for Climate Change	Hon James Shaw	

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

### Ministerial oversight group

26. Given the breadth of portfolios involved, I also propose that Cabinet make an in-principle decision to establish a Ministerial oversight group to:

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

27. I propose the following Ministers be included in this group:

Ministerial Oversight Group		
Portfolios	Ministers	Wai 262 chapters

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

### Benefits and opportunities from developing the strategy

28. In light of the existing and upcoming work streams related to Wai 262 mentioned in paragraph 29 below, and the three-day Ngā Taonga Tuku Iho Conference on Māori Intellectual and Cultural Property Rights held in September 2018, I anticipate that there will be renewed calls in 2019 for the Crown to engage with Māori on the Wai 262 report.<sup>5</sup> Developing the strategy will enable us to front-foot the real issues underlying these work streams and address them in a coordinated and holistic way. It will also enable Ministers to better coordinate them, schedule public engagements and approach cross-portfolio issues in a consistent manner.
29. The strategy will bring greater clarity and leadership to a number of existing or upcoming work streams that have clear implications for the Government's position on several key Wai 262 issues. These work streams are detailed in **Appendix 4**. They include the Copyright Act review, the Haka Ka Mate Attribution Act review, the comprehensive review of the resource management system, the government's response to the Supreme Court decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* regarding the strength of section 4 of the Conservation Act,<sup>6</sup> the Plant Variety Rights Act review, the National Policy Statement on Indigenous Biodiversity, the Biodiversity Strategy, free trade agreements and the wider Trade for All agenda.
30. The strategy will provide a framework for conversations on Wai 262 and mātauranga Māori to take place and give agencies a mandate to proactively

<sup>5</sup> On 4 March, the organisers of the Ngā Taonga Tuku Iho Conference presented me with the communiqué from the conference. It lists a call for the Crown to: elevate its response to address overarching issues rather than the detail of each Wai 262 chapter; develop a policy on the role of government in taonga Māori, including mātauranga Māori; review intellectual property laws to ensure they are Treaty of Waitangi compliant; begin discussions to develop new norms and standards to protect taonga Māori; establish a Māori advisory group to work with Ministers and officials; and resource Māori to actively participate in relevant national and international fora.

<sup>6</sup> Section 4 of the Conservation Act requires the Act to be "interpreted and administered as to give effect to the principles of the Treaty of Waitangi".



engage with Māori on a range of Wai 262 issues that are impacting on the economic, trade, development, research and innovation opportunities.

31. The strategy would also:

- align with a number of Māori-Crown work streams already underway, including the development of the Māori-Crown engagement guidelines, the new mechanisms for kaupapa inquiries and the State Sector Act reforms;
- provide a more enabling environment for progressing Wai 262-related work streams and better strategic oversight of the priority, sequencing and funding of the work; and
- enable the Government to facilitate kōrero on mātauranga Māori and Wai 262 and form meaningful partnerships with Māori to take this kaupapa forward.

**Benefit of using both Ministerial focus groups and a Ministerial oversight group**

32. Using both Ministerial focus groups and a Ministerial oversight group will facilitate conversations on the Waitangi Tribunal's detailed findings and recommendations alongside a higher-level conversation about the underlying and cross-cutting issues in Wai 262. It will enable us to strike a balance between the need to:

- avoid impeding the ability of the Crown and Māori to make immediate progress on existing issues and work streams where it makes sense to do so;
- acknowledge and utilise the guidance the Waitangi Tribunal provided the Crown and Māori in the Wai 262 report, including its findings and recommendations. The Tribunal report provides a good level of clarity, focus and direction across a number of the most critical issues for mātauranga Māori and other issues underlying the Wai 262 claim. The Ministerial focus groups will enable Ministers and officials to examine the Wai 262 findings and recommendations in detail and to develop alongside Māori an integrated work programme for each focus area; and
- facilitate a higher level conversation between Māori and the Crown (acting through the Ministerial oversight group) about:
  - i. the key underlying and cross-cutting issues raised in the Wai 262 claim; and
  - ii. related issues, like whether Crown should develop a broader policy on mātauranga Māori in partnership with Māori.

33. Examples of some of the high-level issues the Ministerial oversight group would need to consider are those identified by the Waitangi Tribunal in Chapter 9 of the report. These include:

- the need to move beyond the Treaty settlement process to a forward-looking partnership focused on ongoing relationships;
- the need to take a more holistic view to the protection of mātauranga Māori and taonga, and the role of kaitiaki, across te ao Māori as a whole rather than the current de facto 'settlement by settlement' approach;
- the need for principles like whānaungatanga and kaitiakitanga to be more widely understood and more widely incorporated into national life, including through more effective partnerships between Māori and local government authorities in resource management and decision-making; and
- the need to 'perfect' the Treaty partnership by viewing it as a relationship of equals looking forward to a shared future rather than to the grievances of the past.

34. The Ministerial oversight group could also be used to provide oversight to similar whole-of-government processes, like the development of a National Plan of Action for the United Nations Declaration on the Rights of Indigenous Peoples [MCR-19-MIN-0003; CAB-19-MIN-0077 refer].

#### Next steps

35. I propose the following next steps before the November 2019 report back to Cabinet:

Steps	Indicative timeframe
I meet with Wai 262 claimants groups to inform them of the decisions in this Cabinet paper  I release a formal Crown statement about the importance of the Wai 262 claim and the Waitangi Tribunal report, and the decisions in this Cabinet paper	April 2019
Agencies plan targeted engagement and prepare draft a Proposed Plan of Action for each focus area	April – May
Officials brief Wai 262 Ministers	June
Targeted engagement	July – August
Briefing to Wai 262 Ministers	September
Report back to Cabinet	November

36. Te Puni Kōkiri officials will work with relevant agencies to develop proposals for how we should approach the issues set out in the Wai 262 claim within

and across the focus areas and through a Ministerial oversight group. This will include the development of a Proposed Plan of Action for each focus area and the intended initial priorities and focus of the proposed Ministerial oversight group.

37. I will convene, as necessary, discussions between Ministers comprising each in-principle Ministerial focus group and the oversight group on the advice received.

38. I and/or my officials from Te Puni Kōkiri, with the assistance of officials from relevant agencies, will undertake targeted engagement with key Wai 262 groups and individuals. On the basis of these discussions, I will provide advice to Cabinet on the draft strategy.

39. Given that the proposed Ministerial focus groups are only in-principle, I do not propose that we have formal meetings. Final recommendations on the participating Ministers and governance arrangements will be covered in my November 2019 report back to Cabinet. Until then, decisions will be sought from the proposed focus group Ministers through briefings from Te Puni Kōkiri, prepared in collaboration with relevant agencies.

### **Targeted engagement**

40. The extensive scope of Wai 262 means there is a wide range of potential Māori partners and interest groups who may be difficult to identify and engage with, both across Wai 262 and on particular issues. We will need to tailor our approach and engagement mechanisms in different areas, in accordance with the relevant relationships, issues, interests and contexts.

41. I recommend that the first stage of developing a proposed government strategy should include targeted engagement. The targeted engagement will enable government to seek views on:

- how the Crown proposes to organise itself (i.e., the proposed Ministerial oversight group and Ministerial focus groups);
- the sorts of matters that should be considered by the Ministerial focus groups and the Ministerial oversight group; and
- matters that might be included in the Proposed Plans of Action.

42. Likely target groups will be Wai 262 claimant groups, Māori technical experts, relevant statutory Māori advisory boards, iwi leaders, the Federation of Māori Authorities, the Māori Council and subject specialists.

43. As well as seeking views on the matters in paragraph 41 above, the targeted engagement will enable the Crown to invite views on how Māori might engage with the Crown's proposed organisational structure and organise themselves in relation to Wai 262 issues.

44. There are many possible ways Māori might engage with the Crown on these issues, including through the establishment of a Māori advisory group or

groups to advise the Ministerial focus groups and oversight group. I will update Cabinet with options for this future engagement in my November 2019 report back. Māori are likely to need some time after the November 2019 report back to confirm how they want to engage with the Crown on this kaupapa. My report back to Cabinet may include recommendations on interim arrangements to facilitate engagement with Māori before Māori confirm how they intend to engage on a longer-term basis.

### **Status of existing Wai 262-related work**

45. The existing work streams in **Appendix 4** will need to be brought within the ambit of the Wai 262 strategy work, in line with its purpose of taking a holistic and coordinated approach to Wai 262. What this means for each work stream, and how each existing work stream should be taken into account within the proposal for its focus area, will vary. In some cases, it may be appropriate for specific work to be put on hold pending targeted engagement in the context of its relevant focus area. In other cases, it will be important that work continue without significant disruption (for example, due to international obligations). The proposed approach to each current work stream will form a key part of officials' initial briefings to Ministers seeking approval to begin the targeted engagement.

### **Risks**

46. There are risks associated with any Crown response to the Wai 262 report. Discussions on the issues raised in the Wai 262 claim will involve questions about tino rangatiratanga and kaitiakitanga over culture, knowledge and natural resources, the relationship between tino rangatiratanga and kāwanatanga, and the interface between tikanga and te ao Māori and New Zealand's laws, policies and practices. This is an area of high importance to many people where emotions run high. The Crown will need to ensure that it takes the time to engage, listen and understand before making any final decisions, and ensure that its public messaging on process, scope and timing is clear.
47. Although the above risks are significant, we must weigh them against the greater risks associated with doing nothing. I have come to the view that developing a whole-of-government strategy for Wai 262 is in the best interests of Māori, the Crown and New Zealand as a whole. It will build on the progress we are making in relation to the Wai 262 recommendations on te reo Māori and intellectual property.
48. The existing and upcoming government work streams detailed in **Appendix 4** will require New Zealanders to grapple with the issues raised in the Wai 262 claim. The role of this government should be to co-lead that conversation alongside Māori, both domestically and internationally.
49. There are also risks associated with the specific approach I am proposing in this paper. Māori interest groups may expect a more collaborative and partnership-oriented government response from the outset, and may



respond adversely to the government taking time to develop its response (albeit informed by targeted engagement with key Māori interest groups).

50. However, it is reasonable for the Crown as a Treaty partner to determine how it organises itself regarding Wai 262 and to propose approaches to Māori. Any government decision to organise itself around three focus areas does not compromise our ability to adopt collaborative and partnership responses with Māori on Wai 262 issues within and across those focus areas. Nor will the Proposed Plans of Action bind the Crown to a particular course of action. As with the above risk, our messaging will be key to managing this risk.

### **Consultation**

51. In the preparation of this paper, Te Puni Kōkiri consulted with the Office of Māori Crown Relations: Te Arawhiti, the Crown Law Office, the Ministry of Business, Innovation and Employment, the Ministry of Culture and Heritage, the Department of Conservation, the Ministry for the Environment, the Environmental Protection Authority, the Ministry of Health, the Department of Internal Affairs, the Ministry of Foreign Affairs and Trade, the Ministry of Education and the State Services Commission. The Department of Prime Minister and Cabinet was informed.

52. I have consulted with the Prime Minister, the Minister of Arts, Culture and Heritage, the Minister of Foreign Affairs, the Minister for Māori Crown Relations: Te Arawhiti, the Associate Minister of Education, the Minister for Treaty of Waitangi Negotiations, the Minister of State Services, the Attorney-General, the Minister for the Environment, the Minister for Trade and Export Growth, the Associate Minister for Māori Development, Minister of Commerce and Consumer Affairs, the Minister of Internal Affairs, the Minister of Energy and Resources, the Minister of Research, Science and Innovation, the Minister of Health, the Minister of Conservation.

### **Financial Implications**

53. Financial implications associated with the proposals in this paper will be met from within existing baselines. Financial implications of any proposed next steps following the report back to Cabinet in November 2019 will be addressed in that paper.

### **Legislative Implications**

54. None.

### **Impact Analysis**

55. There are no regulatory proposals in this paper so an impact analysis has not been prepared.

### **Human Rights**

56. The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

57. International human rights and indigenous rights bodies are monitoring the Crown's approach to Wai 262.<sup>7</sup>

58. The theme of the United Nations Permanent Forum on Indigenous Issues in April 2019 is traditional knowledge generation, transmission and protection, so many of the issues underlying the Wai 262 claim are likely to be raised in there.

