The WAI-262 Taonga Claim
The Claim

Six original claimants Ngāti Kuri, Ngāti Wai, Te Rarawa, Ngāti Porou, Ngāti Kahungunu and Ngāti Koata who asserted that the Crown:

• Failed to actively protect the exercise of *tino rangatiratanga* and *kaitiakitanga* by the claimants over indigenous flora and fauna and other *taonga*, and also over *mātauranga Māori* (Māori traditional knowledge);

• Failed to protect the *taonga* itself;

• Usurped *tino rangatiratanga* and *kaitiakitanga* of Māori in respect of flora and fauna and other *taonga* through the development of policy and the enactment of legislation; and

• Breached the Treaty of Waitangi by agreeing to various international agreements and obligations that affect indigenous flora and fauna and intellectual property rights and rights to other *taonga*.

• *Te Waka Kai Ora* joined as Claimants
WAI 262 Claim

• Who ‘owns’ and control Maori culture?
• Should Maori have proprietary rights over indigenous flora and fauna?
• Does the Crown have an obligation to actively protect *taonga* Maori from misappropriation?
• Do Maori have a right of veto over the use of *taonga* Maori?
It includes all native species in New Zealand. It includes Maori arts and designs. It includes traditional knowledge, plants, medicines. It raises concerns in opposition to genetic tampering with the DNA structures of native flora and fauna in the sense that Maori have a particular whakapapa or genealogical relationship with the native flora and fauna that is not being respected or understood by science, and scientists, and the experiments that are taking place. (Maui Solomon, April 2001)
Misappropriation of Maori culture
Offensive use of Maori iconography
Inappropriate use – no attribution or benefit sharing
Trademark laws that prevent Maori from using Maori language terms
Indigenous Flora & Fauna
Access, sustainable use, equitable sharing of benefits

Land & resources alienation
Biodiversity loss
Commodification of nature
Influence of intellectual property

Iwi Territories
↓
Landscapes, Marine
↓
Ecosystems
↓
Species
↓
Varieties
↓
Genetic resources
1991 Claim lodged
1998 Hearings begin
2001 Other evidence
2006 Statement Of Issues and 2nd round of hearings
2007 End of Hearings
2011 Ko Aotearoa Tenei

Twenty years to complete the Tribunal process
Only one of the six original claimants still alive
Ko Aotearoa Tenei

• 1  Intellectual Property in Taonga works
• 2  Genetic & Biological Resources of Taonga Species
• 3  Relationship with the Environment
• 4  Taonga and the Conservation Estate
• 5  Te Reo Maori
• 6  When the Crown controls Matauranga Maori
• 7  Rongoa Maori
• 8  The Making of International Instruments
WAI 262 – new definitions

- **Taonga species** “Flora and fauna significant to the culture or identity of Maori iwi”

- **Taonga works** “artistic and cultural works significant to the culture and identity of Maori iwi or hapu – because there is a body of inherited knowledge related to them – they invoke ancestors and the iwi or hapu is obliged to act as their kaitiaki.”

- **Taonga derived works** “have a Maori element to them, but that element is generalised or adapted, and is combined with other non-Maori influences.”
The Treaty entitles kaitiaki relationships with taonga species to a reasonable degree of protection...also entitles Maori to a reasonable degree of control over tk relating to taonga species BUT IT DOES NOT ENTITLE KAITIAKI TO OWNERSHIP OF TAONGA SPECIES, OR A VETO OVER USES OF IP IN THOSE SPECIES IN ALL CASES
Maori are not ‘the other’

• First whole of Government enquiry
• Crown must stop seeing itself as pakeha and English speaking and Maori as ‘the other’
• Crown has often acted in a hostile way towards matauranga Maori issues
• Treaty principles must be read collectively
The Crown’s right to govern

• The Crown has the right to govern and to represent NZ globally

• *Kaitiaki* interests

• *Rangatiratanga* interests

• Sliding scale of how Maori interests are applied on a case by case basis
Both Treaty partners

• Cannot continue doing business as usual
• Long overdue for a more sophisticated Treaty partnership
If those relationships [with taonga] are strong, then Māori culture and identity are strong; and if Māori culture and identity are strong, then New Zealand culture and identity are strong.”
Intellectual Property in Taonga Works – Chapter One

• New commission to hear objections to commercial uses of intellectual property such as the *haka*.

