

# RAUIKA MĀNGAI

## A WAI 262 BEST PRACTICE GUIDE FOR SCIENCE PARTNERSHIPS WITH KAITIAKI FOR RESEARCH INVOLVING TAONGA

LESSONS FROM MĀORI VOICES IN THE  
NEW ZEALAND SCIENCE SECTOR

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# HE MIHI | ACKNOWLEDGEMENTS

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## Ngā mihi

He mihi ngākau pono mai i ngā kaituhi ki te hunga ārahi whakaaro, ki ngā mātanga toa i māhorahora te tuku mai i te wā, i te ngoi kia whakapuaki mai i ō rātou mātauranga, i ō rātou wheako ki a mātou mō te kerēme Wai 262. Kei te whakapeto ngoi ēnei mātanga, ēnei whānau hei whakarite, hei atawhai i te māra haumako o te mātauranga rētō, o te mahi whakaute hei nōhanga, hei akoranga mā ngā kaipūtaiao, rangatahi mai, pakeke mai. E kotahi ana mātou ki tō rātou wawata mō te pūnaha pūtaiao rangahau, auahatanga hoki he mea urupare, he mea haepapa, hei reira ō tātou kaipūtaiao, ō tātou whakahaere rangahau e mārāma ana ki tō rātou kawenga tiaki i runga i te whakaute, e whakatinana ana hoki i tērā, ina mahi ana ki ngā taonga Māori, ki ngā kaitiaki kei a rātou te kawenga hei tuarā i te mauri o aua taonga. Ko tēnei Aratohu ko tā mātou tautoko hei whakakaha i tō rātou reo, i te kaupapa e hapahapai ana rātou ki roto tonu i te rāngai.

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We also acknowledge the claimant descendants and their representative rōpū Te Taumata Whakapūmau whom are the kaitiaki who uphold the mana and the mauri of the claim and its future pathway.

We appreciate our partnership with the National Science Challenge community to enable the Rauika Māngai to undertake its work, as well as the relationship and support we received from MBIE to produce this Guide.

# KUPU TAKAMUA

Ko 'te mana whakahaere Māori mō ngā mea Māori' te kī ka tino rangona e tika ana tana whakamārama i te kerēme o Wai 262. Kua 31 tau ināianei te noho a te kerēme kei waenganui i a tātou, ā, ki ngā tini kairangahau Māori, ki ngā tini kaipūtaiao Māori, ā, ki ētahi atu hoki ehara i te Māori, kua noho hei haepapatanga tiaki matatika te mahi i runga i ngā āhuratanga ka whakarewa i a Wai 262 ki te rangahau pūtaiao me te auahatanga hoki (RSI). E mōhio ana ahau ehara tēnei i te ara māmā, ā, he nui ngā wā ka hiahia te 'mahi kawenga rearua' hei whakaako i ētahi atu. He nui ngā wā ka whakahaeretia tēnei mahi ki ngā horopaki ā-hanganga kua hangaia i runga i ngā ariā mātauranga, i ngā pou tarāwaho rawa ā-hinengaro Hauāuru ka whakakore i ngā motika o mua o te mana whakahaere Māori mō ngā mea Māori - nō reira he mahi haere tonu, he mahi waiwai hoki tēnei hei whakaako, hei whakangungu, hei whakapiki i te māramatanga o te katoa i roto i te pūnaha pūtaiao hei whakarite kia noho a Wai 262 kei te ngako o te whakamahi i te pūtaiao, i te rangahau ki Aotearoa.

Ka tukuna e tēnei aratohu paerewa kounga mahi mō Wai 262 tētahi tūāpapa mō te āhua o te mahi tahi ki ngā hapori Māori i te pūtaiao, i te rangahau hoki. Pērā i tā ngā kaikōrero whakatairanga ake i te raupapa wānanga ā-ipurangi Wai 262 a Rauika Māngai i te tau 2021, ehara ēnei āhua mahi i te mea whiriwhiri. Otirā, ka noho hoki ngā mahi pērā ki roto i te horopaki whānui ā-ao o te whakamana i ngā motika o mua o ngā Iwi Taketake, pērā i te whakatakotoranga ki te United Nation's Declaration on the Rights of Indigenous Peoples me te Mataatua Declaration.

Ko te whāinga o te raupapa wānanga ā-ipurangi,

ā, o tēnei aratohu anō hoki, ko te āwhina kia whakatakoto i tēnei tūāpapa mai i te tirohanga takitini Māori. E tino hāngai ana tēnei i tēnei wā e neke haere ana te rāngai rangahau, pūtaiao, auahatanga hoki ki te wā huringa nui tuatahi mō te neke atu i te rua tekau tau. He wā tēnei o te tūmanako, nā te tuku ara a te huringa kia whakarerekē i ngā tautuhinga hanganga ki te pūnaha pūtaiao, me te whakahoki i te tono takitini kaha mai i a ngāi Māori puta noa i te pūnaha kia neke atu ki tētahi atu pūnaha e ārahina ana e te Tiriti, e hangaia ana i runga i ngā ngātahitanga ū, i te māramatanga hoki.

He pānga toro tawhiti ā te kerēme Wai 262 puta noa i te pūnaha RSI. Ka tonoa e te kerēme ngā kaipūtaiao, ngā kairangahau Māori, ehara i te Māori hoki: kia whai mōhiohio, kia mārama hoki ki ngā tuatinitanga o te kerēme ake; kia whakawhanake i ngā hononga whakaute ki ngā kaitiaki, kei reira e tautīneitia ai te ārahitanga o ngā kaitiaki i ngā āhuratanga ā-taonga o ngā kaupapa pūtaiao; kia neke atu i ngā tūranga ārahitanga hei whakarite i te ārahi-ngātahitanga whakawhiti atu i ngā āhuratanga katoa o ngā kaupapa pūtaiao kāore he taonga o roto; kia hoahoa kaupapa ngātahi ki ngā kaitiaki; kia whakawhanake i ngā hononga tauutuutu, toha huanga hoki ki ngā kaitiaki ka hanga ai i te raukaha, i te āheinga; ā, kia whakawhanake i te māramatanga ā-ahurea hōhonu mō te āhua o te noho 'hei manuhiri pai, hei kaimanaaki pai hoki' me ngā paenga koropungapunga i waenganui i ēnei.

Ko tā te Rauika Māngai mahi i ngā wā katoa ko te mahi mō ngā tūmanako Māori takitini whānui ake, ko te whakatairanga i ngā tikanga mahi hou, ā, ko te rapu i ngā ara pai ake mō ngāi Māori ki te

pūtaiao, ki te rangahau. E āki ana mātou i a koe kia toha atu i tēnei aratohu, ā, kia waia koe ki ngā huatau mō te mahi ki ngā āhua ka whakatairanga i a Wai 262. Ko tā mātou karere matua ko tēnei, e pā ana tēnei ki ngā hononga, arā: te hanga i ngā hononga ū i runga i te whakawhirinaki ki ngā hapori Māori kei ō rātou wāhi; me te hiranga o te toha, o te tuku rānei i te mana, i ngā rauemi ki aua hononga kia whakaahei i ngā hapori Māori kia ū ki ā rātou kawenga hei kaitiaki, kia tū hoki hei kaiwhakarite panonitanga hohe.

Ki ngā tini kaipūtaiao, kairangahau hoki i whakangungutia ki te whare mātauranga Hauāuru, he wero pea te whakaterere i ēnei wai – inarā ko tā ngā pūnaha, ko tā ngā whakangungu mātauranga, kua hangaia i runga i ngā momo hanganga mātauranga Hauāuru, he whakanui i te whakatutukinga takitahi ki runga ake i te toha takitini i ngā huanga. He wete-ako, he pure ihomatua auau te mahi me whai e tātou i whakangungutia ki te whare mātauranga Hauāuru. E tūmanako ana mātou he rauemi āwhina tēnei aratohu i taua haerenga.

Ko te kōrero whakamutunga, mō te Rauika Māngai e whakahua ana mātou i te ngākau reka ki a rātou i whai wāhi ki te raupapa Wānanga ā-Ipurangi Wai 262: ki a Aroha Te Pareake Mead rātou ko Sheridan Waitai; ko Tākuta Meika Foster; ko Tākuta Melanie Mark-Shadbolt; ko Tākuta Pauline Harris; ko Josh Te Kani i whakahaere i ngā kōrero. Kei te mihi hoki mātou ki a Tākuta Helen Potter hei kaituhi o tēnei aratohu, ki a Melanie Nelson hei kaiwhakamāori, ki a Aroha Te Pareake Mead hoki nāna i tuku te whakahoki kōrero arotake ā-hoa, nāna hoki i tautoko i te Rauika Māngai kia tū māia ki te wāhi o Wai 262, kia rerekē te whakamahi i te pūtaiao, i te rangahau ki Aotearoa.

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Tākuta Jessica Hutchings  
*Heamana o Mua o Rauika Māngai (2018-2021)*



# FOREWORD

‘Māori control of Māori things’ is the often-used catch cry which aptly describes the Wai 262 claim. The claim has now been with us for 31 years and for many Māori researchers and scientists, and some non-Māori too, it has been an ethical duty of care to work in ways that elevate Wai 262 in research science and innovation (RSI). I acknowledge that this is not an easy road and often requires ‘double duty labour’ to educate others. More often than not, this work is undertaken in structural settings predicated on Western epistemologies and intellectual property frameworks that erase the prior rights of Māori control of Māori things - hence it is ongoing and critical work to educate, upskill and raise the consciousness of all in the science system to ensure that Wai 262 is at the heart of the practice of science and research in Aotearoa.

This best practice guide on Wai 262 provides a baseline for how scientists and researchers can best work with Māori communities. As amplified by the speakers at the 2021 Rauika Māngai Wai 262 webinar series, these ways of working are not negotiable. Indeed, such practices also sit within a wider international context of the recognition of the prior rights of Indigenous Peoples, as outlined in the United Nation’s Declaration on the Rights of Indigenous Peoples and the Mataatua Declaration. The aim of the webinar series, and this guide, is to contribute to laying out this ground from a collective Māori standpoint. This is particularly relevant as the research, science and innovation sector moves towards significant reform for the first time in over two decades. This is a time of hope, as the

reform provides an opportunity to adjust the structural settings in the science system, and respond to the strong collective call from Māori across the system to transition to one which is Tiriti-led and predicated on enduring partnerships and understanding.

The Wai 262 claim has far-reaching implications across the RSI system. The claim asks scientists and researchers, both Māori and non-Māori, to: be informed and understand the complexities of the claim itself; to develop respectful relationships with kaitiaki, where kaitiaki leadership of taonga aspects of science projects is upheld; to move aside from leadership roles to ensure co-leadership across all aspects of science projects that do not involve taonga; to co-design projects with kaitiaki; to develop reciprocal and benefit sharing relationships with kaitiaki that build capacity and capability; and to develop a deep cultural understanding of how to be a ‘good guest and a good host’ as well as the porous boundaries between these standpoints.


The approach of the Rauika Māngai is always to work on behalf of wider, collective Māori aspirations, to uplift new practice, and to seek better pathways for Māori in science and research. We encourage you to share this guide, and to become familiar with the suggestions for working in ways that elevate Wai 262. Our key message is that this is about relationships: the building of enduring relationships of trust with Māori communities at place; and the importance of sharing or relinquishing power and resources in those relationships to enable Māori communities to hold to their roles as kaitiaki and be active agents of change.



For many scientists and researchers trained in the Western academy, it can be a challenge to navigate through these waters – especially when academic systems and training, based on Western forms of knowledge construction, reward individual achievement over and above collective benefit sharing. There is continual unlearning and decolonising that those of us trained in the Western academy must pursue. We hope this guide is a helpful resource on that journey.