### **Publicity**

59. After meeting with Wai 262 claimant representatives to inform them of the decisions in this paper, I intend to release a press statement:

- acknowledging the importance of the issues covered by the Wai 262 claim and Waitangi Tribunal report for Māori, the government and the nation;
- acknowledging the claimants and others who have worked on these issues domestically and internationally;
- publicising the Crown's decision to examine:
  - i. the connection between the issues raised in the Wai 262 claim and existing and future government work;
  - ii. how the Crown should organise itself to facilitate consideration of the issues raised in the Wai 262 claim and engagement with Māori;
- clarifying that:
  - i. the government is doing this as a preliminary step before it makes any decisions on next steps for Wai 262;
  - ii. the government will undertake targeted engagement with key Wai 262 groups and individuals seeking their views on the proposed approach, how Māori might engage with that approach and potential work streams; and
  - iii. existing government work streams that have a connection with Wai 262 will continue in the meantime.

### **Proactive release**

60. I recommend that this paper be released, with any necessary redactions, once I have released the press statement.

### **Recommendations**

61. I recommend that the Committee:

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<sup>7</sup> For example, in 2017 the Committee on the Convention on the Elimination of All Forms of Racial Discrimination issued a concluding observation asking New Zealand to report on its progress in implementing the Wai 262 recommendations. We provided this report in August 2018.

1. **Note** that the Waitangi Tribunal released its report entitled '*Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*' in 2011 (the **Wai 262 report**);
2. **Note** that the Wai 262 report:
  - a. recommended changes to the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international instruments;
  - b. provides extensive guidance on how the Crown could take a Treaty-based approach to establishing partnership mechanisms that enable shared decision-making on important issues;
3. **Note** that:
  - a. although the Crown has made some progress on Wai 262-related issues, it has not sought to directly address the key issues underlying the Wai 262 claim in a coordinated way since it was made in 1991;
  - b. the Crown has not made any formal response to the Wai 262 report or discussed with the claimants, or iwi/hapū more generally, what steps the Crown should take in response to it as a whole since it was released in 2011;
4. **Note** that:
  - a. a number of upcoming work streams will require the Crown to take a position on key Wai 262 issues in the near future, including the Copyright Act review, the Haka Ka Mate Attribution Act review, the comprehensive review of the resource management system, the government's response to the Supreme Court decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* regarding the strength of section 4 of the Conservation Act, the Plant Variety Rights Act review, the National Policy Statement on Indigenous Biodiversity, the Biodiversity Strategy, free trade agreements and the wider Trade for All agenda;
  - b. addressing issues in the Wai 262 report will contribute to wider Government priorities such as: building a closer partnership with Māori; improving how the public sector responds to Māori issues; building a productive, sustainable and inclusive economy; valuing who we are as a country; and, creating an international reputation we can be proud of;
5. **Agree** that the Minister for Māori Development will develop a proposed whole-of-government strategy to address the issues raised in the Wai 262 claim in consultation with the Ministers named in the below Ministerial groups and report back to Cabinet in November 2019 to seek approval for the proposed strategy;

6. **Agree in-principle** that this strategy include:

a. establishing three Ministerial focus groups as follows:

Focus Area	Portfolios	Ministers	Wai 262 Chapters
<b>Focus Area 1:</b> Taonga works and mātauranga Māori	Minister for Arts, Culture and Heritage Associate Minister of Education (Māori Education) Associate Minister for Arts, Culture and Heritage Minister for Māori Development; Minister of Local Government Minister of Internal Affairs Minister of Commerce and Consumer Affairs; Minister of Broadcasting, Communications and Digital Media Minister of Statistics	Rt Hon Jacinda Ardern Hon Kelvin Davis Hon Grant Robertson Hon Nanaia Mahuta Hon Tracey Martin Hon Kris Faafoi Hon James Shaw	Chapter 1 (Taonga Works and Intellectual Property) Chapter 5 (Te Reo Māori) Chapter 6 (When the Crown Controls Mātauranga Māori)
<b>Focus Area 2:</b> Taonga species and mātauranga Māori	Minister of Energy and Resources; Minister of Research, Science and Innovation Minister of Health Minister for the Environment Minister for Māori Development; Minister of Local Government; Associate Minister for the Environment Minister of Commerce and Consumer Affairs Minister for Climate Change Minister of Conservation	Hon Dr Megan Woods Hon Dr David Clark Hon David Parker Hon Nanaia Mahuta Hon Kris Faafoi Hon James Shaw Hon Eugenie Sage	Chapter 2 (Genetic and Biological Resources of Taonga Species) Chapter 3 (Relationship with the Environment) Chapter 4 (Taonga and the Conservation Estate) Chapter 7 (Rongoā Māori)
<b>Focus Area 3:</b> International indigenous matters	Minister of Foreign Affairs Minister for Trade and Export Growth Minister for Māori Development Minister of Commerce and Consumer Affairs Minister for Climate Change	Rt Hon Winston Peters Hon David Parker Hon Nanaia Mahuta Hon Kris Faafoi Hon James Shaw	Chapter 8 (The Making of International Instruments)

b. establishing a Ministerial oversight group as follows:



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

7. **Note** that:

- a. the proposed Ministerial focus groups will not be formally established until after my November 2019 report back to Cabinet;
- b. my report back will include recommendations on the governance arrangements for these Ministerial focus groups and confirmation (or modification) of the participating Ministers;

8. **Agree** that as part of developing the proposed strategy Te Puni Kōkiri officials will work with officials from the agencies of Wai 262 portfolio Ministers to co-ordinate advice to the Minister for Māori Development and relevant Wai 262 portfolio Ministers on how the government should approach Wai 262 and mātauranga Māori in relation to three focus areas and the Ministerial oversight group;

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

10. **Delegate** to the Minister for Māori Development authorisation to approve the approach to the targeted engagement, in consultation with Ministers in the proposed Ministerial oversight group.

Authorised for lodgement

Hon Nanaia Mahuta

Te Minita Whanaketanga Māori



# Appendix 1

## NOTE:

The Wai 262 Report is a comprehensive collection of commentary, findings and recommendations. This page provides a selective overview of the key findings of the Wai 262 Report for each chapter, and does not substitute for the rich content of the chapters.

### Chapter 1: Taonga Works and Intellectual Property

The intellectual property legal framework should deliver to Māori a reasonable measure of control over the use of taonga works and mātauranga Māori, which are entitled to protection against derogatory and offensive public use.

For taonga works, the kaitiakitanga relationship justifies more extensive rights, including the right to be consulted on, and where necessary consent to, commercial use.

Kaitiaki of closely held mātauranga Māori are also entitled to be involved in decisions about its use.

The Crown must take all reasonable steps to accommodate kaitiaki within the framework of intellectual property law. But the Crown's obligation is not absolute. The Crown must do what is reasonable in the circumstances. The importance of the kaitiaki relationship should be weighed against other interests, including the wider community interests in free access to information and ideas and the flourishing of creativity, and the interests of IP right holders in that creativity.

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

Kaitiaki do not have rights in the genetic and biological resources of taonga species akin to the Western conception of ownership. Only in the most exceptional cases are kaitiaki justified in claiming an interest in each living specimen of a taonga species.

Where there is a risk that bioprospecting, genetic modification or intellectual property rights will affect kaitiaki relationships with taonga species, those relationships are entitled to a reasonable degree of protection.

Kaitiaki have valid rights in respect of the mātauranga associated with their taonga species, but these rights do not amount to exclusive ownership of that knowledge if the knowledge is already publicly known.

Activities involving the commercial exploitation of mātauranga Māori must give proper recognition to the interests of kaitiaki.

### Chapter 3: Relationship with the Environment

The Treaty obliges the Crown to actively protect the continuing obligations of kaitiaki towards the environment. This obligation cannot be absolved by statutory devolution of the Crown's environmental management powers and functions to local government.

The degree of control by Māori and their influence in decision-making needs to be resolved using the concept of kaitiakitanga. The exact degree of control as kaitiaki cannot be determined in a generic way. Policies and standards must be set at national and regional levels to provide necessary and principled guidance, and the Crown is obligated to give proper weight to the kaitiaki interests, alongside all others.

A Treaty-compliant environmental management regime is one that delivers either control by Māori in respect of their taonga, or partnership models, or access to effective influence and priority.

### Chapter 4: Taonga and the Conservation Estate

The principles of the Treaty are not adequately reflected in DOC's guiding policies and, as a result, they do not adequately infuse DOC's day-to-day work.

Under the kāwanatanga principle, DOC can give primacy to its conservation mission in accordance with the relevant statutes, but where that can be achieved in a manner that is consistent with the tino rangatiratanga of hapū and iwi, it should be.

The default DOC arrangement in the conservation estate should be partnership. The starting point of partnership should be shared decision making.

Within an overall partnership framework, there will be situations in which it may be appropriate to devolve control over taonga, or transfer ownership of the land subject to the environmental interest.

### Chapter 5: Te Reo Māori

Te Reo Māori is a taonga guaranteed to Māori under Article 2 of the Treaty. The survival of te reo Māori is of paramount importance, placing a significant obligation on the Crown to protect it. The weight of obligation must be met with commensurate action.

The principle of partnership means Māori being properly supported to contribute to the initiatives, ideas and leadership that will ensure the language's survival. The Crown must transfer enough control to enable a Māori sense of ownership of the vision, while at the same time ensuring that its own expertise and resources remain central to the effort.

Māori also have obligations to foster the growth of te reo Māori. Māori must work with the Crown on reviving te reo and must take advantage of opportunities for learning or listening in te reo Māori.

### Chapter 6: When the Crown controls Mātauranga Māori

The Crown has obligations to protect mātauranga itself, and the interests of the kaitiaki in it. This can only be achieved through partnership with Māori, for neither Māori nor the Crown can succeed in protecting and transmitting mātauranga without the help of the other.

There are reasonable limits on the Crown's obligations: other legitimate interests inevitably impact on the degree of control the Crown can yield to kaitiaki. What is common to all cases is the need to identify the wider or competing interests and to carefully weigh them.

Kaitiaki must be to the fore in the survival and revival of mātauranga Māori. The Crown's role must be that of a partner in joint venture with kaitiaki. Agencies need to establish real forms of partnership with Māori communities over the delivery and care of mātauranga.

### Chapter 7: Rongoā Māori

The Crown must alter its mindset and recognise the positive benefits to Māori health that rongoā has to offer.

In any case, the Crown must work in genuine partnership with Māori in identifying and implementing any such proposals.

### Chapter 8: The Making of International Instruments

The Treaty entitles Māori interests to a reasonable degree of protection, when those interests are affected by the international rules that the New Zealand Government negotiates or signs up to. The Crown must actively protect those interests to the extent that is reasonable and practicable in the international circumstances.

Māori must have a say in identifying the interest and devising the protection. But the degree of protection will depend on the nature and importance of the interest when balanced alongside the interests of other New Zealanders, and on the international circumstances, which may constrain what the Crown can achieve.

The Crown must inform Māori about upcoming developments in the international arena, and Māori must inform the Crown about whether and how they perceive their interests as being protected. This is necessarily a dialogue: Māori and the Crown must always be talking to one another.

## Ko Aotearoa Tēnei:

## A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity

(the Wai 262 Report)

## Key Chapter Findings

Released by the Minister for Māori Development



### Featured Report

6



### Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy affecting Māori culture and identity (Wai 262)

The Wai 262 report was the Waitangi Tribunal's first whole-of-government report. The process spanned almost 20 years, reflecting the significant breadth and complexity of the claims. It has been said that the inquiry was about the place of Māori culture, identity and traditional knowledge in New Zealand's laws, government policies and practices.<sup>2</sup>

The Wai 262 claim was lodged in October 1991 by six claimants on behalf of themselves and their iwi: Ngāti Wai, Ngāti Kuri, Te Rarawa, Ngāti Porou, Ngāti Kahungunu and Ngāti Koata. The hearings began in 1995 and the closing submissions were made in 2007.

The Waitangi Tribunal considered that the claim was in essence about who (if anyone) owns or controls Māori culture and identity.<sup>3</sup> In particular, the claim sought to establish who owns or controls:

<sup>2</sup> See <https://waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>

<sup>3</sup> Waitangi Tribunal Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity: Te Taumata Tuatahi (Wai 262, 2011) at 17.

- mātauranga Māori (Māori traditional knowledge)
- the “tangible products of mātauranga Māori” – traditional artistic and cultural expressions, which the Tribunal called “taonga works”
- the things that are “important contributors to mātauranga Māori” – including the unique characteristics of indigenous flora and fauna, which the Tribunal called “taonga species”, and New Zealand’s natural environment more generally.