• Register of cultural works such as *haka* and *moteatea* etc. so *kaitiaki* can be identified

• System should allow anyone to object to derogatory or offensive public uses of taonga works, taonga derived & related knowledge

• Kaitiaki to object to commercial uses or proposed commercial uses of taonga works and related knowledge that do not have their consent
While the RMA originally promised considerable protection for kaitiaki interests in mātauranga Māori [Māori traditional knowledge] and taonga Māori, it has failed to deliver on that promise.”
What are Kaitiaki interests?

• The Tribunal suggests three basic levels of protection that might be applicable to kaitiaki relationships:

1. Full decision-making authority in the hands of the kaitiaki;

•

2. Partnership with the Crown (not merely Maori input, but genuinely shared decision-making), and;

•

3. Influence over decisions that affect the kaitiaki relationship.
Amendments to HSNO to give greater weight to kaitiaki interests in GMO decisions

Wildlife Act to be amended to give Maori and Crown shared management of protected species – no one owns wildlife

decisions about bioprospecting in areas under DOC control be made jointly by the department and tangata whenua.
“Protecting taonga species and mātauranga Māori [Māori traditional knowledge] aids the survival of Māori culture itself. That is why...these things are important enough to justify protection in law.”

Changes to the RMA Act to enhance role of Iwi Resource Management Plans and to remove unnecessary obstacles to the delegation of decision-making powers to, and establishment of partnerships with Iwi
TAONGA AND THE CONSERVATION ESTATE – CHAPTER FOUR
Maori and the conservation estate

• “For Māori, [this is about]... the survival of their own identity. Without the mātauranga Māori [Māori traditional knowledge] that lives in the DOC estate, kaitiakitanga is lost. Without kaitiakitanga, Māori are themselves lost.”
Ko Aotearoa Tenei

Percentage of Māori land

- Māori Freehold Land
- All Other Land

North Island
South Island
Total New Zealand
Biodiversity Loss

• All of NZ’s native frog species are threatened.
• 5 out of 6 NZ bat species are endangered because of predation & loss of the large trees they require as roosts.
• 2,420 species threatened
• 180 species on brink of extinction
Tongariro National Park

• The Tongariro World Heritage National Park was the first park in the world to be created by a gift of land by an indigenous people.

• 1993 Tongariro National Park became the first World Heritage site to be added to the World Heritage list for its associative cultural values. The park is now of only 23 sites in the world with dual World Heritage status.
When the Crown controls Matauranga Maori – Chapter Six

“New forms of partnership should be established for the education, science, and culture and heritage sectors.”
Chapter Six

When the Crown Controls Matauranga Maori

“... there are some Crown agencies for which mātauranga Māori is very much core business. Working in education, the arts, culture, heritage, broadcasting, science, and archives and libraries, these agencies engage with mātauranga Māori in a variety of ways. Some are its custodians, some its owners; others fund it, while others again are responsible for transmitting it. As such the Crown is practically in the seat of kaitiaki [cultural guardians].”
KAITIAKI relationship with *taonga* legitimately sold or willingly transferred

RANGATIRATANGA relationship when *taonga* lost or wrongfully taken or items newly discovered

Partnership discussions should be around USE rather than ACCESS

Mataatua wharenui
Conclusions

- Material held in Crown archives and libraries includes a large amount of matauranga Maori and regardless of how it came into the Crown’s possession, Maori have a strong Treaty based interest in it.
- Nevertheless, important reasons to maintain relatively free public access and especially Maori public access. [p.540]
- Manage use through objection-based approach
- Access for private research remains free
- Users plan to exploit for commercial gain, consult or seek consent of kaitiaki
- In terms of balancing interests of others, No other interests can override the unextinguished rangatiratanga interest in taonga that have been wrongfully acquired
Antiquities Act
Taonga tuturu be identified by those culturally competent NOT by MCH
50 yrs old to be antiquity

