Waitangi Tribunal

Ko Aotearoa Tēnei – Factsheet 3

Taonga Species

"Protecting taonga species and mātauranga Māori [Māori traditional knowledge] aids the survival of Māori culture itself. That is why…these things are important enough to justify protection in law."

- *Ko Aotearoa Tēnei: Taumata Tuarua*, Chapter 2.

Ko Aotearoa Tēnei is the Waitangi Tribunal's report into the claim known as Wai 262, which concerns the place of Māori culture, identity and traditional knowledge in contemporary New Zealand law, and government policy and practice. Chapter 2 relates to intellectual property (IP) in the genetic and biological resources of taonga species (defined below). This factsheet provides a brief overview of that chapter.

Key points

Iwi and hapū are obliged to act as kaitiaki (cultural guardians) towards 'taonga species' of flora and fauna within their tribal areas.

Current IP laws and policies do not recognise or support the relationships of kaitiaki with taonga species, and nor do they protect traditional knowledge relating to those species.

Iwi and hapū do not have ownership rights in taonga species or in traditional knowledge relating to those species, but their relationships with those species and associated knowledge are entitled to a reasonable degree of protection.

Reform will not only strengthen Māori culture and identity but is also beneficial for national identity and New Zealand's future prosperity.

What are 'taonga species' and why do they matter to Māori?

'Taonga species' is a term the Tribunal has used to refer to species of flora and fauna that are significant to the culture or identity of Māori iwi or hapū – for example, because there is a body of inherited knowledge relating to them, they are related to the iwi or hapū by whakapapa, and the iwi or hapū is obliged to act as their kaitiaki.

Māori culture was created through the interaction between early Polynesian settlers and the environment of Aotearoa, including its species of flora and fauna. Those species were sources of technology (for example, relating to food, clothing, shelter, and medicine) and provided inspiration for forms of expression and cultural works such as mōteatea (song-poetry), carving, and the ubiquitous 'koru' or 'pitau' form. They are subject to considerable inherited knowledge relating to their characteristics and properties (such as habitats, growth cycles, sensitivity to environmental change, and requirements for their care). Thus, taonga species help to make Māori culture unique. The exercise of kaitiaki responsibilities towards those species is a fundamental aspect of Māori culture, and kaitiaki relationships are important sources of identity.

What are genetic and biological resources?

'Biological resources' of taonga species refers to any physical material in those species which has some value or use to humanity. 'Genetic resources' are a subset of biological resources and refer to genetic information in the DNA of those species which has some value or use.

What the Treaty requires

The Treaty gives the Crown the right to govern, but in return requires the Crown to protect the

tino rangatiratanga (full authority) of iwi and hapū in relation to their 'taonga katoa' (all that they treasure). The courts have characterised this exchange of rights and obligations as a partnership.

In this context, the Treaty allows the Crown to put in place laws and policies relating to research into and commercialisation of the genetic and biological resources in flora and fauna. This includes IP laws, and laws controlling aspects of the research process such as bioprospecting and genetic modification. But in doing so the Crown must to the greatest extent practicable protect the authority of iwi and hapū in relation to their taonga species, so that they can fulfil their obligations as kaitiaki.

Even if the Treaty did not protect kaitiaki relationships with taonga species, protecting those species would be in the national interest anyway because many taonga species (such as tuatara, pōhutukawa and harakeke) have important places in national identity.

What the Tribunal has found

The Treaty entitles kaitiaki relationships with taonga species to a reasonable degree of protection. It also entitles Māori to a reasonable degree of control over traditional knowledge relating to taonga species and how that knowledge is used. But it does not entitle kaitiaki to ownership of taonga species, and nor does it mean that kaitiaki are entitled to a veto over uses of IP in those species in all cases.

Rather, kaitiaki interests must be fairly and transparently balanced alongside other interests. Those include the interests of those who conduct research and hold IP rights, the public interest in research and development, and of course the interests of the species themselves.

There is little place for kaitiaki interests in current laws and policies controlling research into and IP in taonga species. Those laws and policies were not designed to recognise and support kaitiaki relationships. Instead, they allow others to conduct research, obtain IP rights in, and commercialise, genetic and biological resources in taonga species, without informing kaitiaki or obtaining their consent.

Current laws and policies also allow others to use (and sometimes obtain IP rights in) the traditional knowledge of iwi and hapū, such as knowledge about the medicinal properties of plants, also without acknowledgement or consent.

The Tribunal has recommended reforms to the relevant laws and policies, so that the interests of kaitiaki can be fairly and transparently considered alongside other interests.

It has recommended amendments to the Hazardous Substances and New Organisms (HSNO) Act so that greater weight is given to kaitiaki interests when decisions are made about genetically modified organisms.

It has recommended changes to laws and processes relating to patents and plant variety rights. These include the establishment of a Māori advisory committee to advise the Commissioners of Patents and Plant Variety Rights about whether inventions are derived from Māori traditional knowledge or use taonga species; establishment of a register of kaitiaki interests in taonga species; granting the Commissioner of Patents the power to refuse patents that unduly interfere with the relationships between kaitiaki and taonga; and introducing a legal requirement for patent applicants to disclose any Māori traditional knowledge used in research, and the source and the country of origin of any genetic or biological material contributing to the invention.

The Tribunal has also recommended that decisions about bioprospecting (that is, the search, extraction, and examination of biological material or its molecular, biochemical, or genetic content to determine its potential to yield a commercial product) in areas under Department of Conservation control be made jointly by the department and tangata whenua. Current policies do not provide for kaitiaki participation in decision-making about bioprospecting involving taonga species and Māori traditional knowledge, and do not provide for kaitiaki to share in the benefits of bioprospecting based on their taonga species or knowledge.

See *Ko Aotearoa Tēnei* chapter 2 for full details of the Tribunal's findings and recommendations.