The Tribunal released its report in 2011: a comprehensive, two volume account of the claim and the issues it raised, and the Tribunal’s findings on those issues and its recommendations to the Crown. A summary volume was also released. The report makes a range of specific findings and recommendations relating to indigenous flora, fauna, and cultural and intellectual property.

One of the key cross-cutting themes is the nature of the relationship between the Crown and Māori. The report calls on the Crown to accept its role in the preservation and transmission of mātauranga Māori, and to elevate the Treaty Interest to its rightful place, paving the way for the Treaty partnership.<sup>4</sup>

Each of the report’s eight chapters covers the claimants’ and Crown’s views on the issues, the Tribunal’s findings on these issues, and recommendations for the Crown. In making recommendations to the Crown, the Tribunal stated that its intention was to facilitate a negotiation between the Crown and Māori. In the Tribunal’s view, it “sought to do no more than to assist the negotiation by demonstrating that it is possible to give realistic and tangible shape to law and policy reform”.<sup>5</sup>

This feature section seeks to provide an overview of the findings and recommendations of the Wai 262 report and what the Crown has done since it was released. It is intended to constitute a succinct and frank appraisal of the Crown’s progress on Wai 262. The feature section shows that while the Crown has made progress in several areas, there is more work to do.

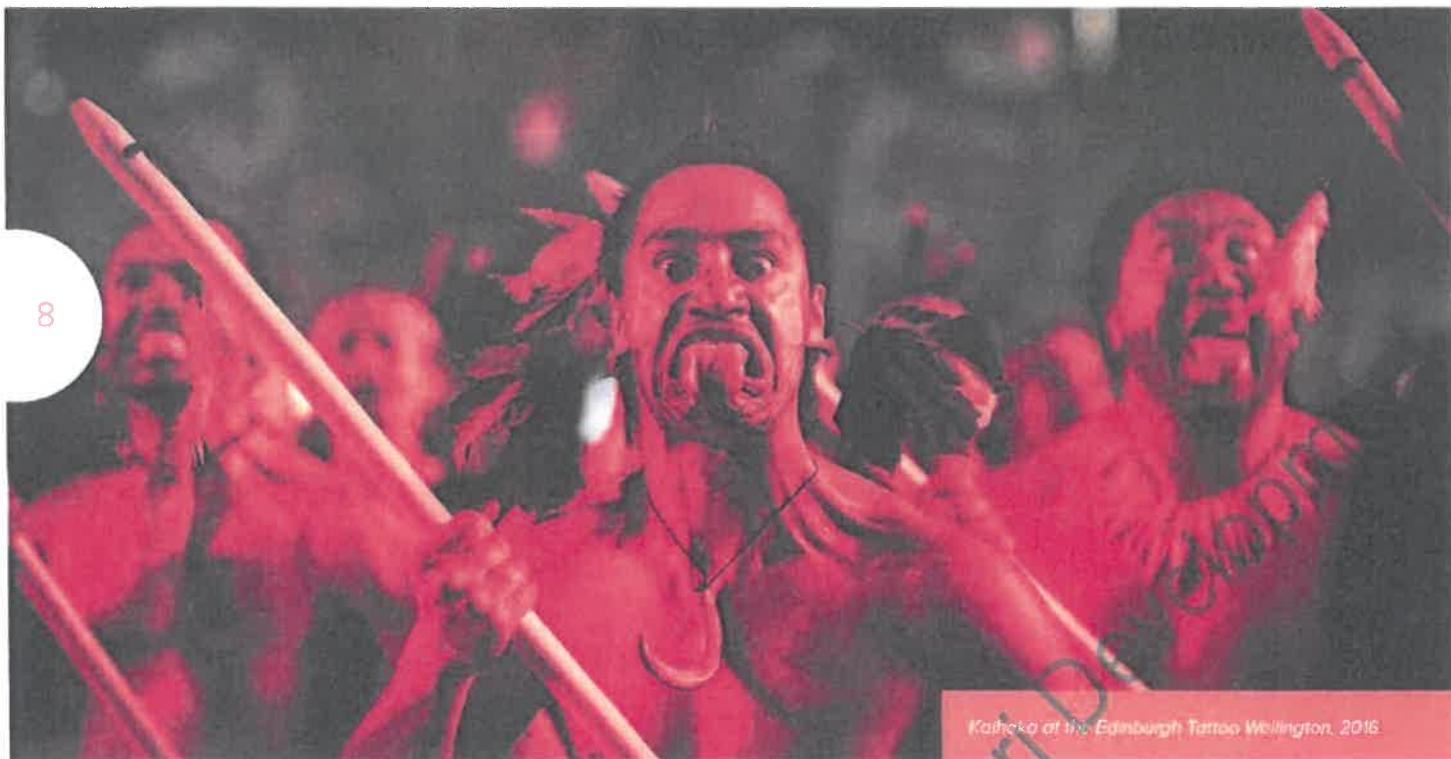
The chapter summaries below do not directly address the Wai 262 report’s high-level findings on the Māori Crown relationship. However, there has been notable movement in this area. In October 2017, the government created a new ministerial portfolio with a focus on the Māori Crown relationship. With 61 percent of all historical Treaty of Waitangi settlements now completed, the Crown is shifting its focus to what this relationship should look like in a post-settlement environment. This includes ensuring that the strong foundations created through Treaty settlements are maintained and built on, into the future.

The Minister for Māori Crown Relations: Te Arawhiti undertook an engagement process with Māori in 2017/18, and Cabinet has now agreed to a set of responsibilities and priority areas for the scope of the portfolio. The portfolio encompasses a range of initiatives that provide leadership, advice and support for the public sector for resetting the Māori Crown relationship. This includes advice specifically on the ways that government should engage with Māori, which was subject to findings across all of the Wai 262 chapters. In 2018, the Minister for Māori Crown Relations: Te Arawhiti released guidelines for public sector engagement with Māori that aim to be effective, efficient and inclusive.

In seeking to paraphrase and simplify the highly complex material in the Wai 262 report, this report is likely to omit certain details and matters of nuance. Readers should refer to the Wai 262 report itself for a more comprehensive account of the claim and the Waitangi Tribunal’s findings and recommendations.

<sup>4</sup> Ibid. see pp. 700, 715.

<sup>5</sup> Ibid. p. 702.



Kaitiaki at the Edinburgh Tattoo Wellington, 2016.

## Chapter 1

# Taonga Works and Intellectual Property

Chapter 1 of the Wai 262 report discussed the interface between the obligations of kaitiaki of taonga works and the intellectual property system. Taonga works were described as the expression of Māori artistic and cultural traditions, founded in and reflecting the body of knowledge and understanding known as mātauranga Māori. Those who are responsible for safeguarding taonga works, whether or not they were the original creator, have a particular relationship to the works: a kaitiaki relationship.

The Waitangi Tribunal's recommendations in Chapter 1 included prohibiting the derogatory or offensive public use of taonga works, taonga-derived works<sup>6</sup> and mātauranga Māori; erecting a mechanism by which kaitiaki could prevent any commercial use of taonga works or mātauranga Māori (but not taonga-derived works) unless there had been consultation and (if appropriate) kaitiaki consent; and establishing an expert commission with adjudicative, facilitative and administrative functions. The Waitangi Tribunal also recommended that a register of taonga works be established and administered by the expert commission.

<sup>6</sup> The Waitangi Tribunal used 'taonga works' to describe tangible and intangible expressions of mātauranga Māori that relate to or invoke ancestral connections, and contain or reflect traditional narratives or stories. They possess mauri and have living kaitiaki in accordance with tikanga Māori. The Waitangi Tribunal used 'taonga-derived works' to describe a work that derives inspiration from mātauranga Māori or a taonga work, but does not necessarily relate to or invoke ancestral connections, nor contain or reflect traditional narratives or stories in any direct way. A taonga-derived work is identifiably Māori in nature, but has neither mauri nor living kaitiaki in accordance with tikanga Māori.



## Progress to date

Prior to 2018, there has been little work to consider the Tribunal's taonga works recommendations. Some protections for taonga works and names have been progressed on ad-hoc basis through Treaty settlement processes – for example, protection for the Ka Mate haka, and the name 'Te Awa Tupua'. However, there has not been a policy process to determine whether and how the taonga works recommendations should be implemented.

Lack of domestic policy development in this area has left Māori cultural expressions vulnerable to misuse. Māori have limited legal recourse when this occurs. While some taonga works may receive some intellectual property protection – for example, under the Copyright Act – this protection does not necessarily align with tikanga Māori.

Misuse of taonga works occurs both domestically and overseas. While the Government is not able to regulate activities that occur outside of New Zealand, it has been working to help establish protections for indigenous rights in traditional cultural expressions in the International intellectual property system. However, lack of domestic policy development and consultation with Māori on taonga works has also limited New Zealand's ability to take an active role in international conversations on these issues.

In November 2018, Ministry of Business, Innovation and Employment (MBIE) released an Issues Paper as part of its review of the Copyright Act 1994. One of the proposed objectives of the review is to ensure that the copyright regime is consistent with the Crown's obligations under the Treaty of Waitangi. The Issues Paper includes a section on the Treaty of Waitangi and taonga works, outlining the Tribunal's Wai 262 recommendations. It proposes launching a new work stream, alongside the Copyright Act review, to look at developing protection for taonga works and associated mātauranga Māori. The paper asks how the Crown can best engage with Māori in this proposed policy development process.

7 New Zealand has participated in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC) since its establishment in 2000. The IGC is a committee of the World Intellectual Property Organization, a specialised agency of the United Nations. The IGC's mandate is to agree international instruments that will ensure the balanced and effective protection of genetic resources, traditional knowledge and traditional cultural expressions.





Rangatahi with their māra kai at their whānau wellbeing day, hosted by Ho Waka Tapu in Christchurch. Credit: Madison Henry.

## Chapter 2

# The Genetic and Biological Resources of Taonga Species

Chapter 2 of the Wai 262 report considered the process of research into, and exploitation of, taonga species. In particular, the chapter examines the effect of bioprospecting, genetic modification and intellectual property rights – which the Waitangi Tribunal saw as a continuum from research to commercial exploitation – on the kaitiaki relationship with taonga species. The Tribunal considered that where there was a risk that bioprospecting, genetic modification or intellectual property rights could affect kaitiaki relationships with taonga species, those relationships were entitled to a reasonable degree of protection. What was reasonable was a matter for case by case analysis. However, the Tribunal did not consider it appropriate to see the kaitiaki relationship with taonga species as one of exclusive ownership other than in rare and exceptional cases, like Ngāti Koata's relationship with the tuatara.

The Waitangi Tribunal's recommendations on bioprospecting included requiring the Department of Conservation to lead the development of a bioprospecting regime that is applicable within the conservation estate, and expanding the role of the pātaka komiti<sup>8</sup> from an advisory one to one of joint decision-making with the regional conservator.

The genetic modification recommendations included amending the Hazardous Substances and New Organisms (Methodology) Order 1998 so that no automatic privilege is given to physical risks, amendments to the Hazardous Substances and New Organisms Act to recognise kaitiaki relationships with taonga species, empowering Ngā Kaihautū Tikanga Taiao to appoint at least two members of Environmental Protection Agency itself, and empowering Ngā Kaihautū Tikanga Taiao to give proactive advice.

The Waitangi Tribunal's recommendations on Intellectual property included ensuring mātauranga Māori is a key factor in decisions about patentability, establishing a Māori advisory committee to advise the Commissioner of Patents, empowering the Commissioner of Patents to refuse patents that are contrary to *ordre public* as well as morality, empowering the Māori advisory committee to act proactively, establishing a voluntary register of taonga species, imposing a disclosure of

<sup>8</sup>

on

land

discussion

to address

origin requirement on patent applicants, prohibiting the Commissioner of Plant Variety Rights from approving a name for a plant variety if it would be likely to be offensive to Māori, clarifying that plant varieties must be specifically bred to qualify for a plant variety right, empowering the Commissioner of Plant Variety Rights to refuse to grant a plant variety right if the grant would affect kaitiaki relationships with taonga species, and empowering the patents Māori advisory committee to advise the Commissioner of Plant Variety Rights on whether to refuse an application on the basis that it would affect kaitiaki relationships with taonga species.