Finally, on behalf of the Rauika Māngai we express our deep gratitude to those who participated in the Wai 262 Webinar series: Aroha Te Pareake Mead; Sheridan Waitai; Dr Meika Foster; Dr Melanie Mark-Shadbolt; Dr Pauline Harris; and Josh Te Kani who facilitated the kōrero. We also acknowledge Dr

Helen Potter as the writer of this guide, Melanie Nelson for te reo Māori translation work, and Aroha Te Pareake Mead who provided peer review feedback and who has supported the Rauika Māngai to be bold in the space of Wai 262 and doing science and research differently in Aotearoa.



Dr Jessica Hutchings  
*Former Chair Rauika Māngai (2018-2021)*



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# INTRODUCTION

The Wai 262 claim has significant implications for the research, science and innovation sector, and for scientists whose research involves working with taonga such as species of indigenous flora and fauna and mātauranga Māori. Despite this, there is often uncertainty about what these implications are and how they might be given effect in the way research is conducted and in the policies and protocols that shape and guide it. This has been compounded by a lack of direction from the Crown in the funding agreements it has with science research collaborations and institutions.<sup>1</sup>

In response to this, the Rauika Māngai hosted two webinars on the Wai 262 claim on 21 and 27 July 2021, where experienced Māori scientists and researchers shared their insights and learnings in relation to the claim.<sup>2</sup> These have been drawn together to produce this best practice guide, the purpose of which is to provide greater clarity about what the Wai 262 claim means for science research and to assist scientists in improving their research practices when working with taonga. The guide has also been informed by kōrero shared at the Wai 262 Kia Whakapūmau Online Symposium convened by the original Wai 262 claimants'

representative rōpū, Te Taumata Whakapūmau, on 19 July 2021.<sup>3</sup> As with the recent publication, *Pūtahitanga*,<sup>4</sup> the guide also builds upon and continues the dialogue started in *A Guide to Vision Mātauranga* about a Te Tiriti-led approach to science research and what that looks like in action.<sup>5</sup>

The essence of the Wai 262 claim is captured simply but eloquently in the catch cry used by Saana Murray, one of the six original claimants: 'Māori control of Māori things'.<sup>6</sup> A key implication of this is that best practice for scientists in working with taonga is centred around developing Te Tiriti-based research partnerships with the kaitiaki of those taonga – hence the title and focus of this guide.

Section one of this guide provides an overview of the Wai 262 claim, from the issues that led the six original claimants to lodge the claim with the Waitangi Tribunal through to the current time, where the Crown is finally turning to consider how it will respond to the issues raised and the recommendations made within the Waitangi Tribunal's report, *Ko Aotearoa Tēnei*.<sup>7</sup> Section two details the best practice guidelines for scientists when working to develop partnerships and partnership projects with the kaitiaki of taonga.

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<sup>1</sup> Hutchings, J. (2021). Panel presentation, webinar on the history and impacts of Wai 262, 21 July 2021.

<sup>2</sup> See [www.rauikamangai.co.nz/resources/](http://www.rauikamangai.co.nz/resources/).

<sup>3</sup> See [www.wai262.nz/symposium](http://www.wai262.nz/symposium).

<sup>4</sup> Kukutai, T., McIntosh, T., Boulton, A., Durie, M., Foster, M., Hutchings, J., Mark-Shadbolt, M., Moewaka Barnes, H., Moko-Mead, T., Paine, S-J., Pitama, S., & Ruru, J. (2021). *Te pūtahitanga: a Tiriti-led science policy approach for Aotearoa New Zealand*. Auckland: Ngā Pae o te Māramatanga.

<sup>5</sup> Rauika Māngai. (2020). *A guide to Vision Mātauranga: lessons from Māori voices in the New Zealand science sector*. Wellington, NZ: Rauika Māngai.

<sup>6</sup> Solomon, M. (2018). Keynote presentation at Ngā Taonga Tuku Iho conference, 17 September 2018

<sup>7</sup> Waitangi Tribunal. (2011). *Ko Aotearoa tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity*. Wellington: Waitangi Tribunal.

As the Crown is turning to consider its response to the Wai 262 claim, Te Taumata Whakapūmau is mobilising whānau, hapū and iwi to move the claim forward. Further pressure for change is also being generated by the increasing visibility of Māori leadership in the research, science and innovation sector and their expectations of a Te Tiriti-based sector. And most recently, the Crown has begun a process to review the sector and explore how it can best honour its Te Tiriti obligations to Māori – including those raised in the Wai 262 claim.<sup>8</sup>

There are broader signals of change too. In 2020, the Crown passed the Public Service Act which requires the public service to actively support the Crown in its relationship with Māori under Te Tiriti o Waitangi.<sup>9</sup> Notably, the Crown has also turned to consider how it might implement the United Nation's Declaration on the Rights of Indigenous Peoples (UNDRIP), commissioning *He Puapua*, a report which maps out a 20-year roadmap for constitutional change in line with Te Tiriti.<sup>10</sup>

Underpinning this Wai 262 best practice guide then is necessarily Te Tiriti o Waitangi, and particularly Article 2 and its affirmation of the exercise of tino rangatiratanga by Māori collectives in relation to all their taonga which the Crown guaranteed to uphold. Further affirming the ongoing exercise of tino rangatiratanga in relation to taonga is the Mataatua Declaration on the Cultural and

Intellectual Property Rights of Indigenous Peoples developed in 1993, and Article 31 of the UNDRIP which the Crown agreed to support in 2010. Article 31 specifically recognises the right of Indigenous Peoples to maintain, control, protect and develop their taonga, and for those rights to be protected by States.<sup>11</sup>

The time to reshape science research practices in relation to taonga has never been more opportune.

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<sup>8</sup> Ministry of Business, Employment and Innovation. (2021). *Te ara paerangi: future pathways green paper*. Wellington: Ministry of Business, Education and Innovation.

<sup>9</sup> *Public Service Act 2020*, Section 14.

<sup>10</sup> Charters, C., Kingdon-Bebb, K., Olsen, T., Ormsby, W., Owen, E., Pryor, J., Ruru, J., Solomon, N., and Williams, G. (2019). *He puapua: report of the working group on a plan to realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand*. Wellington: Te Puni Kōkiri, pp 10-11.

<sup>11</sup> Te Tiriti o Waitangi (in te reo Māori and in English), the Mataatua Declaration and the UNDRIP can be viewed on the Rauika Māngai website at [www.rauikamangai.co.nz/resources/](http://www.rauikamangai.co.nz/resources/).

# EXECUTIVE SUMMARY

The overview of the Wai 262 claim in section one is summarised below as a set of interconnected principles. These principles uphold the Wai 262 claimants' vision of 'Māori control of Māori things' and underpin best practice, where best practice research involving taonga is predicated on the development of Tiriti-based partnerships between scientists and the kaitiaki of those taonga, and on scientists working both under and alongside kaitiaki leadership.

These best practice principles are:

## KOTAHITANGA

→ ✓  
The importance of developing shared understandings that honour Te Tiriti o Waitangi and which build respect for and understanding of the Wai 262 claim and claimant aspirations.

## KAITIAKITANGA

→ ✓  
Recognition of Māori as kaitiaki of indigenous flora and fauna, mātauranga Māori and the mātauranga continuum through whakapapa, who nurture and protect these taonga for future generations.

## TINO RANGATIRATANGA

→ ✓  
Recognition that kaitiakitanga is underpinned by the authority of Māori to control access to taonga and determine how they can be used and developed and for what purpose.

## WHANAUNGATANGA

→ ✓  
Developing strong, respectful, reciprocal relationships and collaborations with kaitiaki to expand the mātauranga continuum and share knowledge.

## KIA TŪPATO

→ ✓  
The need to take care and take things slowly when building relationships; the need for caution when working with taonga and making sure mandates and consents are in place before proceeding.



## ŪKAIPŌTANGA

Recognition of Māori as the first beneficiaries of mātauranga Māori and expansion of the mātauranga continuum.

## MANAAKITANGA

The importance of ensuring that the mana of all who are involved in a project is respected and uplifted; exercising care for people and being a good host and manuhiri.

## TE REO MĀORI

Taking care to use te reo Māori respectfully, including pronunciation and developing an understanding of the meanings of keywords, phrases and values used in one's work.

## PŪKENGATANGA

Pursuing excellence, and continually engaging in learning to improve practices and policies that enhance recognition and protection of the tino rangatiratanga of Māori and the relationships between kaitiaki and taonga.

Section two outlines and illustrates 10 best practices guidelines to assist scientists in how to work together with kaitiaki to put the best practice principles into action, and develop enduring partnerships and mutually-productive projects.

These best practice guidelines are:

### BE INFORMED:

The Wai 262 claim has highlighted the need for scientists to be aware of and informed about the issues related to working with taonga. This can be gained by developing an understanding of and respect for the issues raised in the claim – and particularly by becoming familiar with those aspects of the claim relevant to one's work.

### DEVELOP RESPECTFUL RELATIONSHIPS WITH KAITIAKI:

Any intention to work with taonga necessitates developing strong, genuine and respectful relationships with the kaitiaki of those taonga – before, during and after projects are completed – and where the boundaries set by kaitiaki to protect their tino rangatiratanga and kaitiakitanga are respected.

## **KAITIAKI LEADERSHIP OF THE TAONGA ASPECTS OF SCIENCE PROJECTS:**

Leadership by kaitiaki ensures they have the authority to exercise their kaitiakitanga in relation to taonga, which has benefits for both research partners. It enables kaitiaki to control access to and use of their taonga, to protect their relationships with taonga and protect the taonga themselves. For scientists, it provides a sense of security that the risks involved in working with taonga will be well-managed and that they are fulfilling their Te Tiriti obligations to kaitiaki by protecting the right of kaitiaki to tino rangatiratanga.

## **CO-LEADERSHIP ACROSS ALL ASPECTS OF SCIENCE PROJECTS THAT DO NOT INVOLVE TAONGA:**

All aspects of projects that don't involve taonga lie in the 'joint sphere', where issues of mutual concern are co-led and where decision making is shared.

## **CO-DESIGN PROJECTS WITH KAITIAKI:**

Co-design extends from the design of research ideas and questions, to the design of taonga-protection plans and protocols, and the design of research plans which are inclusive of te ao Māori expertise such as kaupapa Māori methodologies, methods, measures of excellence and kaitiaki community mātauranga Māori experts and expertise.

## **ENSURE RECIPROCITY AND BENEFIT-SHARING WITH KAITIAKI:**

A partnership approach is exemplified by research that is reciprocal and which prioritises the development of new knowledge that is beneficial to kaitiaki research partners.

## **BUILD THE RESEARCH CAPACITY AND CAPABILITY OF KAITIAKI:**

Alongside benefits from the creation of new knowledge, a key benefit for kaitiaki is where engagement in partnership projects assists them in building their own research capacity and capability.

## **RESPECT AND CARE FOR THE PEOPLE YOU WORK WITH:**

Engagement in research and creating new knowledge should be an uplifting experience for all involved – project team members and kaitiaki communities alike.

## **RESPECTFUL USE OF TE REO MĀORI:**

Taking care with pronunciation of people's names, the names of taonga and other words and phrases being used, and taking the time to learn the meanings of the key words, phrases and values used in ones work.

## **ONGOING LEARNING, UPSKILLING AND POLICY DEVELOPMENT TO BUILD BEST PRACTICE:**

Building best practice research partnerships with kaitiaki is supported by ongoing learning, upskilling and policy development across the project teams and research programmes of National Science Challenges and of research institutions and organisations, and putting those learnings into action.

