



1. HE MIHI

Ka rere atu ai nga mihi mahana ki a koutou o Te Tari Taiwhenua i runga i nga ahuatanga o tenei kaupapa whakahirahira. Ki a ratou e takahi ana i te Ara whanui a Tane, haere atu ra, okioki ai; ki a koutou nei nga kanohi ora, tena koutou, a, tena hoki tatou katoa.

2. BACKGROUND

The Federation of Māori Authorities (FoMA) is an incorporated society representing a membership comprising land owning (ahuwenua) trusts, Māori incorporations, Runanga and Māori Trust Boards. There are currently 150 members of the FoMA collectively administering approximately 800,000 hectares of land on behalf of an estimated 100,000 Māori beneficial owners. FoMA's membership ranges from small, single farm businesses to diversified enterprises managing interests across many primary industry sectors, processing and servicing sectors, and equity interests in the New Zealand and global stock-markets. The collective asset base of the FoMA membership is in excess \$4 billion.

FoMA has as its principal objective Māori economic independence. One approach FoMA takes towards achieving this objective is the collective representation of the interests of the FoMA membership in dealing with central, regional and local government on any issues affecting the land, resources, taonga and its beneficial owners.

It is the interests of existing and potentially affected Māori landowners, whanau, hapu, iwi that FoMA provides this submission. We do not claim to represent the views of all Māori or all Māori Authorities. The views expressed in this submission are representative of a majority of the Māori landowners within the FoMA membership. This should be recognised while considering this submission.

3. FEDERATION OF MAORI AUTHORITIES VIEW

- 3.1 FoMA agrees with the concept of a new legal framework to ensure that Mātauranga Māori, Māori Intellectual and Cultural Properties are protected. Tangata Whenua require Tino Rangatiratanga and Kaitiakitanga rights over their resources and taonga and co-management of the Department of Conservation estate.
- 3.2 The relationship with the land is one of respect and reciprocity. All living creatures possess mauri or a life force, Māori respect this mauri and there has always been a balance between use and protection. This balance is practiced by our members today in the numerous guardianship activities they are involved with on their lands as kaitiaki in their rohe.
- 3.3 Māori have an intricate and complex relationship with the land; they believe all living creatures are related by whakapapa.
- 3.4 Evolving from this belief our culture, customs and practices have been developed over the generations through co-existence with the natural world. Through time whanau, hapu and iwi have created knowledge pertaining to the use of natural resources, including flora and fauna.
- 3.5 The coming together of two separate cultural world views, Māori and Pākehā has created a conversation that exposes different thinking and values.
- 3.6 Māori beliefs often conflicted and still conflict with Pākehā beliefs. At the heart of the conflict is that Māori are collective kaitiaki, guardians of resources, who believe that they are guardians for future generations. This belief system stems from the whakapapa to the land and all living things. With the desire to assimilate Māori into the Pākehā world, their belief system was jeopardised and lost to many Māori. Pākehā decision makers until relatively recently (ie 1975) are indifferent to these beliefs.
- 3.7 Individualising and asserting individual control of land and resources was a foreign concept to Māori but this is what Crown policies and laissez-faire capitalist trade policies required. Loss of control and possession of Māori resources and property was inflicted by the Crown through various legislation. Claimants have noted these in the Statement of Issues. (2.314)
- 3.8 Environmental controls were reduced as Māori watched, while under Crown instructions, policies and regulations their natural world was destroyed. Māori social order was reduced with the social

relocation of Maori. Maori culture was on the verge of being extinguished as waahi tapu, uru pa, taonga, arts, marae and other sacred resources were being desecrated through Crown instructions.

- 3.9 FoMA notes that the Maori philosophy of ranatiratanga as afforded by the Treaty of Waitangi applies to the physical, intellectual and spiritual aspects of self-determination.
- 3.10 Rangatiratanga by Maori and co-management with the Crown is required over all significant land, resources and taonga in the Crown estate. Maori require full and active control and use over lands owned and possessed by them. Loss was not just of a physical nature but also spiritual, an example of this was the enactment of the Tohunga Act 1908 resulting in the suppression of Matauranga Maori.
- 3.11 FoMA's view of the documentation it has selected from the wai 262 record of documents is that the case is well demonstrated the loss of resources, land, culture, te reo and other taonga through various Crown policies and legislation has had a devastating effect on the wellbeing of Maori
- 3.12 Conflicts of interest are still occurring today under the Western system of law and legislation of Intellectual Property protection. Areas of concern are the concepts of public domain, duration of protection and technological advancements to name but a few.
- 3.13 Once Knowledge or cultural expressions have been made public it becomes apart of the public domain and protection is limited, this was noted by the Crown (SOR par 135). FoMA disagrees with the Crown as it is their sole obligation to actively protect Maori and all their taonga under Article 1 of the Treaty of Waitangi. FoMA submits that the Treaty obligation to protect taonga Maori relies jointly on the Crown and Maori.
- 3.14 Duration of Protection is limited under current legislation (as has been stated by claimants) in New Zealand and various International Treaties New Zealand is party to. Perpetual protection seems to be a foreign concept that the Crown and other International bodies are not willing to seriously consider. Indigenous peoples world wide however are expected to conform to the Western system. The Crown has an obligation to promote Maori rights and should be advocating for perpetual protection attainment. We point the Tribunal to Maori Whanau trusts which are perpetual unlike non Maori that has duration of 80 years. The system is able to accommodate these two separate cultural beliefs.