## Progress to date

In 2013, Parliament passed the Patents Act 2013 and the following changes were made:

- The Act established the Patents Māori Advisory Committee. The function of the committee is to advise the Commissioner of Patents whether a claimed invention is derived from mātauranga Māori or indigenous plants and animals, and, if so, whether its commercial exploitation would be contrary to Māori values. This advice provides patent examiners with important information about the prior art base (from which to assess novelty and inventive step) that they may not otherwise have access to. The committee has not yet been required to provide advice since established in 2014.
- The Act provides that the Commissioner of Patents can refuse patents that are contrary to *public order* as well as morality.<sup>9</sup>
- Implicit in the above changes is that mātauranga Māori is now a key factor in the patents decision-making process.

In September 2018, the Ministry of Business, Innovation and Employment (MBIE) released an issues paper as part of its review of the Plant Variety Rights Act 1987. Part 4 of the issues paper sets out in detail the Wai 262 recommendations on plant variety rights and signals the Crown's intention to address them as part of the review. It also covers other issues raised by Māori during MBIE's early engagement on the review.

Together with the issues paper on plant variety rights, MBIE also released a discussion paper on whether the Government should impose a disclosure of origin requirement on people applying for patents – another Wai 262 recommendation.

On genetic modification, the Environmental Protection Authority has implemented processes under section 6(d) of the Hazardous Substances and New Organisms Act 1996 that require a case by case approach to decision making including consideration of kaitiaki relationships. When the Environmental Protection Authority was established to replace the Environmental Risk Management Authority in 2011, statutory requirements and non-statutory practices were established to allow the participation of Māori and the consideration of Māori interests by decision-makers. In implementing section 6(d), the Environmental Protection Authority actively seeks and considers the views of tangata whenua.

<sup>9</sup> "Public order" is the English translation of the French *ordre public*. Its meaning is probably better translated in this context as contrary to public policy.





Kaitiaki Regional Park.  
Photo courtesy of Ministry for the Environment.

## Chapter 3

# Relationship with the Environment

Chapter 3 of the Wai 262 report focuses on the kaitiaki relationship with the environment and how this is addressed under New Zealand's resource management laws. The Waitangi Tribunal considered that the Treaty requires the Crown to actively protect the continuing obligations of kaitiaki towards the environment as one of the key components of te ao Māori, and that this obligation cannot be absolved by statutory devolution of the Crown's environmental management powers and functions to local government. The Tribunal further considered that the degree of control exercised by Māori and their influence in decision-making needed to be resolved in a principled way using the concept of kaitiakitanga. The exact degree of control accorded to Māori as kaitiaki was likely to differ widely in different circumstances, and could not be determined in a generic way.

The Waitangi Tribunal's recommendations in Chapter 3 included reforming the Resource Management Act 1991 (RMA) so that decision-makers under the Act have to engage with kaitiaki to deliver control, partnership and influence where each of these is justified; amending the RMA to provide for the development of enhanced Iwi resource management plans in consultation with local authorities; amending the RMA's mechanisms for delegation, transfer of powers and joint management to remove unnecessary barriers to their use; building Māori capacity to participate in RMA processes and in the management of their taonga; and developing national policy statements on Māori participation in resource management plans and arrangements for kaitiaki control, partnership and influence on environmental decision-making.

## Progress to date

The Crown has sought to acknowledge kaitiaki interests and develop partnership models with Māori within the natural resource sector since the release of the Wai 262 report.

The Resource Legislation Amendment Act 2017 ("2017 Amendment Act") introduced new ways for Māori to have input into council plan-making processes. Councils are now required to provide their draft regional and district plans to iwi authorities for comment before the plan is notified for public submissions. The council must give iwi sufficient time to respond. In their reports under section 32 of the RMA, councils must also include the advice received from iwi and how the council responded.<sup>10</sup> If a council is appointing an independent commissioner, there is also a new requirement that councils must consult with iwi authorities about whether to appoint a person who understands tikanga Māori and the perspectives of local iwi and hapū. If it is determined that the commissioner needs this expertise, the relevant iwi must be consulted on the proposed appointee.

Two alternative plan-making tracks were also provided through the 2017 Amendment Act – a collaborative plan-making process and a streamlined plan-making process. In both, provision is made for Māori interests and involvement:

- In the collaborative process, at least one member of a collaborative group must be appointed by iwi authorities to represent the views of tangata whenua
- At least one member of a review panel in the collaborative process must have an understanding of tikanga Māori and the perspectives of tangata whenua, and must be appointed after consultation with iwi authorities.
- A streamlined planning process must not be inconsistent with obligations under any relevant iwi participation legislation or Mana Whakahono ā Rohe agreement (see below).

The other key change made through the 2017 Amendment Act enables any iwi authority to initiate a Mana Whakahono ā Rohe agreement (section 58L-U) with the relevant local authority. This process enables councils and iwi to come together to agree how iwi will participate in resource management planning processes. Once the iwi authority has initiated the process, the council must respond by convening a hui within a specified timeframe. The agreement must be then completed within 18 months unless another period is agreed. By engaging in plan-making processes in this way, iwi can influence resource management outcomes in the region. The agreement may include additional matters – such as how iwi will be notified or consulted on resource consents, and involved in monitoring and other functions, powers or duties. Mana Whakahono ā Rohe is not Treaty settlement redress; it is a tool that is available as of right under resource management legislation.

<sup>10</sup> Section 32 of the Resource Management Act 1991 sets out requirements for preparing and publishing environmental reports. See <http://www.mta.govt.nz/assets/2017/03/06/32-1011>



Mana Whakahono ā Rohe do not limit the content of any iwi participation legislation or agreements. If dispute resolution has tried and failed to resolve a dispute that arises during the negotiation of a Mana Whakahono ā Rohe agreement, participating authorities (iwi or local government) can approach the Minister for the Environment. The Minister can then appoint (and meet the costs of) a Crown facilitator, or direct the parties to use a particular alternative dispute resolution process. Mana Whakahono ā Rohe cannot limit any relevant provision of any iwi participation legislation or Treaty settlements.

The Ministry for the Environment is supporting the development of Mana Whakahono ā Rohe.<sup>11</sup> A series of workshops were held with iwi and with councils in November 2017 to explain the new provisions and to scope the guidance requested by iwi and councils. As well as a fact sheet, a guide to Mana Whakahono ā Rohe was produced in April 2018.

Central government is also responsible for providing the national policy and regulatory framework in which local government operates. The National Policy Statement on Freshwater Management 2014 (NPS-FM) requires local authorities to take reasonable steps to involve Māori in the management of fresh water, and identify and reflect Māori values and interests in management and decision-making regarding fresh water.

The NPS-FM was amended in 2017 to embed the concept of Te Mana o te Wai (the integrated and holistic well-being of a freshwater body) and add more direction on how to apply Te Mana o te Wai in the management of freshwater. The change is intended to put the health and well-being of water bodies at the forefront of discussions and decisions about freshwater. The change puts the health and wellbeing of water bodies at the forefront of discussions and decisions about freshwater. All councils must consider and recognise Te Mana o te Wai in all parts of freshwater management. Objective D1 of the NPS-FM requires councils to provide for the involvement of iwi and hapū in the management of freshwater and to ensure that tangata whenua values are identified and reflected in decision making. In addition, councils are now required to use mātauranga Māori methods when monitoring water quality.

National policy statements (NPS), national environmental standards (NES) and regulations directly influence how local government manages the environment. In the case of NPS, NES and certain regulations, the Minister for the Environment must consult with the public and iwi authorities when developing these tools. In some cases, advisory groups have informed the development of these tools and iwi have been involved in these forums. For example, an Iwi Advisors Group worked directly with the Ministry to explore policy options for freshwater reform. A representative of the Iwi Advisors Group is also on the Biodiversity Collaborative Group that has drafted a National Policy Statement for Indigenous Biodiversity (NPSIB). The current government has formed an advisory group, Kāhui Wai Māori, to assist in co-design of further RMA reforms, including changes to the NPS for freshwater.

<sup>11</sup> For details of Mana Whakahono ā Rohe agreements that have been initiated, see <http://www.mfe.govt.nz/mana-whakahono>



The report of the Biodiversity Collaborative Group was published in October 2018 and recommended the protection of native taonga for the benefit of the people. Its aim is to achieve the integrated and holistic wellbeing of the natural environment. Government officials will continue to develop the NPSIB in 2019, with early engagement with Māori groups. The NPSIB aims to involve tangata whenua in regional plans and strategies, and provide mechanisms for tangata whenua to exercise kaitiakitanga over indigenous biodiversity.

Treaty settlements can also provide models for how iwi and councils can work more closely together to deliver better outcomes for iwi under the RMA. Settlement legislation can, for example, provide tailored arrangements with respect to particular resources or taonga, to ensure iwi aspirations for resources can be more clearly identified, and ensure that iwi are more directly involved in decision making over matters of cultural significance.

Natural resource arrangements made through Treaty settlements can also recognise relationships between kaitiaki and natural resources, and provide partnership models between kaitiaki and local government or the Crown in the management of those resources. Several existing arrangements involve kaitiaki in making plans or strategy documents that influence planning processes under the RMA. For example, the Vision and Strategy for the Waikato River was developed by the Guardians Establishment Committee, the precursor to the Waikato River Authority. The Waikato River Authority has equal Crown/River iwi membership, and was established through legislation. The Vision and Strategy must be given effect to in the Waikato regional plan and this is driving the Healthy Rivers Plan Change 1.<sup>12</sup>

<sup>12</sup> See <https://www.waikatoregion.govt.nz/conservation-and-plans/plans-under-development/healthy-rivers-plan-for-change/and-the-proposed-plan-change/> for more information.





## Chapter 4

# Taonga and the Conservation Estate

Chapter 4 of the Wai 262 report addresses the operation of the Department of Conservation and how Māori communities' relationships with the natural environment should be given expression in the context of the conservation estate (the land, water, flora and fauna that the Department of Conservation administers). The Waitangi Tribunal noted that the Crown estate contains most of the surviving examples of the environment that greeted the first people to arrive in this country and was the environment in which mātauranga Māori evolved. This makes the conservation estate a significant factor for iwi, hapū and whānau seeking to exercise kaitiakitanga responsibilities and relationships with flora and fauna. It also contains spaces and taonga that are high importance to all New Zealanders, Māori and non-Māori alike.

The Waitangi Tribunal considered that the partnership between the Crown and Māori in terms of conservation should be based on two imperatives: the survival and recovery of the environment is paramount; and iwi have a right to exercise kaitiakitanga and maintain their culture. The Tribunal considered that shared decision-making between the Crown and kaitiaki must be the default approach to conservation management, that the Crown should govern as far as practicable in a manner consistent with the tino rangatiratanga of hapū and iwi, and that there may be some cases in which the kaitiaki interest is of overwhelming significance where a transfer of ownership or control is appropriate.

The Waitangi Tribunal's recommendations in Chapter 4 included making partnership a 'will' obligation under the Conservation General Policy (CGP) and the General Policy for National Parks; requiring the Department of Conservation to achieve its conservation mission in a manner consistent with the tino rangatiratanga of iwi and hapū; establishing various entities to facilitate formal partnerships with Māori; reviewing conservation legislation to reconcile the mātauranga Māori and te ao Pākehā approaches to conservation management; amending the CGP, General Policy for National Parks and Crown-Māori Relationship Instruments to

better reflect Treaty principles; providing for full statutory co-management of customary use by the Department of Conservation and by pātaka komiti to make joint decisions; amending the CGC and the General Policy for National Parks to make customary harvest and access a 'will' responsibility in certain situations and to remove the 'established tradition of customary use' requirement; amending the Wildlife Act so that no one owns protected wildlife, so that it provides instead for shared management of wildlife in partnership, and so that taonga works derived from protected wildlife are owned by tangata whenua; amending the Department of Conservation's policies and practices to give tangata whenua interests in taonga a reasonable degree of preference when making decisions about commercial activities in the conservation estate; and formalising Department of Conservation policies for consultation with tangata whenua about concessions within their rohe.



Tourists are able to enjoy the West Coast of Te Wapounamu thanks to Haka Waiwai, an initiative to build culture and wellbeing of whānau and hapū. Lake Mahinupua, 2018. Credit: Te Pūtahianga o Te Wapounamu.



## Progress to date

The Department of Conservation has undertaken, and is undertaking, a number of pieces of work that support partnership with Māori in conservation governance and the exercise of kaitiakitanga. This includes work to reconcile and integrate mātauranga Māori into how the conservation estate is managed.