# SECTION ONE



# WAI 262



The Wai 262 claim was lodged with the Waitangi Tribunal on 9 October 1991 by six claimants from six different iwi: Del Wihongi (Te Rarawa); Haana (Saana) Murray (Ngāti Kuri); John Hippolite (Ngāti Koata); Tama Poata (Te Whānau-a-Ruataupare, Ngāti Porou); Kataraina Rimene (Ngāti Kahungunu); and Witi McMath (Ngāti Wai), with the assistance of lawyer Moana Jackson (Ngāti Kahungunu, Ngāti Porou).<sup>12</sup>

The claim is revolutionary for a number of reasons. It was the first claim laid by Māori from a number of different iwi, and the first ‘whole-of-government’ claim bringing together a large number of kaupapa relating to breaches of Te Tiriti o Waitangi from across more than 20 Crown ministries into a single claim – making it one of the most comprehensive, complex and wide-reaching claims the Waitangi Tribunal has considered to date. It was also the first claim to explicitly frame the issues it raised about intellectual property rights, indigenous flora and fauna and other taonga in constitutional terms; that restoring the tino rangatiratanga of iwi in relation to taonga requires restoring Crown recognition of the tino rangatiratanga of iwi as a constitutional authority.<sup>13</sup>

*“The claim has been called many things – the flora and fauna claim, the intellectual property rights claim and also the wairua claim, the mauri claim, the whakapapa claim, the tino rangatiratanga claim and the mana motuhake claim. But it’s essentially the aroha claim – because the vision is so big, it will require a huge amount of aroha to see it through.”* Sheridan Waitai<sup>14</sup>

This section outlines the background to the Wai 262 claim and how it came to be, the substance of the claim itself, and the concurrent developments that were happening internationally regarding the protection of the

rights of Indigenous People. It then gives an overview of the Waitangi Tribunal’s report, *Ko Aotearoa Tēnei*, released 20 years later, focusing on the findings relevant to scientists working with indigenous flora and fauna and mātauranga Māori. It also gives a short background to and overview of the Ngā Taonga Tuku Iho conference and communique developed from the conference, followed by an outline of the Crown’s first official response to the claim, *Te Pae Tawhiti*. The section ends with a kōrero about Te Taumata Whakapūmau, the original Wai 262 claimants’ representative rōpū, and the work they are doing to uphold the mauri of the claim, share it as a living legacy with whānau, hapū and iwi, and fulfil the vision of ‘Māori control of Māori things’.

## BACKGROUND TO THE WAI 262 CLAIM

The issue which initially brought the claimants together was the Crown’s presumption of the right to undertake scientific research on indigenous plants and commercialise them without any prior discussion or consent being sought from Māori.

This came to the fore following the passage of the Plant Varieties Act 1987, which enabled commercial plant breeders to gain proprietary rights to new varieties of plant species. Most species targeted for research and commercialisation were indigenous plants which raised significant concerns about the ongoing ability of hapū and iwi to exercise tino rangatiratanga in relation to them and use the mātauranga created from them – such as in the preparation of rongoā.<sup>15</sup> The following year, at a 1988 ethnobotany conference in Christchurch, Del Wihongi learned that the Crown had given

<sup>12</sup> Wai 262 claim, cover page.

<sup>13</sup> Jackson, M. (2021). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021.

<sup>14</sup> Waitai, S. (2021a). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021.

<sup>15</sup> Sutherland, O., Parsons, M., Jackson, M., and whānau of claimants (2011). *The background to Wai 262*, [https://weebly.com/uploads/7/4/6/3/7463762/the\\_background\\_to\\_wai\\_262.pdf](https://weebly.com/uploads/7/4/6/3/7463762/the_background_to_wai_262.pdf); Jackson, M. (2021). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021.

the seeds of different varieties of ancient kūmara species brought by Māori from Hawaiki to a research institute in Japan.<sup>16</sup> This raised further concerns about the conservation of indigenous plants, the protection of mātauranga related to their use, the exclusion of Māori from research processes and from the benefits of commercialisation and the failure to consult with Māori about any of it.<sup>17</sup>

In the face of these concerns, John Hippolite and scientists, Oliver Sutherland and Murray Parsons (Ngāti Kahungunu), met with lawyer Moana Jackson in March 1989 to discuss ways of protecting indigenous flora, their genetic material and the traditional knowledge associated with them.<sup>18</sup> The idea to lodge a claim with the Waitangi Tribunal was agreed to at that meeting, and a group of six claimants comprised of friends and fellow activists who shared these concerns was formed. Subsequent discussions drew together the particular concerns and decades-long work of the six claimants which led to the claim being broadened to include both indigenous flora and fauna, and an explicit focus on constitutional issues. Because of this, the vision of the Wai 262 claim for Māori to reclaim tino rangatiratanga didn't begin in 1989 but has its roots in the 1960s, when Māori started challenging the Crown and local bodies about the policies, practices and laws that had stripped that authority and control away.<sup>19</sup>

For example, Saana Murray, had spent many years challenging the Crown about land confiscations and the creation of reserves and protected species such as pūpū harakeke (flax

snail) which had denied Ngāti Kuri access to species of indigenous flora and fauna used as seasonal sources of kai, and for rongoā and weaving. For weavers such as Saana, Crown restrictions on the harvesting of pīngao, kiekie, hoihere, raupō and kākaho threatened the survival of their skills and knowledge, their ability to care for and conserve the plants they used and their ability to continue to derive a steady income from the sale of their weaving. Similarly, John Hippolite had been a long-time land rights campaigner, whose activism included challenging the Crown's acquisition of Takapourewa (Stephens Island) from Ngāti Koata as a reserve for tuatara and its assumption of the right to manage them. Witi McMath too had spent years challenging the Crown's confiscation of Hauturu (Little Barrier Island), and the forced eviction of Ngāti Wai to turn it into a reserve for tuatara. Through his work in the trade union movement, Tama Poata established the Māori Organisation on Human Rights in the late 1960s, spending decades actively pursuing tino rangatiratanga issues and supporting these land rights claims of his friends and comrades. Del Wihongi too had spent decades working to uphold the mana of He Whakaputanga o te Rangatiratanga o Nu Tirenī, the 1835 Declaration of Independence. She also brought a considerable body of mātauranga relevant to the claim passed to her by her grandfather, tohunga Toki Pangari, where the restoration of rangatiratanga and kaitiakitanga was critical to ensuring future generations would continue to benefit from such knowledge.<sup>20</sup>

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<sup>16</sup> Poata, T. (2012). *Poata: seeing beyond the horizon*. Wellington: Steele Roberts, pp.233-234.

<sup>17</sup> Sutherland et al, 2011.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

## MAKING THE WAI 262 CLAIM

The basis of the Wai 262 claim is that the Crown wrongfully assumes its right to govern means it can make decisions about nearly every aspect of Māori people's lives, and of particular concern to the claimants, about those aspects relating to taonga.<sup>21</sup>

### THE ORIGINAL CLAIM, 1991

In the original claim, lodged in 1991, the claimants assert that consistent with the tino rangatiratanga recognised in Article 2 of Te Tiriti o Waitangi 1840, iwi hold all rights relating to the protection, control, conservation, management, treatment, propagation, sale, dispersal, utilisation and restrictions on the use and transmission of the knowledge of indigenous flora and fauna and the genetic resources contained within them.<sup>22</sup> Because of the absolute nature of those rights, they state that all past and present Crown actions or omissions, or actions or omissions on behalf of the Crown, involved in developing policies and practices and enacting laws in relation to indigenous flora and fauna, are a denial of the tino rangatiratanga of iwi and are in breach of Te Tiriti o Waitangi.<sup>23</sup> Further, the claimants state that such actions and omissions have not just been a denial of tino rangatiratanga but have also divested iwi of their rangatiratanga and deprived them of the rights to exercise it in relation to the indigenous flora and fauna within and upon their whenua and kāinga.<sup>24</sup>

The claim organises the denial and deprivation of tino rangatiratanga into four broad areas of breaches of Te Tiriti.<sup>25</sup>

These are:

- The right to development, where iwi have been excluded from the right to develop new cultivars from indigenous flora and determine the intellectual property rights in relation to them;
- The right to preserve and protect species, where this right has been inadequately replaced or usurped by Crown management and 'protection' strategies which have been made without Māori and which have prohibited or restricted Māori access to indigenous flora and fauna;
- The right to the use and dispersal of species, where this right has been usurped by the Crown through permitting the trade, collection and export of indigenous flora and fauna, including by scientific and commercial parties; and
- The right to cultural and spiritual concepts, where Māori have been denied access to species of indigenous flora and fauna in their rohe which has denied Māori the ability to express or make use of the especial cultural and spiritual values associated with them.

The effect for Māori of these breaches has been the dispossession of major spiritual, cultural, scientific and economic resources.<sup>26</sup>

Claimants illustrated the ways in which this dispossession has and continues to occur through detailed reference to four specific species of flora (kūmara, pōhutukawa, koromiko and puawānanga), species of forest timbers and other indigenous flora, and three species of fauna (pūpū harakeke, tuatara and kererū).<sup>27</sup> Each of the species has been significantly affected by colonisation, where the

<sup>21</sup> Mead, A. (2021). Panel presentation, webinar on the history and impacts of Wai 262, 21 July 2021.

<sup>22</sup> Wai 262 claim, p 2.

<sup>23</sup> Ibid., pp 2-3.

<sup>24</sup> Ibid., p 5.

<sup>25</sup> Ibid., pp 6-7

<sup>26</sup> Ibid., p 5.

<sup>27</sup> Ibid., pp 9-28.



dispossession of Māori and the struggle to survive as a people has meant the ability to act as kaitiaki and exercise tino rangatiratanga in relation to them has likewise suffered, and where all bar the tuatara have been diminished by extensive land clearance and habitat destruction.

Further examples of the Crown's breaches relating to these species include:

- **Kūmara:** the collection of varieties of kūmara and later disposing of them to Japan, and without ensuring seed stock remained in New Zealand;
- **Pōhutukawa:** the granting of a Plant Variety Right (PVR) for a variety of pōhutukawa (Var. 195 'Carousel');
- **Koromiko:** permitting the sale, export and exploitation of koromiko in domestic and international markets; including permitting its transfer to research institutions to produce new ornamental cultivars;
- **Puawānanga:** permitting commercial and scientific exploitation of puawānanga, including its genetic modification to produce a more commercially attractive cultivar;
- **Indigenous forest species:** the sale and exploitation of indigenous timbers;
- **Other indigenous flora species:** permitting experimentation of at least 23 other species of indigenous flora by international interests;
- **Pūpū harakeke:** designating the habitat of the pūpū harakeke as a scientific reserve and the snails as a protected species under the Wildlife Act, denying Ngāti Kuri access;
- **Tuatara:** the compulsory acquisition of some of the island habitats of tuatara and gazetted them as reserve and wildlife sanctuaries, and

designating tuatara as a protected species under the Wildlife Act, denying Ngāti Koata and Ngāti Wai access; and permitting the export of Tuatara for scientific or military purposes; and

- **Kererū:** designating the habitat of kererū as scientific reserves and protected areas and the birds as a protected species under numerous Acts including the Wildlife Act, denying iwi access.