- 3.15 Technological advancements, such as the internet, are making information transfer instant, cost effective and efficient. Information is able to be shared world wide and FoMA is concerned with the ability to misuse and misappropriate Mātauranga Māori and culture. This is already evident with international companies such as Lego®, The Danish restaurant MOKO that has depicted both Female and Males with Moko. Inappropriate usages need to be prevented and the Crown being a policy maker and international advocator for New Zealand should be pushing for indigenous rights internationally.
- 3.16 The Crown in their statement of issues has recognised that Māori are entitled to exercise rangatiratanga over property and resources owned or controlled by them. (SOR 2.256)
- 3.17 As noted in 3.7 loss of property owned and controlled by Māori was mainly through Crown policy. Māori should have the right to control use and development of indigenous Flora and Fauna on their lands.
- 3.18 Access and co-management of lands held in the Department of Conservation estate for the maintenance of cultural practices and the connection to whakapapa as tangata whenua.
- 3.19 Flora and Fauna are being rapidly depleted because of irresponsible development and overexploitation. Sometimes inappropriate government policies allow corporations relatively unlimited access to local resources instead of requiring them to extract material at a sustainable level.¹
- The proposed Australia New Zealand Therapeutic Authority joint registrar is an example that FoMA submits of Crown legislation that will despite Crown assurances² so far to the contrary, diminish Māori rights as kaitiaki.
- 3.20 In regards to the Crown denying Māori the right to development (SOR 2.256) FoMA would like to note that in the Muriwhenua Fisheries Report 1988 (wai 22) at paragraph 11.6.10 (d) Tradition was not prevented to have development and (e) there was nothing to say that traditional practices could not be handed down without improvement.³ FoMA Members are becoming exasperated with Crown officials promulgating this kaupapa.

¹ p15 Beyond intellectual property. Document F12

² Mr. Brown QC assurance from wai 262 hearing 8 September 2006

³ Muriwhenua Fisheries Report 1988 (wai 22). Available from www.waitangitribunal.govt.nz.

3.21 Maori should not be restricted to the level of development of the 1840s, as noted above Maori tradition did not prevent the evolution of knowledge, however Maori should not be forced to agree to all bio-prospectors proposals. Crown insistence that Maori participate in this way will create future Treaty breaches.⁴

4. Recommendations

4.1 Foma would like to recommend that the Tribunal takes the following points into consideration

4.2 This claim is an opportunity for the Crown to become engaged jointly with Maori in indigenous rights and advocacy in fulfilment of their treaty obligations. Advocacy to be at International forums.

4.3 The World Trade Organisation (WTO) World Intellectual Property Organisation (WIPO) is currently drafting Traditional Knowledge and Traditional Cultural Expressions or Folklore, the Crown is obligated to argue for the rights of Indigenous people, namely Maori, at these forums, taking into consideration that the 10th session is to be held in December this year and ought do so with Maori advocates at their side.

4.4 Establishment of an Indigenous Cultural and Intellectual Property Rights Commission (ICIPRC). Focus of the Commission to be the protection of Maturanga Maori, Maori culture and taonga.

4.5 FoMA supports a high level working group with a mixture of Crown and Tangata Whenua representatives to develop the above kaupapa, objectives and resourcing of this body should be implemented.

4.7 The New Zealand legal framework requires reviewing and strengthening to increase the level of protection for Maori in regards to Maturanga Maori. The framework should consider perpetual protection for hapu, whanau, and lwi groups, address areas of concern such as the notion of public domain, through full consultation with Maori, taking adequate steps to address concerns and ideas expressed by Maori.

4.8 The commercialisation exploitation of Flora and Fauna from the Crown Estates requires a formal process including a royalty system for benefits gained by parties using these resources. The royalties would assist in funding ICIPRC.

⁴ Williams, D. 2001. Maturanga Maori and Taonga.

4.9 An example of a royalty system is the Crown Mineral Prospector; however our recommendation is that Maori be the beneficiaries of royalties from the use of Matauranga Maori and resources that have cultural or other significance to Maori.

4.10 FoMA sees a joint responsibility between Maori and the Crown to ensure the continued advancement and vitality of Indigenous Maori culture of New Zealand as expressed by individual whanau hapu iwi. To ensure advancement and vitality of culture Maori have the right to determine their;

- Spirituality, intention and practice
- Morals and ethics, conduct and customs
- Cultural needs, aspirations and practice (in particular cultural expressions, songs, dance, rituals and arts to name but a few)

4.11 To this end many Maori desire the establishment and resourcing of whare wanganga along a traditional baseline. This should not be prescribed by the Crown but resource assistance could be provided by the ICIPRC to assist Iwi.

The Federation of Maori Authorities thanks you for the opportunity to make a Submission on the Wai 262 claim. The Federation's submission outlines the major points we wish to raise regarding this hearing. Please do not hesitate to contact myself or the author if you have any queries relating to this submission.

Nāku noa,



Paul Morgan

Executive Deputy Chair