The major upcoming initiative that the department will lead relating to Wai 262 is the refresh of the New Zealand Biodiversity Strategy. The current biodiversity strategy runs to 2020. To refresh the strategy, the department is taking the Wai 262 claim and *Ko Aotearoa Tēnei* into account, and demonstrating the Treaty partnership by consulting with iwi prior to drafting the strategy.

The Department of Conservation continues to implement departmental initiatives and policies to embed partnership with Māori into their work and approaches to conservation management. These include:

- committing to partnership with tangata whenua through the department's future goal setting and accountability processes
- including in its 2015-2019 Statement of Intent a 10-year goal that "*Whānau, hapū and iwi are able to practise their responsibilities as kaitiaki of natural and cultural resources on public Conservation lands and waters.*"
- developing and instituting "Treaty Principles Guidelines" to guide staff and their work around the Treaty of Waitangi/Te Tiriti o Waitangi and delivering the "Te Pukenga Atawhai" staff development programme to give staff and conservation board members confidence in more effectively engaging with the Māori world. Over 200 staff completed this training in 2017/18.

Department of Conservation staff partner with Māori across the eight Department of Conservation regions, and work together with Kāhui Kaupapa Atawhai staff as a matter of course.<sup>13</sup> The Pou Tairangahou differs from the specific recommendations of the Waitangi Tribunal regarding the setting up of partnership entities or pātaka komiti. However, since the Wai 262 report was released the Department of Conservation has continued to place this network at the core of its business, use it to support and test their national strategies and commitments to partnership, and to bring regional learnings from iwi and hapū into national strategies and plans. Department of Conservation leaders also work with the Conservation

Iwi Leaders Group to better understand iwi views and considerations on Department of Conservation practice and policy proposals.

Treaty settlements are another area in which particular iwi interests around taonga and public conservation land are addressed, and various solutions have been adopted. Settlement arrangements have included, for example, provisions about improved access to cultural materials (materials related to mātauranga

<sup>13</sup> The Pou Tairangahou, who work in Kāhui Kaupapa Atawhai, were referred to as Pou Kura Taiao in the Tribunal's report.

that are otherwise monitored or protected by the Department of Conservation or conservation legislation). These provisions generally enable iwi members to obtain cultural materials for non-commercial purposes under multi-site and multi-take permits. Some settlements provide for a transfer of decision-making to iwi for access of iwi members to plant materials and dead protected fauna for cultural purposes.

The Crown is also working with whānau, hapū and iwi to address their desire for more legal and policy recognition of their specific rights in relation to taonga species and commercial activities on conservation land. This is being done through a combination of Treaty settlements, existing commitments and new work to enable Māori-led conservation work, sustainable customary use of biological resources and indigenous biodiversity protection across a range of services and levels. Government has committed to this work through National Target 17 of the updated New Zealand Biodiversity Action Plan, which is: "Whānau, hapū and iwi are better able to practise their responsibilities as kaitiaki." The Department of Conservation led the update of the Action Plan in 2016, and will be coordinating its delivery between now and 2020.



## Chapter 5

### Te Reo Māori

In Chapter 5, the Waitangi Tribunal found that te reo Māori is a taonga guaranteed to Māori under Article 2 of the Treaty. The survival of te reo Māori is of paramount importance and this places a significant obligation on the Crown as a Treaty partner to protect it. The Waitangi Tribunal considered that the weight of this obligation, coupled with the Crown's duty to act in favour of te reo Māori as a simultaneous matter of national interest, must be met with commensurate action. In particular, the development of a modern, Treaty-compliant regime to ensure the survival of the Māori language.

The Waitangi Tribunal further considered that for Māori, the principle of partnership means being properly supported to contribute to the Initiatives, ideas and energetic leadership that will ensure the language's survival. In essence, they considered that the Crown must transfer enough control to enable a Māori sense of ownership of the vision, while at the same time ensuring that its own expertise and resources remain central to the effort.

Once a strategic and transparent Crown-Māori policy was established, the Waitangi Tribunal considered that the Government's Māori language sector must be highly functioning and infused with common vision and purpose. The Waitangi Tribunal considered that:

- the Crown owes Māori policies and services that are not undermined by structural issues, competing priorities and intermittent focus
- the Crown must recognise that the Māori interest in the language is not the same as any minority group in New Zealand/Aotearoa
- te reo Māori is entitled to a 'reasonable degree of preference' and must receive a level of funding that accords with this status
- Māori also have an obligation to foster the growth of te reo Māori and must be prepared to work with the Crown on reviving it.

The Waitangi Tribunal recommended that Te Taura Whiri be granted authority to require and approve Māori language plans of:

- all central government agencies
- all local authorities, district health boards, and regional branches of central government in local body districts where the census shows a sufficient number or percentage of te reo speakers in the population
- all State-funded schools (other than kura kaupapa and other immersion schools) with at least 75 students, of whom at least 25% are Māori)
- all State broadcasters and other broadcasters drawing on Te Māngai Pāho funds.

The Waitangi Tribunal also recommended that Te Taura Whiri be granted authority to:

- approve all early childhood, primary and secondary curricula involving te reo as well as all level 1-3 tertiary te reo courses
- set targets for the training of Māori language and Māori-medium teachers and require and approve plans from teacher training institutions showing how they will meet the targets.

### Progress to date

Te Ture mō Te Reo Māori Act 2016 (the Act) affirms the status of te reo Māori as the indigenous language of New Zealand, a taonga of iwi and Māori, a language valued by the nation and an official language of New Zealand. It also provides means to support and revitalise te reo Māori. Section 6 of the Act provides that the Crown must work in partnership with iwi and Māori to continue to actively protect and promote te reo Māori for future generations.

This partnership is expressed through the metaphor of te Whare o te Reo Mauriora. The two sides of the partnership are represented by the maihi (bargeboards) on each side of the whare: te Maihi Māori symbolises iwi, hapū, whānau, Māori and communities, and te Maihi Karauna symbolises the Crown. The Act also established an independent statutory entity, Te Mātāwai, to represent iwi and Māori interests in language revitalisation, and provide leadership on behalf of iwi and Māori in their role as kaitiaki of the Māori language.

Since the passing of the Act, implementation of te Whare o te Reo Mauriora has begun, setting up the infrastructure for the ongoing partnership approach to te reo Māori revitalisation.

- Te Mātāwai confirmed its strategy for language revitalisation efforts at the grassroots level, te Maihi Māori, in 2017. The two outcome areas of its strategy are aimed at increasing language in the home and creating communities of speakers.
- Public consultation on the draft Maihi Karauna, the Crown's Māori language strategy, closed at the end of September 2018. In accordance with the legislation, it sets out a vision, outcomes, and short-term and medium-term priorities. Although the Maihi Karauna has a different vision from the Maihi Māori, a shared vision for te reo Māori has also been confirmed.



More work is required on the effectiveness of current interventions and identifying the types and costs of interventions required to achieve the goals of te Whare o te Reo Mauriora. While the Crown has increased its direct funding for Māori language under Vote Māori Development over the last 15 years, more work is required to determine whether the current level of funding accords with the status of te reo Māori in New Zealand and, if not, what funding is required if we are to achieve the goals of the draft Maihi Karauna.

The recommendations in Chapter 5 also largely related to the form and powers of Te Taura Whiri, several of which relate to aspects that have been built into te Whare o te Reo Mauriora. For example, the Waitangi Tribunal recommended that:

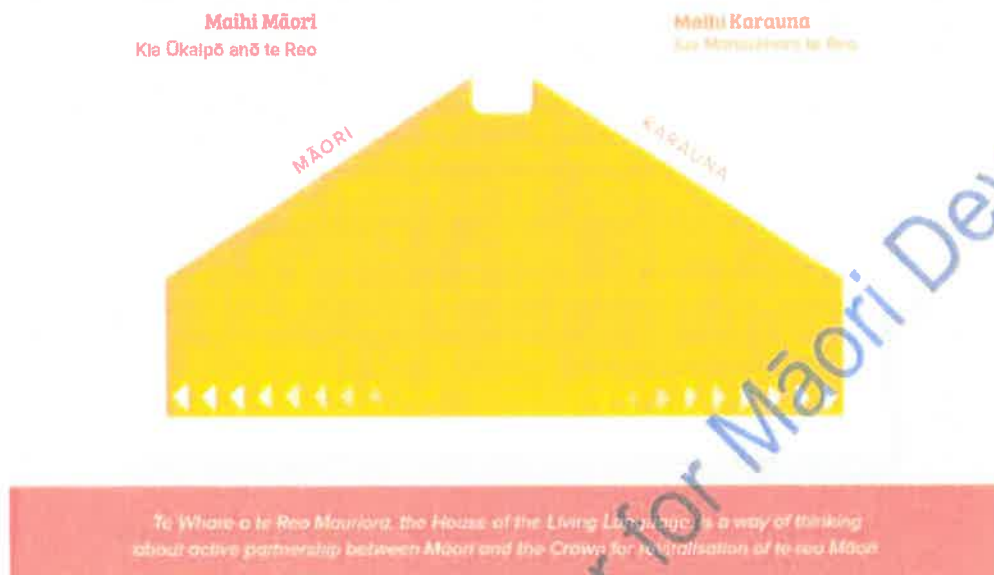
- Te Taura Whiri be made the lead Māori language sector agency
- Te Taura Whiri function as a Crown-Māori partnership through equal appointment of Crown and Māori appointees to its board, with the Māori appointees potentially chosen by an electoral college and the Crown appointees by the Minister of Māori Affairs
- Te Taura Whiri be enabled to offer a dispute-resolution service to kōhanga and kura whānau to ensure that the occasional conflicts that occur disrupt children's learning as little as possible
- Te Taura Whiri monitor the health of te reo Māori carefully and report back to the community on progress every two years.

The establishment of Te Whare o te Reo Mauriora replaces the need for a single lead Māori language sector agency, with responsibilities now shared in the Maihi-partnership model. This partnership extends to Te Taura Whiri, with Te Mātāwai holding the power to nominate three of the five appointments to Te Taura Whiri. Te Mātāwai itself represents iwi and Māori interests in te reo through its 13 members: seven appointed by each of the seven iwi clusters, four by each of the four Te Reo Tūkūtu clusters and two by the Minister of Māori Development on behalf of the Crown.

The Act also confirmed the ongoing role of Te Taura Whiri, including functions that are the same as its role under the Māori Language Act 1987. This includes work to give effect to the status of the Act, promoting the language, providing language services and leading the coordination of the Maihi Karauna strategy. As part of its coordination role, Te Taura Whiri will also be responsible for monitoring the Māori language. Its monitoring and evaluation framework is still to be confirmed by Ministers.