To remedy the Crown's dismissal of tino rangatiratanga and ensure the survival of a Māori way life for future generations, the claim calls for Crown acknowledgement and recognition of the tino rangatiratanga of iwi as defined by tūpuna, as represented in tikanga, as reaffirmed in He Whakaputanga and as recognised in Te Tiriti o Waitangi – and as part of that recognition, for control of indigenous flora and fauna to be returned to iwi.<sup>28</sup>

### THE AMENDED CLAIM, 1993

Following the lodging of the claim with the Waitangi Tribunal and ahead of the first round of hearings in 1998, the claimants filed an amended statement of claim due to further Crown breaches of Te Tiriti. These breaches included the Crown's support of the updated General Agreement on Tariff and Trade (GATT 1994), the World Trade Organisation and the Agreement on Trade-Related Aspects of International Property Rights, and the subsequent proposed legislative changes to give them effect. Not only were the international agreements signed up to without prior discussion with and consent from Māori, the legislative changes required to give them effect would further diminish the ability of Māori to exercise rangatiratanga and kaitiakitanga in relation to indigenous flora and fauna – and

<sup>28</sup> Ibid., p 28.

indeed any taonga. The comprehensiveness of what these international agreements cover meant that the claim was amended to become equally comprehensive.<sup>29</sup>

As a result, the claim now encompasses all taonga where 'taonga' is defined as all the elements of an iwi estate, material and non-material, tangible and intangible. Alongside indigenous flora and fauna, this includes but is not limited to: mātauranga; whakairo; wāhi tapu; biodiversity; genetics; Māori symbols and designs and their use and development; and associated indigenous, cultural and customary heritage rights in relation to such taonga.<sup>30</sup>

### ADDITIONAL CLAIMANTS, 2006

During the second round of hearings in 2006, two new claimants were admitted by the Waitangi Tribunal. One was the Wairoa-Waikaremoana Māori Trust Board, which lodged concerns about the pollution of waterways with organochlorine pesticides and the resulting harmful effects on taonga – and also on the health of tangata whenua through the consumption of contaminated food sources, particularly fish. The second was Te Waka Kai Ora, the National Māori Organics Authority, which lodged concerns about the effects of a proposed Australia–New Zealand Therapeutic Products Agreement (ANZTPA) on rongoā Māori. They too lodged concerns about the use of organochlorine pesticides.<sup>31</sup>

Aroha Te Pareake Mead has developed a useful summary of the claim, highlighting the key points of concern raised by the claimants:<sup>32</sup>

- That the Crown has failed to actively protect the ability of Māori to exercise tino rangatiratanga and kaitiakitanga in relation to indigenous flora and fauna, mātauranga Māori and other taonga;
- That the Crown has failed to protect taonga;
- That the Crown has usurped the tino rangatiratanga and kaitiakitanga of Māori in relation to taonga through the development of policy and the enactment of laws; and
- That the Crown has entered into international trade agreements and obligations which further impact on taonga.

## CONCURRENT INTERNATIONAL DEVELOPMENTS

The myriad of issues that claimants were grappling with which led to the Wai 262 claim were not isolated concerns. As neoliberalism took hold across the globe from the 1980s, facilitated by regional and international trade agreements, Indigenous Peoples around the world were similarly grappling with how to protect their taonga from exploration, privatisation and exploitation by scientific and commercial interests.

### UNITED NATION'S DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

In 1982, the United Nations Economic and Social Council established the Working Group on Indigenous Peoples to draft international standards for the protection of the rights of Indigenous Peoples across the world, and in 1985, the Working Group began drafting what would become the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). As outlined by Moana Jackson, who was a member of the Working Group and Chair of its Indigenous Caucus, many of the discussions during the drafting of the Declaration were about intellectual property rights and the right to protect

<sup>29</sup> Wai 262 claim, amended statement of claim, 10 September 1997, pp 1-2.

<sup>30</sup> Ibid., p 1.

<sup>31</sup> Waitangi Tribunal, 2011, p 8.

<sup>32</sup> Mead, 2021.

indigenous species. This meant that when the claimants responded to the Crown’s Plant Variety Rights Act and began to draw together the issues for their claim three years later in 1988, it was part of a wider international Indigenous response to what was happening to the taonga of Indigenous Peoples.<sup>33</sup>

As also outlined by Moana Jackson, much of the discussion that took place between Indigenous Peoples during the drafting of the Declaration often centred around the notion of sovereignty; that the right to protect and care for taonga is part of holding and exercising sovereignty.<sup>34</sup> Reflecting these discussions, the Articles in the finalised text of the Declaration which deal with the rights of Indigenous Peoples in relation to land-based taonga,<sup>35</sup> all relate to the UNDRIP’s core Article on the right of Indigenous Peoples to self-determination.<sup>36</sup> The Wai 262 claim similarly framed the issues it raised within a broader constitutional context, where recognition of the tino rangatiratanga of iwi in relation to taonga is part of recognising the tino rangatiratanga of iwi as a constitutional sphere of authority.<sup>37</sup>

**“As with the Declaration’s core Article on the rights of Indigenous Peoples to self-determination, the Wai 262 claim similarly framed the issues it raised within a broader constitutional context, where recognition of the tino rangatiratanga of iwi in relation to taonga is part of recognising the tino rangatiratanga of iwi as a constitutional sphere of authority.”**

**– Moana Jackson**<sup>38</sup>

These parallels with the UNDRIP have helped reinforce the significance of the Wai 262 claim and the international scope of what it envisages – and have also drawn in critical interest and support for the claim from other Indigenous Peoples.<sup>39</sup>

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<sup>33</sup> Jackson, 2021.

<sup>34</sup> Ibid.

<sup>35</sup> See for example, Articles 25, 26, 27 and 29, *United Nations Declaration on the Rights of Indigenous Peoples*, 2007.

<sup>36</sup> Ibid., Article 3.

<sup>37</sup> Jackson, 2021.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

## MATAATUA DECLARATION ON THE CULTURAL AND INTELLECTUAL PROPERTY RIGHTS OF INDIGENOUS PEOPLES

The inadequacy of existing mechanisms to protect the cultural and intellectual property rights of Indigenous Peoples led to the development of the Mataatua Declaration in 1993. As outlined below, it was developed by Indigenous Peoples and very much sits alongside the Wai 262 claim in its intents.<sup>40</sup>

Following requests from Indigenous Peoples, the United Nations proclaimed 1993 as the International Year for the World's Indigenous People. In recognition of the Year, the nine iwi of the Mātaatua waka in the Bay of Plenty region convened the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples in Whakatāne in June of that year. At this conference, the 150 plus attendees from around the Indigenous world developed and passed the Mataatua Declaration on the Cultural and Intellectual Property Rights of Indigenous Peoples.

The Declaration's preamble includes an affirmation of Indigenous Peoples' right to self-determination, their exclusive ownership of their cultural and intellectual

property, and that their knowledge is of benefit to all. It recognises that Indigenous Peoples are capable of managing their own knowledge, and clarifies that the sharing of such knowledge is conditional on the protection of their right to define and control that knowledge. It also insists that the first beneficiaries of Indigenous knowledge (cultural and intellectual property rights) must be the direct Indigenous descendants of that knowledge.

It also includes a list of 14 recommendations for nation-states and organisations, such as the need for them to: co-develop with Indigenous Peoples a regime to protect the cultural and intellectual property rights of Indigenous Peoples; cease any experiments or commercialisation of biogenetic resources being undertaken without the consent of the appropriate Indigenous Peoples; strengthen scientific environmental research by the involvement of Indigenous communities and of customary environmental knowledge; and offer to return all Indigenous cultural objects held in museums and other institutions back to their traditional owners.

Following the conference, the Mataatua Declaration was signed by members of over 80 Indigenous nations and tabled at the United Nations.<sup>41</sup>



Kokohinau Marae, Te Teko, Aotearoa New Zealand. Finalisation of the Mataatua Declaration, June 1993.

Source: Aroha Te Pareake Mead

<sup>40</sup> Mead, 2021.

<sup>41</sup> Kelsey, J. (2000). *Reclaiming the future: New Zealand and the global economy*. Wellington: Bridget Williams Books, p 265.

## KO AOTEAROA TĒNEI, 2011

On 2 July 2011, 20 years after the Wai 262 claim had been lodged, the Waitangi Tribunal finally released their report entitled *Ko Aotearoa Tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity*. It was presented to the only surviving claimant, Saana Murray, at a large gathering of claimants' whānau, hapū, iwi and supporters at a ceremony at Roma Marae in Ahipara. Long-awaited and much anticipated, the day was marked with both excitement at the prospect of meaningful change but also grief from the passing of so many who had given evidence and supported the claim and particularly from the passing of five of the original claimants.<sup>42</sup>

The Tribunal's report is presented in a two-volume work, covering eight chapters and nearly 800 pages. It details claimants' concerns and evidence, the Crown's argument and evidence which includes evidence from the New Zealand Vice Chancellors' Committee (representing the research interests of universities) and Crown Research Institutes, the key questions posed and explored by the Tribunal in their consideration of the claim, the conclusions they reached and the recommendations they make for change. Because of the length and complexity of the report, reflecting the size and complexity of the claim, the Tribunal also published a separate 300-page summary document.

Despite the thought and effort the Waitangi Tribunal put into *Ko Aotearoa Tēnei*, it was controversial. Claimants' whānau found key aspects of it disappointing and constraining, as did many Māori.<sup>43</sup> For one, given the constitutional framing of the claim, many were aggrieved the Tribunal deferred a review of New Zealand's constitutional arrangements to another time.<sup>44</sup> Secondly, concerns were raised about the definition of 'taonga species' used by the Tribunal when referring to indigenous flora and fauna. This is because it limits taonga species to those species already known, and to those supported by a body of traditional knowledge – which is not a realistic requirement for some iwi whose inability to exercise kaitiakitanga has impeded the maintenance and transmission of such knowledge.<sup>45</sup> For many Māori, a 'taonga species' is simply any species which co-exists in their rohe, known or unknown.<sup>46</sup> Thirdly, the Tribunal did not support the view of claimants that the guarantee of tino rangatiratanga in Te Tiriti means Māori have proprietary interests and exclusive rights in relation to indigenous flora and fauna. Instead, they took the view that nature pre-dates Māori culture, but which is contradictory to the definition used in the UNDRIP, where rights are based on being the first peoples of the land.<sup>47</sup> In place of ownership, the Tribunal put forward a sliding-scale of how Māori rights and interests in taonga should be protected, and said that protection should be determined on a case-by-case basis.

<sup>42</sup> See for instance, the speech of Rāhui Katene, daughter of claimant John Hippolite, <https://www.scoop.co.nz/stories/PA1107/S00024/speech-wai-262-rahui-katene.htm>.

<sup>43</sup> Mead, 2021.

<sup>44</sup> Jackson, 2021; and also Solomon, M. (2021). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021.

<sup>45</sup> Taiuru, K. (2021). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021.

<sup>46</sup> Mead, 2021.

<sup>47</sup> Mead, A. (2011). Keynote presentation at the LIANZA conference, 2011.