Te Papa explore next step in evolving indigenous settler partnerships approach to cultural heritage [p513]

Protected Objects Act
Best practice guidelines for private collectors willing to involve kaitiaki
Prima facie ownership by Crown
Exempt kaitiaki who reacquire taonga
Matauranga Maori

• The Tribunal’s core recommendation was for the establishment of viable partnerships to support mātauranga Māori.
• “New forms of partnership should be established for the education, science, and culture and heritage sectors.
• These partnerships should provide for shared decision-making about objectives for mātauranga Maori and, wherever possible, shared action. They should ensure (among other things) that appropriate priority is accorded to mātauranga Māori when balanced alongside other Crown priorities, and that Crown agencies act in a coordinated fashion in developing mātauranga policies.”
Chapter Two

Genetic & Biological Resources of Taonga Species
Establishment of a Maori Advisory Cttee for Commissioners of Patents & PVR inventions derived from Maori TK or use taonga species

Power to refuse patents that unduly interfere with the relationships between kaitiaki and taonga

Legal requirements for applicants to disclose Maori TK, and the source and country of origin of any genetic or biological materials
“...The received wisdom is that the revival of te reo over the last 25 years is nothing short of a miracle. There is an element of truth in that. But the notion is that te reo is making steady forward progress, particularly amongst the young, is manifestly false.”
Te Reo Maori

• The Crown provide programmes – including Māori-medium education – that are highly focused and effective, and appropriately resourced.
• And it must abandon the mindset that it is Pākehā and English-speaking, and instead acknowledge that it represents Māori too. When Māori engage with the state they should be able to do so in te reo Māori if they choose.
• The Tribunal has recommended reforms, centred around an expanded role and powers for Te Taura Whiri. Te Taura Whiri should take the lead role in the Crown’s responsibility for Māori language revival. Its board should have equal representation from the Crown and Māori so it can function as a partnership.
• TTW should have powers to require public sector agencies to produce Māori language plans, and to approve those plans.
• Regional public sector organisations should consult iwi when preparing their language plans. TTW should also have powers to set targets for training of te reo teachers, approve education curricula for te reo, and otherwise hold public sector agencies accountable for their responsibilities towards the language.
Need to promote more widely the benefits of rongoa Maori
It is time for the Crown to stress the positive benefits of rongoā, particularly to combat the ongoing crisis in Māori health.”

- recognising that rongoā has significant potential as a weapon in the fight to improve Māori health;
- identifying and implementing ways to encourage the health system to expand rongoā services (for example by requiring primary healthcare organisations servicing a significant Māori population to offer rongoā clinics);
- adequately supporting the national rongoā organisation Te Paepae Matua to play a quality-control role in relation to rongoā; and
- gathering data about the extent of current Māori use of rongoā services and likely ongoing demand.
The Making of International Instruments

“...indigenous rights and the role of the indigenous voice in international forums are areas where NZ should be leading the world.”
Making of international instruments

- amend the Strategy for Engagement with Māori on International Treaties to require engagement over both binding and non-binding instruments, and to provide for engagement beyond consultation where appropriate to the nature and strength of the Māori interest

- identify relevant Māori bodies which could serve as partnership forums for discussion about international instruments, and create partnership bodies where they do not exist

- adopt a policy, following negotiation with Māori interests, for funding independent Māori engagement in international forums

- that the Crown put in place accountability mechanisms, including regular reporting about Crown actions relating to international instruments to iwi and Māori organisations, and to Parliament’s Māori Affairs Select Committee;

and

- that the National Interest Analysis carried out when Parliament considers international instruments includes consideration of any effect on Treaty rights and interests.
It’s taken twenty years to get to a Waitangi Tribunal Report

How many of the recommendations will the Crown accept?

How long will it take to implement the Tribunal’s recommendations?