## Kia Mauriora te Reo Kia rere, kia tika, kia māori

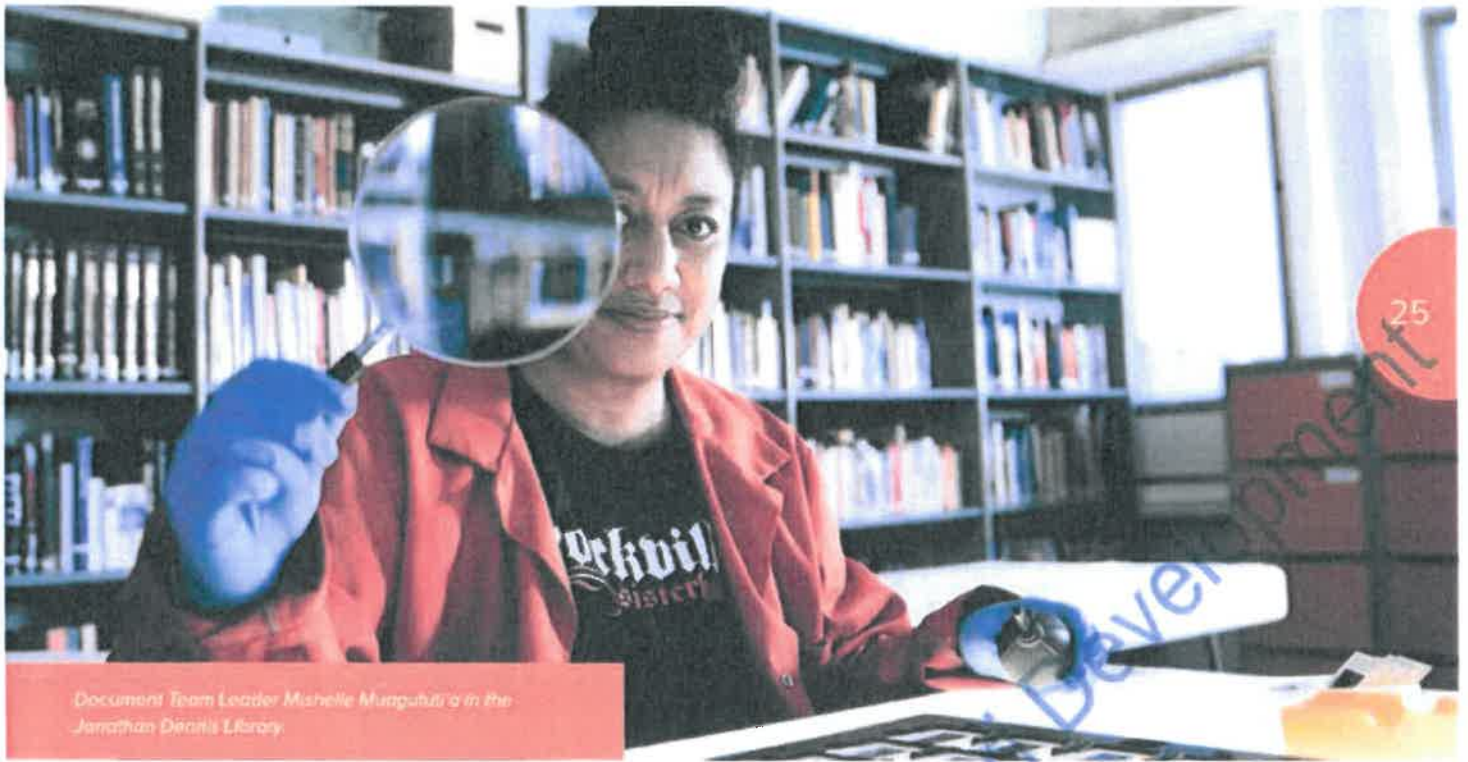
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Under the Act, Te Taura Whiri has identified language planning as a key function of its role leading the coordination of the implementation of the Maihi Karauna, and the ability to require all public sector agencies to develop a language plan is being investigated as part of the work to finalise the Maihi Karauna. This will focus on central government agencies first.

The Ministry of Education published Tau Mai Te Reo (the Māori Language in Education Strategy) in 2013 to ensure there is a connected and cohesive approach to education sector contributions to support and strengthen the Māori language. Tau Mai Te Reo is currently being refreshed and updated as part of the overall Education Work Programme being undertaken by the Ministry of Education. It is expected that this work will be completed in mid-2019.

Released by the Minister for Māori Development



Documents Team Leader Michelle Mungahutu in the Jonathan Dennis Library.

## Chapter 6

### When the Crown Controls Mātauranga Māori

Chapter 6 of the Wai 262 report addresses government policy and practice across a range of agencies that are responsible for the protection, preservation or transmission of mātauranga Māori, which the Waitangi Tribunal considered to be at the heart of the Wai 262 claim. The Tribunal noted that for some government agencies, mātauranga Māori is peripheral to their core business, whereas for other government agencies, mātauranga Māori is at the core of what they do. Some agencies are custodians or owners of mātauranga Māori, others fund it, and others are responsible for the transmission of it. The Tribunal noted that the Crown is often practically in the seat of kaitiaki and considered that obligated it to protect both the mātauranga itself and the interests of kaitiaki in it. The Tribunal considered that the Crown's obligations to protect mātauranga can only be achieved through partnership with Māori, and that neither Māori nor the Crown can succeed in protecting or transmitting mātauranga without the help of the other.

The Waitangi Tribunal's recommendations in Chapter 6 included establishing viable partnership models between Māori and the Crown in the retention and transmission of mātauranga Māori. There were various recommendations concerning culture and heritage agencies; toanga tūru; arts, culture and broadcasting; archives and libraries; education agencies; and research, science and technology agencies:

- The culture and heritage recommendations included that Te Puni Kōkiri and the Ministry for Culture and Heritage take leadership roles to improve coordination and collaboration between themselves over mātauranga Māori and forming a Crown-Māori partnership entity for the culture and heritage sector.



- The taonga tūturu recommendations included Te Papa exploring the next step in the evolving indigenous-settler partnership approach to cultural heritage and making a number of amendments to the Protected Objects regime.
- The arts, culture and broadcasting recommendations included Māori and the Crown using 'The Health of Māori Heritage Arts' research project (2009) to identify future funding priorities and criteria; using Te Puni Kōkiri's comprehensive marae survey to clarify national priorities for marae improvements, indicate what funding is needed to support them and indicate what criteria should operate in assisting funding applications; TVNZ doing more to fulfil its aim of being New Zealand's 'Māori content leader'; and TVNZ and Māori Television cooperating over te reo and mātauranga Māori programming and scheduling.
- The archives and libraries recommendations included imposing some constraint on the commercial use of the mātauranga in documents and images the Crown holds. This included an objection-based approach enabling kaitiaki to seek to prevent the commercial use of their mātauranga unless they have given consent or have been consulted; TVNZ consulting with Māori to produce staff guidelines on handling requests for the use of mātauranga-laden footage from its film and television archive; and Archives New Zealand and the National Library preparing generic guidelines about when it might be appropriate to consult kaitiaki or seek kaitiaki consent for private archives and libraries willing to offer them to users.
- The recommendations for education agencies included establishing a Crown-Māori partnership entity in the education sector and the Ministry of Education developing specific indicators around mātauranga Māori to properly gauge its Māori-focused activities.
- The recommendations for research, science and technology agencies included boosting research capacity and funding the preservation of mātauranga Māori and research that explores the interface between mātauranga and modern applications by creating a Māori purchase agent that would disburse money to researchers; having people on the purchase agent's board with a mix of expertise in mātauranga Māori and science; requiring science sector agencies to give greater prominence to Vision Mātauranga or make mātauranga Māori a strategic priority in its own right.
- The recommendations for Te Puni Kōkiri included protecting and retaining the Māori Potential Fund, requiring its investments to be evaluated by both Māori and the Crown, requiring it to be allocated in partnership with Māori, and establishing a board to allocate the fund comprised equally of Te Puni Kōkiri staff and representatives of the Māori community.

## Progress to date

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

The number of funds administered by Te Puni Kōkiri has grown since the WAI 262 report was published. The Māori Potential Fund has evolved and was restructured into the Māori Development Fund in 2017 to recognise the different opportunities and challenges Māori face across the country. The new approach ensures that the fund is flexible enough to support whānau, hapū, iwi, Māori and communities in achieving their particular aspirations. The fund has a much broader focus than mātauranga in order for the funds to be responsive to the range of aspirations that Māori have, though mātauranga and Te Ao Māori remain inherent to it and other funds administered by Te Puni Kōkiri.

The Māori Development Fund is focused on supporting communities to identify and achieve their aspirations. Investment proposals are developed by Māori entities, and regional Te Puni Kōkiri offices plan their investment priorities in response to the priorities identified by their Māori communities. Through this, Māori directly influence where investments are targeted at a grassroots level, by identifying what their priorities are. Te Puni Kōkiri's relationships with kaitiaki and communities also supports the gathering of real-time feedback, which means that funding adjustments can be made where needed. Māori also directly inform evaluations of how effective investments are by providing feedback and reports on the outcomes achieved, challenges faced, and the difference the funding has made. Any evaluation providers commissioned by Te Puni Kōkiri must demonstrate that they have experience in te ao Māori, and Te Puni Kōkiri publishes evaluation results, as well as information on investments.

Working in partnership with Māori on their priorities at a community level allows investments to be appropriately targeted to where they will make the biggest difference across diverse communities. Outside of the funds it directly administers, Te Puni Kōkiri seeks to influence a partnership approach to investment across government, especially on matters that intersect with mātauranga Māori, and Māori culture and identity.

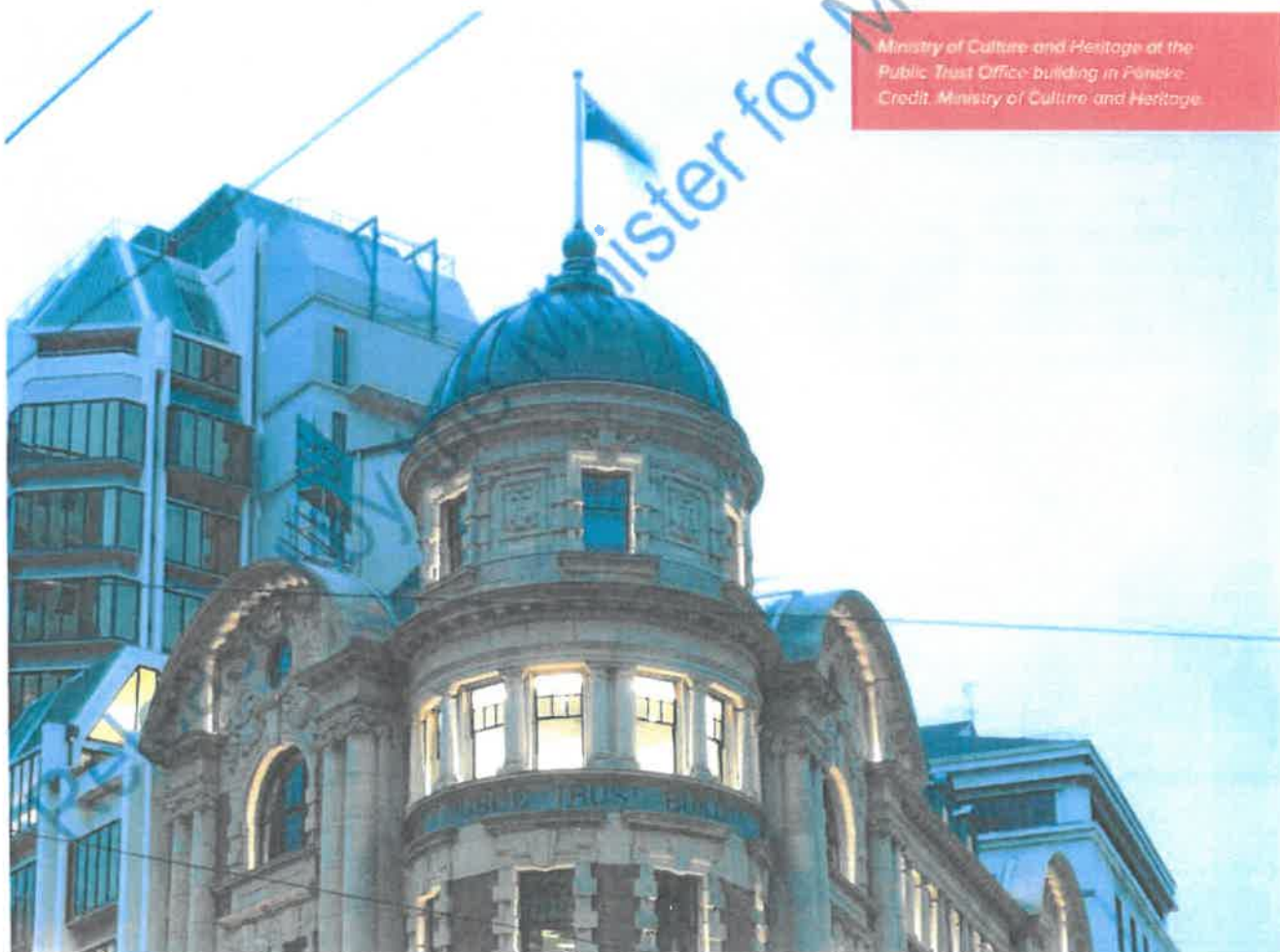
The Ministry for Culture and Heritage administers the Regional Culture and Heritage Fund, which is also accessible to iwi and Māori groups considering establishing whare taonga and performing arts venues.

Te Puni Kōkiri and the Ministry for Culture and Heritage work closely together on a range of Māori policy (eg. the Maihi Karauna), and operational outcomes (eg. Tuia 250). In addition, the Chief Executives of both Te Puni Kōkiri and the Ministry for Culture and Heritage are Crown representatives on the advisory panel for Te Pūtake o Te Riri fund, established in 2017.