This was a further source of disappointment because it failed to provide an adequate level of clarity, placing the onus back on Māori to continue to navigate the extent to which such interests and rights can be protected.<sup>48</sup>

Notwithstanding the contentious aspects of the Waitangi Tribunal’s report, their findings provide points of guidance on how to give practical effect to Te Tiriti o Waitangi in regards to taonga Māori. In considering key questions about the relevance of Treaty principles to Māori interests and rights in taonga, the overall position taken by the Tribunal is that the right of Māori to exercise tino rangatiratanga carries the obligation for Māori to act as kaitiaki in relation to all taonga. They also stated that the right to tino rangatiratanga and the responsibility of kaitiakitanga should be protected to the greatest extent practicable.<sup>49</sup>

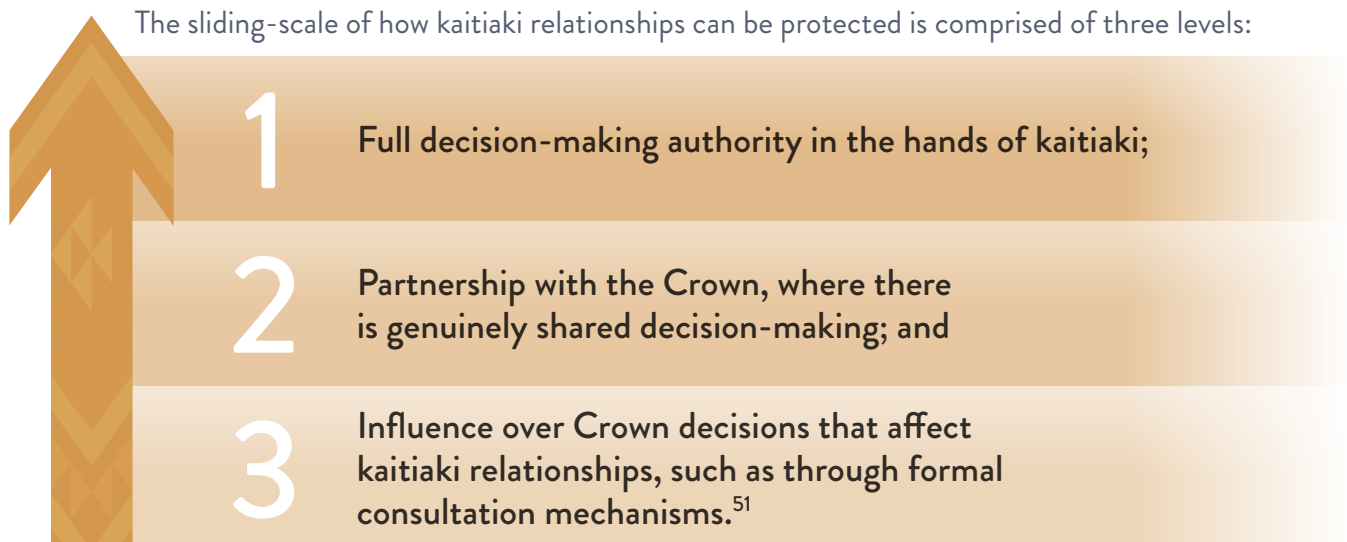
Outlined below are those findings which have particular significance for scientists working with indigenous flora and fauna and mātauranga Māori in terms of protection, national collections and Tiriti partnership.

## PROTECTING MĀORI INTERESTS AND RIGHTS IN TAONGA SPECIES AND MĀTAURANGA MĀORI

*Taonga species:*

Weighing up the evidence provided by claimants and the Crown, and guided by the Treaty principle of tino rangatiratanga, the Tribunal found that some level of kaitiaki control in relation to the use of the genetic and biological resources of taonga species is justified, and that such control must be sufficient for kaitiaki to protect their relationship with these species to a reasonable degree. They went on to say that, because kaitiaki relationships vary and the proposed uses of taonga species differ, the level of protection required will also vary, and that therefore, the level of protection required cannot be prescribed in advance but will need to be determined on a case-by-case basis. Their general position, however, is that *“the greater the effects of the proposed research upon the kaitiaki relationship, the greater the right of involvement of kaitiaki”*.<sup>50</sup>

The sliding-scale of how kaitiaki relationships can be protected is comprised of three levels:



<sup>48</sup> Mead, 2021.

<sup>49</sup> See for instance, Waitangi Tribunal, 2011, pp 8, 15-17.

<sup>50</sup> Ibid., pp 193-194.

<sup>51</sup> Mead, 2021.

“Where we’re at currently with law and policy in New Zealand, is a mixture of 3) and 4) which isn’t even on this scale – which is no influence over decisions whatsoever. We are not yet into the 1) and 2), but that is where we have to move, and where we as researchers could make a useful contribution to helping Māori move through these layers of interest.”

– Aroha Te Pareake Mead<sup>52</sup>

#### *Mātauranga Māori:*

In terms of mātauranga, the Tribunal stated that although much mātauranga about taonga species is already published and publicly available, there remains a just claim against those who seek to exploit it for commercial gain without proper acknowledgement of the prior rights of kaitiaki. They went on to say that, because mātauranga is the creation of kaitiaki, they should not be deprived of having a say in its commercial exploitation – and that this justifies three rights to kaitiaki. One, the right of kaitiaki to acknowledgement; two, their right to have a reasonable degree of control over the use of mātauranga Māori; and thirdly, that “*any commercial use of mātauranga Māori in respect of taonga species must give proper recognition to the interests of kaitiaki.*”<sup>53</sup> As with taonga species, kaitiaki relationships with their mātauranga vary, meaning that what constitutes ‘proper recognition’ will also vary and will need to be determined on a case-by-case basis. In line with the sliding-scale above, some cases will be up to kaitiaki to determine themselves, others will require partnership arrangements and for some, consultation will be sufficient.<sup>54</sup>



#### *Recommendations for change:*

Reviewing current laws and policy in the key areas of bioprospecting, genetic modification (GM) and intellectual property rights (patents and plant variety rights) against the Treaty principle of rangatiratanga, the Tribunal concluded the Crown has fallen short, where its laws and policies lack cohesion and do not make adequate provision for the protection of kaitiaki relationships with taonga species or the rights of kaitiaki to their mātauranga.<sup>55</sup> In response to these short-falls, they recommended a number of law changes. These include:

- Amending the Hazardous Substances and New Organisms Act 1996 to include a requirement that decision-making around GM recognises and provides for kaitiaki relationships with taonga species;
- Establishing a Māori committee to advise the Commissioner of Patents about the contribution of mātauranga Māori or taonga species to an invention, and whether the proposed use is consistent with or contrary to tikanga Māori;

<sup>52</sup> Ibid.

<sup>53</sup> Waitangi Tribunal, 2011, p 195.

<sup>54</sup> Ibid., pp 194-195.

<sup>55</sup> Ibid., pp 189-192.

- Empowering the Commissioner of Patents to refuse patents that fail to adequately protect kaitiaki relationships with taonga species and the rights of kaitiaki to their mātauranga, and requiring the Commissioner to work in partnership with the Māori committee when making such decisions;
- Requiring all patent applicants to disclose whether any mātauranga Māori or taonga species has contributed to the research or invention in any way, requiring these disclosures to be publicly available and introducing sanctions for non-disclosure; and
- Ensuring any new plant variety rights legislation includes empowering the Commissioner of Plant Variety Rights to refuse a PVR if it affects kaitiaki relationships with taonga species, and requiring the Commissioner to work in partnership with the same Māori committee recommended to become part of the patent regime.<sup>56</sup>

*What's good for Māori is good for New Zealand:*

The Tribunal stressed throughout its report that what's good for Māori, is good for New Zealand. In relation to indigenous flora and fauna, for example, they stressed that **“the protection of that which is valuable to Māori has important spin-offs for all”**.<sup>57</sup> This is because many of the same species that Māori regard as taonga such as pōhutukawa, harakeke and tūi, are also seen by others as signifiers of a unique national identity and as having an intrinsic value that goes beyond the species' economic potential.

## NATIONAL COLLECTIONS

The Waitangi Tribunal also examined claimants' concerns relating to mātauranga Māori held by archival institutions such as Archives New Zealand,

the National Library, TVNZ, and Radio New Zealand, and made a number of recommendations for change.<sup>58</sup> These recommendations are also relevant to other Crown bodies, such as CRIs, which house collections containing mātauranga Māori.

After analysis of the evidence and taking into account the Treaty principles, the Tribunal found that some level of constraint is justified in the use of mātauranga Māori held by the Crown to protect the interests and rights of kaitiaki. To exercise an appropriate level of constraint, they recommend that **access remains open unless users plan to exploit mātauranga for commercial gain**. Where users seek to commercialise mātauranga, they need to either consult with kaitiaki or seek their consent before doing so. The Tribunal also suggested that user guidelines could be co-developed with kaitiaki about what uses would infringe on their rights.<sup>59</sup>

## TIRITI PARTNERSHIP

The central thrust of the Tribunal's report is that business-as-usual is simply not tenable because it has been, and will continue to be, economically and socially destructive to all. Instead, it said wide-ranging changes are needed to move New Zealand from grievance and into partnership and mutual benefit, as envisaged when Te Tiriti was signed in 1840.<sup>60</sup> **In concluding the section on the law changes recommended to protect Māori interests and rights in taonga species and mātauranga, the Waitangi Tribunal said that such changes will enable those involved in research, science and commerce to be equipped to make better decisions, and thereby play a part in the transition from grievance to Treaty partnership.**<sup>61</sup>

<sup>56</sup> Ibid., pp 210-212.

<sup>57</sup> Ibid., p 210.

<sup>58</sup> Ibid., pp 527-542.

<sup>59</sup> Ibid., pp 540-541.

<sup>60</sup> Ibid. pp xxiii-xxvi, 19.

<sup>61</sup> Ibid., p 210.

While acknowledging the extent of the work ahead to develop this partnership, where Māori are enabled to exercise greater control and make decisions or share in the decision-making about the use of taonga species and mātauranga in research and commerce, the Waitangi Tribunal underlined the urgency for change lest solutions that do not fully reflect the unique place of Māori in New Zealand are imposed from outside to the detriment of all.<sup>62</sup>

## JUSTICE DELAYED IS JUSTICE DENIED

In the 20 years between the lodging of the Wai 262 claim in 1991 and the release of the Waitangi Tribunal's report in 2011, there were a number of significant international developments which aligned with the claim. As outlined earlier, the Mataatua Declaration was developed and signed in 1993, and after a decades-long drafting process, the UNDRIP was passed by the United Nations General Assembly in 2007 – and was later accepted by the Crown when the New Zealand government announced its support in 2010. Further to this, the UN's Convention on Biological Diversity, which aims to halt the misappropriation of biodiversity and genetic resources, was passed in 1992, and in 2010, the Nagoya Protocol was also passed, the objective of which is the fair and equitable sharing of benefits from the utilisation of genetic resources. In 2000, the World Intellectual Property Organisation began negotiating two international treaties relevant to genetic resources, traditional knowledge and cultural expressions.

While these mechanisms to better protect the interests and rights of Indigenous Peoples were

being picked up and implemented by some governments overseas, three things were happening in New Zealand. One was that these international rights agreements were either not supported by the Crown or they were formally supported but largely ignored. Secondly, the development of policy on issues relevant to the claim was put on-hold until the Waitangi Tribunal had reported back, for example, the development of a comprehensive policy regime to regulate bioprospecting – which meant it continued without any transparency or appropriate checks and balances in place.<sup>63</sup> Thirdly, the Crown continued to introduce laws and policies which allowed greater freedom for research, science and commercial interests to access, use and exploit taonga for commercial gain. These actions and inactions meant that the longer the claim process went on, the more the issues the claimants had raised were effectively being dismissed by the Crown.<sup>64</sup>

By 2018, seven years after the release of the Waitangi Tribunal's report on the Wai 262 claim, little if anything had changed: the Crown had yet to respond to the Tribunal's findings and recommendations in any meaningful way; laws and policies continued to do little to prevent anyone from conducting research and obtaining intellectual property rights over taonga for commercial gain because there was still no requirement to inform the kaitiaki of those taonga or obtain their consent; and there was still no policy to regulate bioprospecting, despite ratifying the Convention on Biological Diversity in 1993, nor an Access and Benefit-Sharing framework. This situation still continues today.

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<sup>62</sup> Ibid.

