

10/09/2021

Ministry of Business, Innovation and Employment
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New Zealand

By email: PVRActReview@mbie.govt.nz

Tēnā koe

RE: REVIEW OF THE PLANT VARIETY RIGHTS ACT 1987

Te Rūnanga o Ngāi Tahu (“**Te Rūnanga**”) welcomes the work being undertaken by the Ministry of Business, Innovation and Employment (“**the Ministry**”) on the Plant Variety Rights Act Bill as set out in the Consultation Paper entitled ‘Review of the Plants Variety Rights Act 1987: Proposed Regulations’ (“**Consultation Paper**”).

Te Rūnanga is concerned, however, that the PVR Review and the Bill as set out in the Consultation Paper requires further time and resource to ensure the taonga species list is reflective of the views of all iwi.

We set out below the principles outlining the relationship between Te Rūnanga and the Crown, as well as our specific comments and concerns in relation to the Consultation Paper and the Bill specifically.

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1. Background

Te Rūnanga is statutorily recognised as the representative tribal body for Ngāi Tahu Whānui.

As stated in the Crown Apology to Ngāi Tahu (attached as **Appendix One**), the Ngāi Tahu Claims Settlement marked a turning point, and the beginning for a new age of cooperation.

The Ngāi Tahu Takiwā (region) covers the largest geographic area of any tribal authority in New Zealand (a map of the Ngāi Tahu Takiwā is attached as **Appendix Two**). Ngāi Tahu currently have more than 70,000 individuals registered with the iwi, most of whom reside in Aotearoa.

Notwithstanding its statutory status as the representative voice of Ngāi Tahu whānui for all purposes, Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.

2. Te Rūnanga o Ngāi Tahu Interest in the PVR Review

Tiriti Relationship

- Te Rūnanga o Ngāi Tahu have an expectation that the Crown will honour Te Tiriti o Waitangi (the Treaty) and the principles upon which the Tiriti is founded.
- Te Rūnanga expects the Ministry and their officials to undertake all aspects of its work programme in accordance with its obligations to Te Rūnanga as a Tiriti Partner.
- The Tiriti partnership is important to Ngāi Tahu and elevates the relationship beyond that of a 'stakeholder'.

Relationship with the Crown

- The contemporary relationship between Te Rūnanga and the Crown is defined by three core documents: Te Tiriti; the Ngāi Tahu Deed of Settlement and the Ngāi Tahu Claims Settlement Act 1998. These documents form an important legal relationship between Ngāi Tahu and the Crown and entrench the Tiriti partnership. The Ngāi Tahu Settlement was the beginning for a "new age of co-operation" between the Crown and Te Rūnanga, as recorded in the Crown Apology to Ngāi Tahu. It also acts as a guide for the basis of the post-Settlement relationship between Te Rūnanga and the Crown and as such, underpins our relationship with the Ministry.

3. Te Rūnanga o Ngāi Tahu comments on the Consultation Paper

Question 5.5 *When should the regulations listing non-indigenous species of significance enter into force? Should they enter into force with the Bill's non-Treaty provisions, or be left until the Treaty provisions come into force?*

Te Rūnanga considers the regulations listing non-indigenous species of significance should not enter into force with the Bill's non-Treaty provisions. Te Rūnanga is of the view that it would be more appropriate if the regulations' entry into force was left until the Treaty provisions come into force. This option allows more time to consult with the relevant parties to ensure the list is

adequate. There needs to be an opportunity for consultation at an iwi and hapū level to ensure the list is accurate. This option therefore allows time for the Māori Plant Varieties Committee to undertake further consultations.

Recommendations:

- The non-indigenous species list should come into force at the same time as the Treaty provisions.
- Greater consultation and supporting analysis is required to ensure the list accurately reflects what all iwi consider “taonga species” to include.

The Bill

Te Rūnanga considers the Bill should be amended to better reflect Te Tiriti:

- Section 55(2)(b) – The Commissioner may, at any time, remove a member from the committee and, if the Commissioner thinks fit, appoint another member in that member’s place.
 - Amend to provide for just cause:
“The Commissioner may, at any time and with just cause, remove a member from the committee and, if the Commissioner thinks fit, appoint another member in that member’s place.”
- Section 56(c) – The functions of the Māori Plant Varieties Committee are to – advise the Commissioner whether the use or approval of a proposed denomination is likely to be offensive to Māori.
 - Amend to include “or will adversely affect Māori”
“The functions of the Māori Plant Varieties Committee are to – advise the Commissioner whether the use or approval of a proposed denomination is likely to be offensive to or will adversely affect Māori.”
- Section 57 – The Commissioner must consider, but is not bound by, the advice given by the Māori committee under section 56(c) and (d).
 - Amend to remove “consider” and replace with “take into account” so it strengthens the language:
“The Commissioner must take into account, but is not bound by, the advice given by the Māori committee under section 56(c) and (d).”