The Ministry for Culture and Heritage (MCH) plays an important role in the protection of both tangible and intangible cultural heritage, which embody mātauranga Māori. Some initiatives include:

- *Te Ara Taonga*: a collaborative approach between MCH, DIA, Te Papa and Heritage NZ and Ngā Taonga Sound and Vision to work with iwi involved in the Treaty settlement process to help achieve iwi objectives. MCH enters into relationship agreements with individual iwi through the Treaty settlement process e.g. Te Wairoa.
- *Protected Objects Act 1975*: under this Act there is a process to facilitate iwi ownership of newly found taonga tūturu. MCH has ongoing direct relationships with iwi around the country regarding newly found taonga tūturu and the export of taonga tūturu. In the event that the Crown reviews the Act, MCH would take the opportunity to explore changes to wording of interim custody arrangements, prima facie ownership, export decision making processes, and registered collector requirements.

Ministry of Culture and Heritage at the  
Public Trust Office building in Pōneke.  
Credit: Ministry of Culture and Heritage.





- *Public Websites:* MCH provides a wide range of high quality Māori related content to the public through our websites and are steadily increasing the te reo Māori component (e.g. NZ History & Te Ara the online encyclopaedia). The 28th Māori Battalion and Landmarks websites are examples of projects where MCH work with iwi/Māori, enabling iwi to tell their stories their way. Public resources like Roadside Stores (an audio tour of New Zealand, including important Māori sites) are publically accessible.
- *Te Tai Whakaea Treaty Settlement Stories:* the Ministry for Culture and Heritage has embarked on a national project – *Te Tai Whakaea Treaty Settlement Stories* – to collect, preserve and share the broad and multi-faceted history of Treaty settlements. The Te Tai Whakaea website was launched in November 2018.
- *Tuia 250:* In 2019, New Zealand will mark 250 years since the first meetings between Māori and Europeans during James Cook and the Endeavour's 1769 voyage to Aotearoa New Zealand.
- *Whakaaetanga Tiaki Taonga relationship agreement:* This arrangement was designed by DIA (including the National Library and Archives New Zealand), MCH, Heritage NZ and Te Papa to support the taonga, culture and heritage aspirations of iwi. Through Whakaaetanga Tiaki Taonga agreements, claimant groups are accorded access to mātauranga Māori held within Archives New Zealand and the National Library, and allowed to use and re-use that mātauranga how they see fit.
- *Te Mauri o te Mātauranga:* The National has recently reviewed Te Mauri o te Mātauranga, which is a set of principles for the care and preservation of Māori materials. Te Mauri o te Mātauranga sets out rights statements with regard to the access and use of mātauranga Māori across the Galleries, Libraries, Archives and Museums (GLAM) sector. Also covered in this document are cultural and property rights.
- *Broadcasting, Communications and Digital Media:* One of the policy objectives in the Broadcasting, Communications and Digital Media portfolio is that public media be strengthened so that it better caters for Māori and other under-served audiences. This is a focus of the work of the Ministerial Advisory Group to the Minister of Broadcasting, Communications and Digital Media in its advice on the components of Budget 2019, and, as part of revised terms of reference, on "how Māori and Pacific Peoples' language, culture and perspectives can be better represented across publicly funded media.

Many of the organisations funded through Vote Arts, Culture and Heritage have strong relationships with iwi/Māori and/or strategies and programmes to support their cultural objectives. Examples include:

- *Creative NZ*: a new national Māori Arts Strategy is currently in development following consultation with Māori to understand their aspirations with respect to Ngā Toi Māori, as well as the challenges faced by Māori artists and arts organisations.
- *Te Matatini*: due to increased funding from 2016/17, Te Matatini can now significantly increase Kapa Haka participation, including local communities and schools. Kapa haka is a vehicle for the revitalisation and retention of reo, tikanga, mana, ritual processes and histories as well as creating contemporary performing art.
- *Te Papa Tongarewa*: New Zealand's national museum's Mana Taonga principle and bicultural mandate underpins all its activities. Te Papa (Te Paerangi National Services) works with iwi and Māori groups in many ways (workshops, wānanga, funding, advice and guidance on specific projects). Other examples include the repatriation of human remains from overseas through the Karanga Aotearoa programme, and Te Papa's iwi in residence exhibition programme which gives individual iwi the opportunity to present their taonga and stories in a national forum by working collaboratively with Te Papa to create exhibitions.
- *Heritage New Zealand (HNZPT)*: HNZPT has a long history of support and assistance to iwi and hapū as kaitiaki of their significant places, providing technical advice and expertise including marae-based training and opportunities for practical skills development to enable local people to maintain their places into the future.
- *Ngā Taonga Sound & Vision*: Ngā Taonga's collections provide a treasury of language resources. The organisation works directly with iwi and Māori wishing to surface a range of mātauranga Māori (including dialectal and other language related material). Ngā Taonga projects include digitising and archiving critical legacy collections of Māori language material.



The leaves of the kawakawa plant have a long history of medicinal use. They are still used by many rongoā practitioners.

## Chapter 7

### Rongoā Māori

Chapter 7 examined rongoā Māori, including the Crown's traditional and current approaches to it and its potential contribution to Māori health outcomes. The Tribunal urged the Crown to recognise that rongoā Māori has significant potential as a weapon in the fight to improve Māori health, to see the philosophical importance of holism in Māori health, and to work in genuine partnership with Māori to identify and implement ways of encouraging the health system to expand rongoā services.

The Waitangi Tribunal's recommendations in Chapter 7 included incentivising the health system to expand rongoā services; adequately supporting Te Paepae Matua to play the role of quality-control instead of the Crown; gathering data about the current and potential demand for rongoā services; and the Ministry of Health coordinating with the Department of Conservation on rongoā policy.



## Progress to date

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

- *Te Kāhui Rongoā*: In 2012, the Ministry of Health supported the merger of Ngā Ringa Whakahaere and Te Paepae Matua mo te Rongoā into one national organisation (Te Kāhui Rongoā). Te Kāhui Rongoā is dedicated to sharing, nurturing and protecting traditional healing systems and the Ministry of Health continues to engage with them.
- *Advisor to Minister of Conservation on management of rongoā*: The Ngāa Rauru governance entity has been appointed as advisor to Minister of Conservation on management of rongoā
- *He Korowai Oranga (the Māori Health Strategy)*: In 2014 the Ministry of Health refreshed He Korowai Oranga (the Māori Health Strategy). Rongoā remains a key element of the strategy. Te Ara Tuatahi (one of the pathways for achieving the strategy) specifically mentions the need to develop programmes and interventions that incorporate Māori models of health and wellbeing, rongoā (traditional healing) and innovation.
- *Tikanga ā-Rongoā (Rongoā Tikanga Standards)*: In 2014, following extensive consultation with the sector, the Ministry of Health released Tikanga ā-Rongoā (Rongoā Tikanga Standards) that defines a benchmark of excellence to deliver safe and quality rongoā services. All rongoā providers funded by the MOH are required to adhere to the standards, although any rongoā provider across the sector can adopt the standards voluntarily.
- *Government contracting of Rongoā providers/services*: The Ministry of Health manages 18 rongoā providers with 3-year contracts starting from 1 April 2018 to 31 March 2021. Before these contracts expire the MOH must conduct an open and transparent tender process through the Government Electronic Tender Service. All 18 providers will be eligible to submit proposals for this service. DHBs and Primary Health Organisations (PHOs) can also hold contracts for rongoā services



## Chapter 8

# The Making of International Instruments

Chapter 8 of the Wai 262 report examined the Crown's obligations to engage with Māori during the negotiation and implementation of international instruments. The Waitangi Tribunal found that the Treaty of Waitangi requires Māori interests to be protected to the extent that it is reasonable and practicable in the international circumstances. The degree of protection will depend on the nature and importance of the interest when balanced alongside the interests of other New Zealanders. The Crown must properly inform itself of the scale of any Māori interests, their importance to Māori and the nature and extent of likely impacts on it to determine the degree of priority to be accorded to them. To help determine these questions, the Crown and Māori must always be talking to each other, whether through occasional consultation or something more regular, fixed and permanent.

The Waitangi Tribunal's recommendations in Chapter 8 included amending the 2001 Strategy for Engagement with Māori on International Treaties to include non-binding international instruments; consulting with Te Puni Kōkiri in determining the existence, nature and strength of any Māori interests and the requisite degree of engagement; using existing and new bodies to serve as partnership forums to discuss international instruments; adopting a policy for funding independent Māori engagement in international forums; adopting Crown accountability mechanisms, including regular reporting to Māori organisations and Parliament; including in each National Interest Analysis consideration of whether the instrument has any effect on Treaty rights and interests; considering whether statutory requirements for enforcement are appropriate; and considering reporting on Crown engagement with Māori to relevant bodies or forums.

## Progress to date

The Crown's practice is to consider engagement with Māori for all Government policy including non-binding international instruments. The 2001 Cabinet-mandated Strategy for Engagement with Māori on International Treaties has a specific focus on binding international instruments and places an onus on the lead agency to identify at an early stage, on the basis of consultation with Te Puni Kōkin if necessary, whether there is a need for engagement with Māori.

As part of the Ministry of Foreign Affairs and Trade's internal and overarching Māori Engagement Strategy, approved for implementation in December 2017, the Ministry is strengthening its implementation of the 2001 Strategy for Engagement with Māori on International Treaties. This work is also informed through a regular schedule of engagement with Māori interest groups. At the same time, the Ministry of Foreign Affairs and Trade is developing tools to improve its engagement with Māori across the range of its activities. This will apply more generally for any activity that the Ministry of Foreign Affairs and Trade is contemplating undertaking, so will include non-binding instruments.

The Ministry of Foreign Affairs and Trade is also strengthening its capability to identify Māori interests, assess the nature and strength of that interest and the degree of engagement required in respect of treaties for which it is the lead agency. In addition, the Ministry of Foreign Affairs and Trade consults closely with agency partners, most particularly Te Puni Kōkiri but also the Ministry for Business, Innovation and Employment, the Māori Crown Relations: Te Arawhiti office, New Zealand Trade and Enterprise, the Ministry for the Environment and others.

The Ministry of Foreign Affairs and Trade provides regular opportunities for Māori to discuss trade policy and issues of interest to Māori either face-to-face through dedicated hui or smaller meetings, and in writing. Information on how the Ministry engages with Māori on trade agreements is maintained on the Ministry of Foreign Affairs and Trade website along with information on recent and upcoming events.<sup>14</sup> The Ministry also engages directly with a range of Māori bodies to discuss international instruments including Iwi Chairs, Urban Māori Authorities, Māori Peak Business Groups such as the Federation of Māori Authorities (FOMA) and WAI 2522 counsel and claimants (Wai 2552 is the Tribunal claim concerning the Trans-Pacific Partnership Agreement). The Ministry is also broadening its engagement to include other Māori interest groups, particularly those working at the whānau and hapū level.

Every six months, the Ministry of Foreign Affairs and Trade sends Iwi and other Māori organisations a report on treaties currently under negotiation or consideration to ensure that Māori are, wherever possible, kept informed of developments in the government's participation in international legal framework. The list includes Iwi organisations, for which contact details are provided by

<sup>14</sup> See <https://www.mfat.govt.nz/en/> for more information



Te Puni Kōkiri, and Māori organisations and other groups such as WAI 2522 claimants who also wish to receive this information

Departments are required to inform the Ministry of Foreign Affairs and Trade of all negotiations in which they are involved. This is done through New Zealand Treaties Online, a dedicated website established to provide more detailed information on international instruments to which New Zealand is party, or in the process of negotiating, concluding or ratifying. National Interest Analyses are required to specify the economic, social, cultural and environmental effects of a proposed treaty action, which in practice includes any Treaty of Waitangi considerations.

The Crown also reports to a large range of international bodies as part of its obligations under various international instruments. These reporting mechanisms, as well as attendance at related meetings, involve regular international scrutiny of the Crown's engagement with Māori. Recent examples include:

- International Covenant on Economic, Social and Cultural Rights (ICESR)
  - New Zealand's most recent examination took place in March 2018
  - New Zealand responded to the United Nations interest in our consultation with stakeholders, particularly Māori interest in the elaboration, negotiation and ratification of trade agreements.
- The Universal Periodic Review (UPR)
  - The UPR is a state-to-state mechanism that reviews the human rights situation in all United Nations member states.
  - New Zealand's national report was submitted to the United Nations in October 2018 and is scheduled for review in January 2019. It discusses progress and challenges in respect of Indigenous rights in New Zealand. Māori engaged in the public consultation process that informed the drafting of the report. The draft report was released online for public feedback in mid-2018.