<sup>63</sup> Mead, 2021; and Foster, M. (2021). Panel presentation, webinar on the Wai 262 claim and opportunities for National Science Challenges, 27 July 2021.

<sup>64</sup> Jackson, M. (2011). Kōrero on the history of the Wai 262 claim, <https://www.youtube.com/watch?v=a0Tk8NaSKQI>.



## NGĀ TAONGA TUKU IHO CONFERENCE, 2018

In response to the lack of Crown action, and the continued misappropriation of indigenous flora and fauna and mātauranga Māori and other taonga, Ngā Taonga Tuku Iho, a conference on Māori cultural and intellectual property rights, was convened in 2018 to consider what more could be done to safeguard the cultural heritage of te ao Māori for future generations.<sup>65</sup> Over 270 people attended the conference hosted at Whakatū Marae in Nelson, hearing from more than 70 national and international speakers. Following the conference, the organising committee developed a communique of the priorities and actions set out at the conference which built upon existing initiatives and legal instruments such as Te Tiriti o Waitangi, the Wai 262 claim, the Mataatua Declaration and the UNDRIP.<sup>66</sup>

The communique called for the Crown to go beyond the Waitangi Tribunal's *Ko Aotearoa Tēnei* report and take a wider view of the Wai 262 claim. It urged the Crown to work with Māori to co-develop policy on the role of government in relation to taonga, and to progress issues which had been suspended during the Wai 262 claim process. It called for the Crown to review current intellectual property rights laws and report on their compliance with Te Tiriti, and alongside this, begin discussions with Māori to co-develop new [sui generis] norms and standards to afford greater protection against the misappropriation of taonga. It also called for the broader constitutional conversation deferred by the Waitangi Tribunal to occur in parallel with these developments.<sup>67</sup>

The communique was presented to the Crown on behalf of the conference participants in March 2019.

**“The risks to mātauranga Māori and rongoā through biopiracy are huge. Genomic research is the new currency: it’s worth more than gold and oil and precious minerals. Using small devices, scientists are capable of sequencing the DNA of taonga species in the ngāhere, and sending that overseas – and then they’re gone and we have no way to protect them. If we don’t have legal rights and protections, we’ll see more and more of it, especially in the face of global food shortages and in weaponry as super powers face off against each other.”**

– *Karaitiana Taiuru* <sup>68</sup>



<sup>65</sup> See, <https://www.taongatukuiho.com>.

<sup>66</sup> Foster, 2021.

<sup>67</sup> Ngā Taonga Tuku Iho Organising Committee (Aroha Te Pareake Mead, Miriana Stephens, Lynell Tuffery-Huria, Te O Kahurangi Waaka-Tibble) (2019). *Te Taihu ngā taonga tuku iho communique*, 4 March 2019.

<sup>68</sup> Taiuru, 2021.



## TE PAE TAWHITI, 2019

Later in 2019, the Crown released *Te Pae Tawhiti*, which outlines its preliminary proposals for how it will organise its whole-of-government response to the Wai 262 claim and the Waitangi Tribunal's report.<sup>69</sup>

A work programme was developed in 2020, which includes the development of a Crown action plan, and supporting Māori-to-Māori conversations about partnering with the Crown. The key areas of work identified to date are the protection of mātauranga Māori and supporting kaitiakitanga towards taonga species.<sup>70</sup>

At the same time, the Crown has also turned to consider how to give effective implementation to the UNDRIP. In the second-half of 2019, the Crown established a Declaration working group to develop a plan and engagement strategy to achieve the goals of the UNDRIP. The working group's report, *He Puapua*, was presented to the Crown in November of that year and released to the public in May 2021. *He Puapua* provides a 20-year roadmap to achieve 'Vision 2040' where rangatiratanga is rebalanced as an equally authoritative sphere of influence alongside kāwanatanga, and where the overlapping joint sphere of influence is broadened.<sup>71</sup>

As an immediate action, the working group recommended the establishment of a co-governance body, comprised of equal numbers of government ministers and Māori representatives appointed by Māori, to develop and lead a Declaration action plan. Given the significant overlap and synergy between the development of a Declaration plan and *Te Pae Tawhiti*, the working group suggested that the Ministerial Oversight Group for the Wai 262 work programme could usefully be amalgamated with the co-governance group, and that Wai 262 could form an important subset of the wider work required for New Zealand to meet its obligations under *Te Tiriti o Waitangi* and the Declaration.<sup>72</sup>

The Minister of Māori Development, Hon Nanaia Mahuta, who is leading both of these programmes of work for the Crown also sees them as intertwined kaupapa, saying that, "*Wai 262 and He Puapua – those aspirations are moving ahead in tandem; not one or the other, but together as a vector.*"<sup>73</sup>

<sup>69</sup> Te Puni Kōkiri. (2019). *Wai 262 – Te pae tawhiti – targeted engagement report: preliminary proposals for Crown organisation*. Wellington: Te Puni Kōkiri.

<sup>70</sup> See, <https://www.tpk.govt.nz/en/a-matou-kaupapa/te-ao-maori/wai-262-te-pae-tawhiti>.

<sup>71</sup> Charters et al, 2019, pp 10-11.

<sup>72</sup> *Ibid.*, pp xi, 14, 18.

<sup>73</sup> Minister of Māori Affairs (Hon Nanaia Mahuta) (2011). *Kōrero at the Wai 262 Kia Whakapūmau Online Symposium*, 19 July 2021.

## TE TAUMATA WHAKAPŪMAU

As agreed by both Māori and the Crown, implementation of the Wai 262 claim's remedies and the Waitangi Tribunal's recommendations necessitates a three-pronged approach, where some solutions will be for the Crown and other agencies to action, some will be for Māori alone to action, and where other initiatives will need to be progressed jointly in partnership.<sup>74</sup>

To this end, the whānau of the original claimants have remobilised to move the kaupapa of the Wai 262 claim forward, establishing Te Taumata Whakapūmau, a group of whānau and iwi representatives of the original claimants, to uphold the mauri of the claim and share it as a living legacy with whānau, hapū and iwi.<sup>75</sup> As part of this role, and consistent with the final directions given to them by the original claimants, the Taumata Whakapūmau has developed and is overseeing a Kanohi Ora Engagement Strategy to meet with whānau, hapū and iwi in different rohe to draw together kōrero about what engagement with the Crown might look like. From there, the plan is to build a collective that will then work with the Crown to progress remedies to the Wai 262 claim – and which will include both rohe-specific and national remedies, and constitutional change.<sup>76</sup>

As part of their programme of engagement, and to mark the 30-year anniversary of the Wai 262 claim and 10-year anniversary of the Waitangi Tribunal's report, the Taumata convened Wai 262 Kia Whakapūmau, an online symposium on 19 July 2021. The 15 kaikōrero included whānau of the claimants, leaders of the claimant iwi, those who have supported the claim's journey, those working to progress the vision of the claim, academics, researchers and the Minister of Māori Affairs.



Their kōrero covered the background to and history of the claim, key kaupapa of the claim, the work ahead to realise the visionary potential of the claim, and the role of scientists and researchers in supporting that work.<sup>77</sup>

<sup>74</sup> See for instance, Ngā Taonga Tuku Iho Organising Committee, 2019; and Te Puni Kōkiri, 2019.

<sup>75</sup> Waitai, S. (2021b). Panel presentation, webinar on the history and impacts of Wai 262, 21 July 2021.

<sup>76</sup> Ibid.

<sup>77</sup> See, <https://www.wai262.nz/symposium>.

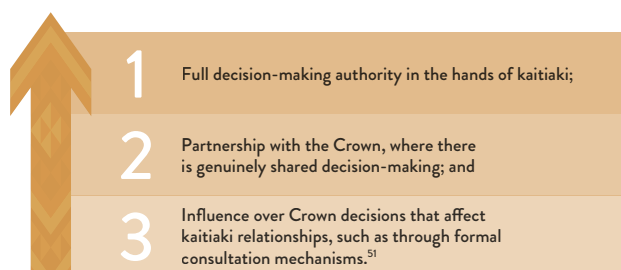
## SECTION TWO



# BEST PRACTICE GUIDELINES FOR RESEARCH PARTNERSHIPS WITH KAITIAKI

Consistent with Te Tiriti o Waitangi and as upheld in the Wai 262 claim, these best practice guidelines are centred on the fundamental right of Māori to define and control their own lives and knowledge, and from that, the right and responsibility to determine if and how the taonga they are kaitiaki of may be researched and used by scientists and for what purpose.

They also draw from the Waitangi Tribunal’s ‘sliding-scale’ of how kaitiaki relationships with taonga can be protected, where best practice necessarily sits at the top of that scale. That ‘top position’ too is about ensuring kaitiaki have leadership and full decision-making authority of any aspects of research relating to taonga and the benefits from it.



Recognition of this right, this authority, is the basis of a Te Tiriti o Waitangi partnership approach to research.

## BE INFORMED

The Wai 262 claim has highlighted the need for scientists to be aware of and informed about the issues related to working with taonga, which can be gained by developing an understanding of and respect for the issues raised in the claim.

Best practice includes:

- Becoming familiar with the aspects of the claim connected to your work by engaging with the many resources developed in relation to the claim. This includes the claim itself and the Waitangi Tribunal’s report *Ko Aotearoa Tēnei*, which further details the concerns raised by the claimants, the evidence given in support of those concerns, the position of the Crown and the evidence given by CRIs and universities, and the Tribunal’s analysis of the issues and their recommendations for change. Other key resources are the presentations given at the Wai 262 Kia Whakapūmau Online Symposium, which are available for viewing via the Taumata Whakapūmau website. The Rauika Māngai website also includes links to further resources, including the two Wai 262 webinars which have informed this guide;<sup>78</sup>
- Becoming familiar with other Indigenous rights instruments that help clarify best practice when working with taonga, such as the UNDRIP and the Mataatua Declaration;
- Seeking out further research and materials produced by Māori relevant to your field of work; and
- Seeking out settings to encounter and learn about mātauranga Māori.<sup>79</sup>

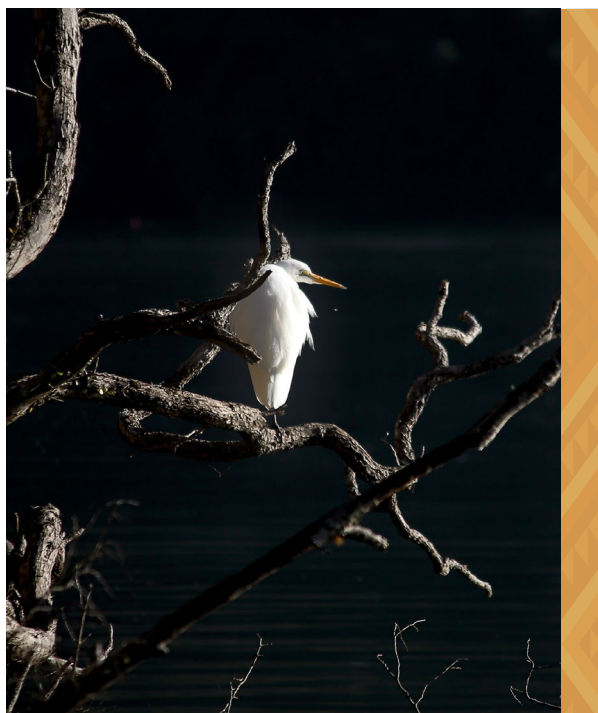
<sup>78</sup> See [www.wai262.nz/symposium](http://www.wai262.nz/symposium) and [www.rauikamangai.co.nz/resources/](http://www.rauikamangai.co.nz/resources/).

<sup>79</sup> For suggestions see, Rauika Māngai, 2020, p 49.

*“The objective for us as researchers is to be aware of the issues that are raised in the claim, and to respect that they come from a place of enormous wisdom of the claimants.”<sup>80</sup>*

*“We all have a responsibility to direct our own learning and be informed about cultural and intellectual property issues, and the implications of those for our respective roles.... Be aware of the issues and respectful of the mahi that has gone before both nationally and internationally. Read stuff!”<sup>81</sup>*

*“There is decades of research by Māori in the new technologies and genetic engineering space, for instance, so it’s about being aware of what’s gone before and building on that work and that we don’t need to start anew here.”<sup>82</sup>*



## DEVELOP RESPECTFUL RELATIONSHIPS WITH KAITIAKI

Any intention to work with taonga necessitates developing strong, genuine and respectful relationships with the kaitiaki of those taonga who may be whānau, hapū, iwi, marae, Māori land trusts and corporations, Māori individuals or communities, collectives, organisations and businesses.

*“For mātauranga, yes it can be used and it should be used, but it’s not free for the taking by anyone for any purpose. It has to be given by the descendants. And in order to give it, it means you have to have a relationship with them. If you don’t have a direct relationship, then you are taking – and taking is not the objective here.”<sup>83</sup>*

## BUILD AND MAINTAIN RESPECTFUL RELATIONSHIPS

These relationships are at the heart of a partnership approach and are what generates quality projects, so they need to be nurtured and cared for and given priority – before, during and after projects are completed.

Best practice includes:

- Taking the time to build relationships; learning about who kaitiaki are – their histories, their values, their tikanga, their relationships with the taonga they are kaitiaki of, and their plans and aspirations for the future;
- Being genuine, honest and open about what your intentions are for the relationship;

<sup>80</sup> Mead, 2021.

<sup>81</sup> Foster, 2021.

<sup>82</sup> Hutchings, 2021.

<sup>83</sup> Mead, 2021.



- Establishing relationships early, well before a grant application is due, so that projects can be co-developed in line with the timeframes that kaitiaki have available. Appreciating the other commitments that kaitiaki have on their time is not only part and parcel of any respectful working relationship, it will also help you to develop realistic timeframes;
- Being aware of the values you bring and working to develop shared values and keeping them to the fore in any projects undertaken together;
- Maintaining relationships throughout a project by building-in time for ongoing kōrero and the sharing and negotiating of ideas; and
- Building enduring relationships over the long-term that extend beyond the life-span of a single project and flow into multiple projects – which are often needed to progress a research idea from concept to real-world outcomes.

*“Given all of the history and struggles that continue through to the present day, be aware that it will take time to build trust with Māori. When you’re building those relationships, allow time.”*<sup>84</sup>

*“If you’re going to work with Māori, you need to know those intimate, individual things, i a rohe, i a rohe, because that’s what makes them who they are.”*<sup>85</sup>

*“Whakawhanaungatanga and those conversations where you get an understanding about the commonalities and differences; where you share your vision, principles and values; where you can have those difficult conversations.”*<sup>86</sup>

*“Many of our key Māori partners are businesses that are whānau collaborations, and as well as having economic goals, they’re largely driven by social, cultural and environmental objectives – so we’ve moved to promote a values focus across our National Science Challenge.”*<sup>87</sup>

*“You can work with people who share the same values as you.”*<sup>88</sup>

*“You can usually pick them ... when you see it’s the same research team. You know from that there’s been a level of trust established on both sides, and that the benefits are flowing on both sides. Anything that’s been around for ten years or so, you can be fairly certain is based on a solid understanding between the researchers and the community. It’s a rich space to be creative and to make an effort to delve into.”*<sup>89</sup>

## RESPECT BOUNDARIES

Relationships are also dependent on scientists respecting the boundaries set by kaitiaki to protect their tino rangatiratanga and their kaitiakitanga of taonga. Best practice includes:

- Respecting boundaries by being clear of your role;
- Treading carefully, and taking care not to over-step or take over; and
- Refraining from claiming to hold expertise in mātauranga Māori.

*“You’ve got to be invited into the space.”*<sup>90</sup>

*“One of the things we talk about with our science community is, ‘don’t touch and don’t take anything that doesn’t belong to you’.”*<sup>91</sup>

*“Part of acknowledging that mātauranga is a different knowledge system is also acknowledging that mātauranga is a different worldview. Unless you are steeped in that worldview, you cannot possibly claim to be an expert in mātauranga.”*<sup>92</sup>

<sup>84</sup> Foster, 2021.

<sup>85</sup> Waitai, 2021b.

<sup>86</sup> Mark-Shadbolt, M. (2021). Panel presentation, webinar on the Wai 262 claim and opportunities for National Science Challenges, 27 July 2021.

<sup>87</sup> Foster, 2021.

<sup>88</sup> Waitai, 2021b.

<sup>89</sup> Mead, 2021.

<sup>90</sup> Waitai, 2021b.

<sup>91</sup> Ibid.

<sup>92</sup> Mead, 2021.

## KAITIAKI TO LEAD THE TAONGA ASPECTS OF SCIENCE PROJECTS

Leadership by kaitiaki ensures they have the authority to exercise their kaitiakitanga in relation to taonga, which has benefits for both research partners. It enables kaitiaki to control access to and use of their taonga, to protect their relationships with taonga and protect the taonga themselves. For scientists, it provides a sense of security that the risks involved in working with taonga will be well-managed and that they are fulfilling their Te Tiriti o Waitangi obligations to kaitiaki by protecting the right of kaitiaki to tino rangatiratanga.

Best practice includes:

- Kaitiaki leadership of all aspects of a project which involve taonga;
- Kaitiaki leaders exercising full decision-making authority in relation to these aspects; and
- Ensuring kaitiaki are appropriately resourced and supported to lead the taonga aspects of science projects – including through the design phase before projects are funded.

*“It’s thinking about how you might support mana whenua to be engaged in the process. The opportunity cost is quite high for us financially, emotionally and spiritually. We’ve got to think about how much do we share because our mātauranga is all we’ve got left. We don’t want it to be weaponised against us. We have to set up protocols amongst ourselves, for ourselves, and with our friends – which is how we like to refer to our science community and our research community.”<sup>93</sup>*

*“Our kaumātua, our tohunga designed the project ... and are the project leaders of this programme, and we are their supporters helping them along the way.”<sup>94</sup>*

<sup>93</sup> Waitai, 2021b.

<sup>94</sup> Mark-Shadbolt, 2021.

<sup>95</sup> Charters et al, 2019, p 11.

## CO-LEADERSHIP ACROSS ALL ASPECTS OF SCIENCE PROJECTS THAT DO NOT INVOLVE TAONGA

All aspects of projects that don’t involve taonga lie in the ‘joint sphere’, where issues of mutual concern are co-led and where decision making is shared.<sup>95</sup>

Best practice includes:

- Co-leadership across all aspects of science projects that do not involve taonga;
- Genuinely shared decision-making in relation to these aspects of a project; and
- Ensuring kaitiaki are appropriately resourced and supported to be research partners – including through the co-design phase before a project is funded.

## CO-DESIGN PROJECTS WITH KAITIAKI

Strong relationships, shared values and a clear understanding of each other’s interests and aspirations provide a base from which to co-design projects together.

## CO-DESIGN RESEARCH IDEAS AND QUESTIONS

Best practice includes:

- Co-designing research ideas and questions to be investigated so that a project is aligned with kaitiaki interests alongside your own;
- Seeking mandates and prior informed consent from kaitiaki where research questions involve working with taonga, and respecting their right to say no; and

- Being realistic about the questions you are seeking consent for. If the consent being sought is for access to the genetic resources of an indigenous species, it needs to be sought at the Crown-Māori level not by researchers.

*“For those of us trained as academic researchers, it’s about not thinking like how we’ve been trained to think – to think about our own kaupapa, but to link our work into supporting the aspirations and dreams of Māori.”<sup>96</sup>*

*“We can use our expertise to help people make informed decisions about consent, we can provide technical assistance or we can provide frameworks for decision-making – but it is not our role as researchers to be the ones trying to gain consent from an iwi for genetic research. Our role as researchers is to respect the Crown-Māori relationship and not do harm or undermine it.”<sup>97</sup>*

## CO-DESIGN A SET OF TAONGA-PROTECTION PLANS AND PROTOCOLS

There will be a multitude of issues to work through to ensure the appropriate protections are in place to prevent the misuse and appropriation of taonga.

Best practice includes:

- Co-developing a cultural and intellectual property plan to ensure all consents for access to and use of taonga, including possible commercial exploitation, have been sought, discussed and agreed to in advance;
- Co-developing protocols for data storage, protection and access; and
- Co-developing protocols for the sharing of project details with others.

*“Asking, how will the data be stored? If it’s encrypted does that make it safer? What about storing on clouds that are allocated in other locations not in Aotearoa? So it’s an important issue.”<sup>98</sup>*

*“Permission is everything – it’s our licence to operate. Permission is something that has often been denied to Indigenous communities in the research space; it’s why we’re so hell-bent on making sure we have permission before we show photos, before we talk about projects, to make sure we’re not breaking the faith and trust that our tangata whenua partners have given us.”<sup>99</sup>*

## CO-DESIGN RESEARCH PLANS THAT ARE INCLUSIVE OF TE AO MĀORI EXPERTISE

Best practice includes:

- Using or including kaupapa Māori methodologies and methods;
- Developing Māori worldview measures of excellence, impact and success to use alongside Western science measures; and
- Bringing in and valuing kaitiaki community mātauranga Māori experts and expertise alongside Western science experts and expertise.

<sup>96</sup> Smith, L.T. (2021). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021.

<sup>97</sup> Mead, 2021.

<sup>98</sup> Harris, P. (2021). Panel presentation, webinar on the Wai 262 claim and opportunities for National Science Challenges, 27 July 2021.

<sup>99</sup> Mark-Shadbolt, 2021.

## ENSURE RECIPROCITY AND BENEFIT-SHARING WITH KAITIAKI

A partnership approach is exemplified by research that is reciprocal and which has clear benefits for kaitiaki research partners.

Best practice includes:

- Kaitiaki determining for themselves what benefits they want to see out of the research;
- Ensuring that benefits for kaitiaki are the research project's primary goal(s);
- Developing benefit-sharing agreements and protocols to ensure the benefits to kaitiaki are delivered; and
- Being clear and being honest about the expertise you bring to the table and what benefits you can help kaitiaki to achieve.

*“Our primary focus ... is on building outcomes for Māori that align with their aspirations for themselves.”<sup>100</sup>*

*“The first beneficiaries of mātauranga must be the direct descendants of that mātauranga .... That is how cultural knowledge is transmitted across generations.”<sup>101</sup>*

*“As Ngāti Kuri, we've developed what we call our Taonga Tuku Iho protocols ... which sets out a clear way in which scientists and others will work with us and within our space, for what purpose and for what benefit. For example, all intellectual property or knowledge taken from our land must be able to be shared with our mokopuna in our schools. If it's of no benefit to our mokopuna, if it cannot be used to advance the thrive-ability of Ngāti Kuri taonga katoa, then it doesn't fit.”<sup>102</sup>*

## BUILD THE RESEARCH CAPACITY AND CAPABILITY OF KAITIAKI

Alongside benefits from the creation of new knowledge, another key benefit for kaitiaki is where engagement in partnership projects assists them in building their own research capacity and capability.

Best practice includes:

- Research teams which are inclusive of researchers from kaitiaki communities;
- Mentoring community researchers and ensuring there is an EFTS allocation to support those holding a mentoring role; and
- Co-publishing with Māori communities and community researchers.