### Appendix 3: Previous Wai 262 governance arrangements

Before the Waitangi Tribunal released the Wai 262 Report in 2011, Cabinet established three groups to manage the Crown's initial response and develop a whole-of-government policy response for the medium and long term [DOM Min (10) 10/2; Cab Min (10) 24/5 refer]. These were:

#### **A Ministerial group**

Chaired by the former Attorney-General (who was also the Minister for Treaty of Waitangi Negotiations).

Others in the Ministerial Group included the Ministers of: Economic Development; Energy and Resources (and the Associate Minister of Energy and Resources); Justice; Commerce; Environment; Agriculture; Forestry; Biosecurity; Foreign Affairs; Trade; Māori Development; and Conservation.

#### **A group of senior officials to provide oversight of the government's response**

Consisted of Te Puni Kōkiri (TPK), the Ministry for Business Innovation and Employment (MBIE)<sup>1</sup>, Department of Conservation (DOC), Ministry of Justice, Ministry for the Environment, Ministry for Culture and Heritage, Ministry for Primary Industries<sup>2</sup>, and the Ministry of Foreign Affairs and Trade.

#### **A secretariat**

Established and led by TPK, together with MBIE and DOC and other responsible agencies as necessary to develop the government's policy response

<sup>1</sup> The officials were from the former Ministry of Economic Development, which became MBIE in 2012.

<sup>2</sup> These officials were from the Ministry of Agriculture and Forestry, which became the Ministry for Primary Industries in 2012.

## Appendix 4: Relationship between Wai 262 and other government work

### *Work related to Focus Area 1: Taonga Works and Mātauranga Māori*

- **Copyright Act review:** The Ministry of Business, Innovation and Employment (MBIE) released an issues paper in November 2018 as part of its review of the Copyright Act 1994. Given the significant overlap between copyright works and taonga works,<sup>3</sup> a section of the issues paper focuses on the Wai 262 recommendations on taonga works. The issues paper proposes launching a new work stream on taonga works alongside the Copyright Act review.
- **Haka Ka Mate Attribution Act review:** *Ka Mate* is one of the most well-known examples of a taonga work. The Haka Ka Mate Attribution Act 2014 requires people publishing *Ka Mate* or broadcasting or commercialising a film of *Ka Mate*, to clearly state that Ngāti Toa chief Te Rauparaha was its composer. Section 12 of the Act requires the Crown to review the Act after 22 April 2019 to consider whether *Ka Mate* is sufficiently protected by the Act “and any other relevant enactment or policy of the Crown”. This wording was negotiated in anticipation that the Crown would provide more generic protections for taonga works in response to the Wai 262 report.
- **Data and Digital Ministers group work:** The Data and Digital Ministers group is working with Statistics New Zealand to co-design an initiative called Māori data governance – a process to ensure te ao Māori views are incorporated by co-designing a Māori data governance approach for the official data system in partnership with iwi. The process will be jointly led by Statistics New Zealand and the Data Iwi Leaders Group. Archives New Zealand is also participating in this work with respect to government information management and its standards for creation, maintenance and disposal of information. Specific outputs and users will be determined through the co-design process due to begin in early 2019. This work overlaps with chapter 6 of the Wai 262 report (when the Crown holds mātauranga Māori) and shows how incorporating Wai 262 principles could contribute to New Zealand’s digital and data settings.
- **National Archival and Library Institutions (NALI) Ministerial Group:** The Minister of Internal Affairs and the Associate Minister for Arts, Culture and Heritage are considering structural options for the National Library and Archives New Zealand. Part of this work involves considering how to strengthen the Treaty partnership relationship between these institutions and Māori to ensure proactive decision-making about access and use of mātauranga Māori. The findings and recommendations in Chapter 6 of

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<sup>3</sup> Taonga works are traditional artistic and cultural expressions of mātauranga Māori like songs, stories, carvings, drawings, designs and haka etc. Copyright works are creative works like songs, stories, sculptures, drawings, designs and movies etc. There is a large body of works that are both taonga works and copyright works so any review of copyright necessarily affects the treatment of taonga works.



the Wai 262 report (when the Crown holds mātauranga Māori) has implications for this work.

- ***The Government Digital Strategy:*** The Government Chief Digital Officer, based in the Department of Internal Affairs, is developing the Government Digital Strategy (GDS). The GDS has a vision of All New Zealanders thriving in the digital age, and aims to enable Government to respond to rapid societal and economic changes in the digital age. Digital inclusion, including by Māori is a critical aspect of the GDS, and there is a commitment within the draft strategy that the GDS will embody Te Tiriti o Waitangi/Treaty of Waitangi principles. This includes ensuring that tangata whenua have input into decisions relating to digital inclusion and are involved in all levels of this work. The findings and recommendations in Chapter 6 of the Wai 262 report (When the Crown Controls Mātauranga Māori).
- ***Review of the Te Ture Mō Te Reo Māori Act 2016:*** Chapter 5 of the Wai 262 report made a number of recommendations on te reo Māori. The review of the Te Ture Mō Te Reo Māori Act 2016 and maihi karauna take a different approach to that recommended by the Waitangi Tribunal. I have confidence in the Crown's approach on te reo but we should front foot any questions about the extent to which we have departed from the approach recommended in the Wai 262 report and why we have done so.

***Work related to Focus Area 2: Taonga Species and Mātauranga Māori***

- ***Comprehensive review of the resource management system:*** The Minister for the Environment has signalled that a comprehensive review of the resource management system will begin in 2019. The review scope is still being worked through, but the review will provide an opportunity for fundamental system changes to support a more productive, sustainable and inclusive economy, and also contribute to a strengthened Māori-Crown relationship. Chapter 3 of the Wai 262 report focussed on the kaitiaki relationship with the environment and how this is addressed under New Zealand's resource management laws, and the Tribunal made recommendations on Resource Management Act reform.
- ***Response to the Supreme Court's decision in Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation:*** This decision concerned how DOC must consider Treaty principles when allocating commercial opportunities on public conservation lands (the case related to commercial guiding concessions on Rangitoto and Motutapu Islands). The decision reinforces the strength of section 4 in the statutory scheme of the Conservation Act, and therefore affects all aspects of DOC's work. There is considerable overlap between the decision and the Waitangi Tribunal's recommendations on the conservation estate in chapter 4 of the Wai 262 report.
- ***Plant Variety Rights Act review:*** MBIE released an issues paper in September 2018 as part of its review of the Plant Variety Rights Act 1987.

Part 4 of the issues paper sets out in detail the Wai 262 recommendations on plant variety rights and signals the Crown's intention to address them as part of the review. New Zealand has an obligation to reform the Plant Variety Rights Act under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

- *Disclosure of origin requirement:* The Wai 262 report recommended that people applying for patents be required to disclose the origin of any genetic material or traditional knowledge used in the development of their claimed invention. MBIE released a discussion document in September 2018 consulting on whether the Government should introduce a disclosure of origin requirement.
- *National Policy Statement for Indigenous Biodiversity (NPSIB):* Through my work as Associate Minister for the Environment, I have been delivered recommendations by the stakeholder-led Biodiversity Collaborative Group for a draft NPSIB and complementary measures. Officials are further analysing the recommendations, and I expect to publicly consult on a draft NPSIB in 2019. An NPSIB would direct regional and district councils on managing biodiversity under the Resource Management Act 1991 (RMA). The draft NPSIB delivered by the collaborative group includes useful direction for councils to involve tangata whenua in biodiversity management decisions, incorporate mātauranga Māori and identifying and protecting taonga. Additionally one of the complementary measures recommended by the collaborative group is to take account of the Wai 262 report in the review of biodiversity/conservation legislation and strategy.
- *Biodiversity strategy:* The Department of Conservation (DOC) is developing a new national Biodiversity Strategy. They are leading a consultation process that includes early engagement with iwi and hapū to understand their visions and aspirations for indigenous biodiversity. The new Strategy will recognise the unique relationship between mana whenua and nature, as well as the importance of mātauranga Māori [ENV-18-SUB-0039]. The Wai 262 report will be considered as part of the work programme. The Strategy implements New Zealand's commitments under the Convention on Biological Diversity, which includes a need to respect, preserve and maintain knowledge, innovations and practices of indigenous peoples embodying lifestyles relevant for the conservation and sustainable use of biological diversity.
- *Biodiversity Beyond National Jurisdictions:* New Zealand is participating in the negotiation of a new international treaty on marine biodiversity. One of the issues in the negotiations is whether there should be an international regime for marine genetic resources accessed in the high seas. Since a number of taonga species with significance to Māori are also highly migratory, and since unsustainable use of high seas marine biodiversity can impact on biodiversity within national jurisdiction, the New Zealand government's approach to negotiations is mindful of its obligations to its Treaty partner including relevant Wai 262

recommendations. Pacific Islands Forum members – including New Zealand – have also emphasised the relevance of traditional knowledge of indigenous people to the new treaty.

- ***Convention on Biological Diversity and the Nagoya Protocol:*** DOC, MBIE and Te Puni Kōkiri are currently preparing advice to inform a ministerial discussion on bioprospecting, whether further work is required in this area, and, if yes, which portfolio this work should fall under. Developing a bioprospecting policy was one of the key findings of chapter 2 of the Wai 262 report.
- ***Kaupapa Inquiry – Wai 2575:*** The Health Services and Outcomes Kaupapa Inquiry (Wai 2575) will hear all claims concerning grievances relating to health services and outcomes which are of national significance. A number of claims have been submitted to this inquiry concerning the visibility and role of rongoā Māori in New Zealand's primary health care system. Stage one of the inquiry, which is currently underway, is a discrete and targeted inquiry into the legislative and policy framework of the primary healthcare system. Although the claims regarding rongoā Māori are not at the centre of this stage of the inquiry, each claim has been granted varying degrees of participation. It is therefore expected the final report of the inquiry will include implications for rongoā Māori services and more broadly for the role and extent of mātauranga Māori in health policy and the delivery of health services. Rongoā Māori was the subject of chapter 7 of the Wai 262 report.

#### ***Work related to Focus Area 3: International Indigenous Matters***

- ***Trade for All:*** The Ministry of Foreign Affairs and Trade has been engaging with Māori as part of its Trade for All agenda. The Crown's failure to respond to the Wai 262 report has been an issue that Māori have frequently raised in the engagements. The Wai 262 report made a number of recommendations to improve the Crown's treaty-making procedures, including on how to engage with Māori.
- ***United Nations Permanent Forum on Indigenous Issues:*** Ministry of Foreign Affairs and Trade and Te Puni Kōkiri officials engage annually in the Permanent Forum as part of the government's international engagement on indigenous rights issues. The theme at this year's Permanent Forum is traditional knowledge. As mentioned above, mātauranga Māori and the Crown's obligation to protect it is one of the central themes of the Wai 262 report.
- ***The European Union / New Zealand Free Trade Agreement negotiations:*** During scoping discussions, the European Union agreed to explore issues related to genetic resources (including taonga species), traditional knowledge (mātauranga Māori) and folklore (taonga works) in the negotiations.
- ***Work stream on the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration):*** Cabinet has recently agreed to



initiate a process to develop a national plan of action, strategy or other measure on New Zealand's progress towards the objectives of the Declaration [MCR-19-MIN-0003; CAB-19-MIN-0077 refer]. This plan is expected to reflect the government priorities for Māori wellbeing and development. I intend for the plan to be developed through engagement with technical experts on indigenous and human rights, followed by a broader conversation with Māori in late 2019.

- *The World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)*: The IGC was established in 2000 to consider how the international intellectual property system can better protect the intellectual property of indigenous peoples. It is seeking to negotiate three legal instruments: one on genetic resources (e.g. taonga species); one on traditional cultural expressions (e.g. taonga works) and one on traditional knowledge (e.g., mātauranga Māori). There is significant overlap between IGC's work and the findings and recommendations of chapters 1 and 2 of the Wai 262 report. Although New Zealand is considered a leader in this area by many states in the negotiations, our ability to lead has been hampered by a lack of domestic traction on Wai 262 issues. New Zealand may be required to take a formal position on the genetic resources text (focusing on 'disclosure of origin' in patent applications) in the next biennium of the IGC's work. MBIE consulted on this issue in 2018 (see bullet point above under Focus 2 work streams). A Cabinet negotiating mandate will be sought for the IGC in 2019.