*“In our National Science Challenge, there's a commitment to ensuring co-publishing with Māori communities and Māori researchers. We have a target of 25 per cent, and that's a rolling target which will shift [upwards] over time.”<sup>103</sup>*

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<sup>100</sup> Foster, 2021.

<sup>101</sup> Mead, 2021.

<sup>102</sup> Waitai, 2021b.

<sup>103</sup> Mark-Shadbolt, 2021.

## RESPECT AND CARE FOR THE PEOPLE YOU WORK WITH

Engagement in research and creating new knowledge that expands the mātauranga continuum should be an uplifting experience for all involved.

Best practice includes:

- Developing kaupapa and tikanga (principles and protocols of behaviour) for how you will engage with each other as a team, and with kaitiaki communities;
- Be a good leader by caring for and respecting those you are working with;
- Be a good manuhiri by being respectful when hosted by kaitiaki communities;
- Ensuring that all the cultural roles Māori team members will play to make a project work are appropriately sized and resourced; and
- Ensuring that all Māori members on project teams, whether they are early or experienced researchers, are supported in terms of their mātauranga and cultural work by having access to wider Māori research networks for advice and mentoring.

*“Being an ethical researcher is engaging with a set of principles, a set of relationships and connections; it’s not simply filling out a form.”<sup>104</sup>*

*“When you’re a researcher and you’re leading something, you’re hosting people so it’s your responsibility to care for them, to manaaki them, and to be respectful of what it is you are asking of them. If you’re a lead researcher and you’re convening a hui on a marae, then you’re both a host and a manuhiri. You’re a manuhiri because you’re in someone else’s area. You have to work really closely with the marae whānau who are the main hosts, and then find your role within that. When you are a manuhiri, when you are a visitor, be respectful. That’s the number one principle.”<sup>105</sup>*

*“For our newer researchers who identify as Māori... it’s okay to still be learning. Take your time and find support networks like the Rauika, and know that the organisations you work for have a responsibility to make sure you are safe in your role, and to not ask things from you that you are not comfortable with.”<sup>106</sup>*

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<sup>104</sup> Smith, 2021.

<sup>105</sup> Mead, 2021.

<sup>106</sup> Foster, 2021.



## RESPECTFUL USE OF TE REO MĀORI

Take care with your use of te reo Māori to ensure it's respectful.

Best practice includes:

- Learning to pronounce all the words and phrases that are being used within your National Science Challenge, research programme and projects;

- Learning the meanings of key words, phrases and values used in your work; and
- Learning to pronounce the names of the kaitiaki you work with.

*“We had a hui with some of our kaumātua to go through some of the key terms and values so everyone actually understands what they mean.”<sup>107</sup>*



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<sup>107</sup> Mead, 2021.

## ONGOING LEARNING, UPSKILLING AND POLICY DEVELOPMENT TO BUILD BEST PRACTICE

Building best practice research partnerships with kaitiaki needs to be supported by ongoing learning, upskilling and policy development across the project teams and research programmes of National Science Challenges and of research institutions and organisations.

Best practice includes:

- Creating regular opportunities for scientists to share and reflect on learnings from their research projects with kaitiaki;
- Undertaking annual reviews of how your institution's structures, policies and activities can be increasingly informed by Te Tiriti o Waitangi and better aligned with best practice when working with kaitiaki and their taonga; and
- Putting those learnings into action by updating institutional values, policies and processes.

*“It’s about us sharing what we have done, what we can do better and what we can learn from. Institutions and organisations have turnover; people come and go, so you might not necessarily have the same capability you had before. It means we need to reflect on what’s been done and how we can move forward to better contribute to different kaupapa in the future.”<sup>108</sup>*

*“As with all National Science Challenges, we’re on a learning journey and there is significant room for improvement. At our annual Vision Mātauranga strategy hui last year, where we review how our challenge’s structures and activities can increasingly be informed by Te Tiriti, ... we identified major policy gaps in our research involving taonga and the need to develop a clear policy on our approach to access and benefit sharing. To inform that policy direction, we began with a wānanga and brought in expertise to help guide us.... We’re now attempting to put the policies we developed into action – and acknowledge it will need ongoing refinement.”<sup>109</sup>*

**“The claim is indeed about aroha; there’s nothing to fear and everything to embrace. Mātauranga Māori is what makes us distinctive in the world and Indigenous knowledge and wisdom is needed now more than ever. The claim is important for the survival of te ao Māori and for the flourishing of New Zealand as a country as a whole.”**

**– Maui Solomon**

<sup>108</sup> Harris, 2021.

<sup>109</sup> Foster, 2021.

# REFERENCES

- Charters, C., Kingdon-Bebb, K., Olsen, T., Ormsby, W., Owen, E., Pryor, J., Ruru, J., Solomon, N., and Williams, G. (2019). *He puapua: report of the working group on a plan to realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand*. Wellington: Te Puni Kōkiri.
- Foster, M. (2011). Panel presentation, webinar on the Wai 262 claim and opportunities for National Science Challenges, 27 July 2021.
- Harris, P. (2021). Panel presentation, webinar on the Wai 262 claim and opportunities for National Science Challenges, 27 July 2021.
- Hutchings, J. (2021). Panel presentation, webinar on the history and impacts of Wai 262, 21 July 2021.
- Jackson, M. (2021). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021, <https://www.wai262.nz/symposium>.
- Jackson, M. (2011). Kōrero on the history of the Wai 262 claim, <https://www.youtube.com/watch?v=aOTk8NaSKQI>.
- Kelsey, J. (2000). *Reclaiming the future: New Zealand and the global economy*. Wellington: Bridget Williams Books.
- Kukutai, T., McIntosh, T., Boulton, A., Durie, M., Foster, M., Hutchings, J., Mark-Shadbolt, M., Moewaka Barnes, H., Moko-Mead, T., Paine, S-J., Pitama, S, & Ruru, J. (2021). *Te pūtahitanga: a Tiriti-led science policy approach for Aotearoa New Zealand*. Auckland: Ngā Pae o te Māramatanga.
- Mark-Shadbolt, M. (2021). Panel presentation, webinar on the Wai 262 claim and opportunities for National Science Challenges, 27 July 2021.
- Mataatua Declaration on the Cultural and Intellectual Property Rights of Indigenous Peoples*, 1993.
- Mead, A. (2021). Panel presentation, webinar on the history and impacts of Wai 262, 21 July 2021.
- Mead, A. (2011). Keynote presentation at the LIANZA conference, Wellington, 1 November 2011.
- Minister of Māori Affairs (Hon Nanaia Mahuta) (2011). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021, <https://www.wai262.nz/symposium>.
- Ministry of Business, Employment and Innovation. (2021). *Te ara paerangi: future pathways green paper*. Wellington: Ministry of Business, Education and Innovation.
- Ngā Taonga Tuku Iho Organising Committee (Aroha Te Pareake Mead, Miriana Stephens, Lynell Tuffery-Huria, Te O Kahurangi Waaka-Tibble) (2019). *Te Tauihu ngā taonga tuku iho communique*, 4 March 2019.
- Poata, T. (2012). *Poata: seeing beyond the horizon*. Wellington: Steele Roberts.
- Public Service Act 2020*, Section 14.
- Rauika Māngai. (2020). *A guide to Vision Mātauranga: lessons from Māori voices in the New Zealand science sector*. Wellington, NZ: Rauika Māngai.
- Smith, L.T. (2021). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021, <https://www.wai262.nz/symposium>.
- Solomon, M. (2021). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021, <https://www.wai262.nz/symposium>.
- Solomon, M. (2018). Keynote presentation at Ngā Taonga Tuku Iho conference, Whakatū Marae, Nelson, 17 September 2018.
- Sutherland, O., Parsons, M., Jackson, M., and whānau of claimants (2011). The background to Wai 262, [https://weebly.com/uploads/7/4/6/3/7463762/the\\_background\\_to\\_wai\\_262.pdf](https://weebly.com/uploads/7/4/6/3/7463762/the_background_to_wai_262.pdf).
- Taiuru, K. (2021). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021, <https://www.wai262.nz/symposium>.
- Te Puni Kōkiri. (2019). *Wai 262 – Te pae tawhiti – targeted engagement report: preliminary proposals for Crown organisation*. Wellington: Te Puni Kōkiri.
- Wai 262 claim, 1991.
- Wai 262 claim, amended statement of claim, 10 September 1997.
- Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021, <https://www.wai262.nz/symposium>
- Waitai, S. (2021a). Kōrero at the Wai 262 Kia Whakapūmau Online Symposium, 19 July 2021, <https://www.wai262.nz/symposium>.
- Waitai, S. (2021b). Panel presentation, webinar on the history and impacts of Wai 262, 21 July 2021
- Waitangi Tribunal. (2011). *Ko Aotearoa tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity*. Wellington: Waitangi Tribunal.
- United Nations Declaration on the Rights of Indigenous Peoples*, 2007.

# NGĀ KAIURUNGI | PANELLISTS



**Aroha Te Pareake Mead**  
Ngāti Awa, Ngāti Porou

Aroha is a political scientist specialising in the contribution of indigenous peoples to regional, national, and global policy and law. She is a leading figure in the national conversation on Wai 262 and has published extensively on indigenous sustainable development, indigenous cultural and intellectual property policies, participatory conservation, bio-cultural heritage, the role of culture in development and sustainability, and many other issues.



**Sheridan Waitai**  
Ngāti Kuri, Te Rarawa, Ngai Takoto, Tainui

Sheridan grew up in Te Hiku o te Ika. She has significant experience in legislation and the policy environment in relation to indigenous issues, where she has contributed to environmental, social, education and health initiatives. She has been instrumental in the continuation of the WAI262 Fauna and Flora Claim for Ngāti Kuri. She has maintained the relationship with other claimant whānau and iwi over many years that has resulted in a national work programme for Māori and is currently a member of Te Taumata Whakapūmau, the whānau and iwi representatives of the original Wai 262 claim.



**Dr Jessica Hutchings**  
Ngāi Tahu, Gujratati

Jessica is the Treaty Relationship Manager for the Biological Heritage National Science Challenge. She has a PhD in environmental studies and completed a post-doctoral fellowship in Maori health research. Jessica is a well-known kaupapa Māori research leader and Māori science strategist, trained in the fields of environmental and Indigenous studies. She has held senior management and leadership roles in the Māori science and research sectors and is a widely published author.



**Dr Meika Foster**  
Te Atiawa, Ngāti Mutunga

Meika specialises in human molecular and metabolic nutrition research. She also has a background in Law, with particular interest in cultural and intellectual property. Meika currently leads the implementation of Vision Mātauranga in the High Value Nutrition science and innovation programmes.



**Melanie Mark Shadbolt**  
Ngāti Porou, Te Arawa, Te Ātiawa,  
Ngāti Raukawa, Ngāti Tūwharetoa

Melanie is an Indigenous environmental sociologist. She has previously been the Director Māori for the Biological Heritage National Science Challenge and continues to undertake research in that Challenge. She is the Deputy Secretary for Māori Rights and Interests for the Ministry for the Environment and is passionate about the environment, indigenous rights and the empowerment of communities to manage their own resources.



**Dr Pauline Harris**  
Rongomaiwahine, Ngāti Rakaipaka,  
Ngāti Kahungunu

Pauline's background is in physics. Her current work is focussed on mātauranga Māori associated with Māori astronomy, traditional Māori calendars called Maramataka, climate change and sustainability. Pauline is the Associate Vision Mātauranga Theme Leader in Science for Technological Innovation.



## SPECIAL THANKS TO:



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