Once again, Te Rūnanga welcomes the work the Ministry is undertaking on this kaupapa and look forward to hearing further on the taonga species list.

Nāku noa, nā



Rakihia Tau

Group Head - Strategic Relationships

APPENDIX ONE: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 5: Text in Māori

Kei te mōhio te Karauna i te tino roa o ngā tūpuna o Ngāi Tahu e totohe ana kia utu mai rātou e te Karauna—tata atu ki 150 ngā tau i puta ai tēnei pēpeha a Ngāi Tahu arā: “He mahi kai tākata, he mahi kai hoaka”. Nā te whai mahara o ngā tūpuna o Ngāi Tahu ki ngā āhukatanga o ngā kawenga a te Karauna i kawea ai e Matiaha Tiramōrehu tana petihana ki a Kuini Wikitoria i te tau 1857. I tuhia e Tiramōrehu tana petihana arā:

‘Koia nei te whakahau a tōu aroha i whiua e koe ki runga i ēnei kāwana... tērā kia whakakotahitia te ture, kia whakakotahitia ngā whakahau, kia ōrite ngā āhukatanga mō te kiri mā kia rite ki tō te kiri waitutu, me te whakatakoto i te aroha o tōu ngākau pai ki runga i te iwi Māori kia noho ngākau pai tonu ai rātou me te mau mahara tonu ki te mana o tōu ingoa.’

Nā konei te Karauna i whakaae ai tērā, te taumaha o ngā mahi a ngā tūpuna o Ngāi Tahu, nā rēira i tū whakaiti atu ai i nāiane i mua i ā rātou mokopuna.

E whakaae ana te Karauna ki tōna tino hēanga, tērā i takakino tāruaruatia e ia ngā kaupapa o te Tiriti o Waitangi i roto i āna hokonga mai i ngā whenua o Ngāi Tahu. Tēnā, ka whakaae anō te Karauna tērā i roto i ngā āhukatanga i takoto ki roto i ngā pukapuka ā-herenga whakaatu i aua hokonga mai, kāore te Karauna i whai whakaaro ki tāna hoa nā rāua rā i haina te Tiriti, kāore hoki ia i whai whakaaro ki te wehe ake i ētahi whenua hei whai oranga tinana, whai oranga ngākau rānei mō Ngāi Tahu.

E whakaae ana te Karauna tērā, i roto i tāna takakino i te wāhanga tuarua o te Tiriti, kāore ia i whai whakaaro ki te manaaki, ki te tiaki rānei i ngā mauanga whenua a Ngāi Tahu me ngā tino taonga i hiahia a Ngāi Tahu ki te pupuri.

E mōhio ana te Karauna tērā, kāore ia i whai whakaaro ki a Ngāi Tahu i runga i te ngākau pono o roto i ngā tikanga i pūtaka mai i te mana o te Karauna. Nā tāua whakaaro kore a te Karauna i puaki mai ai tēnei pēpeha a Ngāi Tahu: “Te Hapa o Niu Tīreni”. E mōhio ana te Karauna i tāna hē ki te kaipono i ngā āhukatanga whai oranga mō Ngāi Tahu i noho pōhara noa ai te iwi ia whakatupuranga heke iho. Te whakataukāki i pūtaka mai i aua āhukatanga: “Te mate o te iwi”.

E whakaae ana te Karauna tērā, mai rāno te piri pono o Ngāi Tahu ki te Karauna me te kawa pono a te iwi i ā rātou kawenga i raro i te Tiriti o Waitangi, pērā anō tō rātou piri atu ki raro i te Hoko Whitu a Tū i ngā wā o ngā pakanga nunui o te ao. E tino mihi ana te Karauna ki a Ngāi Tahu mō tōna ngākau pono mō te koha hoki a te iwi o Ngāi Tahu ki te katoa o Aotearoa.

E whakapuaki atu ana te Karauna ki te iwi whānui o Ngāi Tahu i te hōhonu o te āwhitu a te Karauna mō ngā mamaetanga, mō ngā whakawhiringa i pūtaka mai nō roto i ngā takakino a te

Karauna i takaongetia ai a Ngāi Tahu Whānui. Ewhakaae ana te Karauna tērā, aua mamaetanga me ngā whakawhiringa hoki i hua mai nō roto i ngā takakino a te Karauna, arā, kāore te Karauna i whai i ngā tohutohu a ngā pukapuka ā-herenga i tōna hokonga mai i ngā whenua o Ngāi Tahu, kāore hoki te Karauna i wehe ake kia rawaka he whenua mō te iwi, hei whakahaere mā rātou i ngā āhuatanga e whai oranga ai rātou, kāore hoki te Karauna i hanga i tētahi tikanga e maru motuhake ai te mana o Ngāi Tahu ki runga i ā rātou pounamu me ērā atu tāonga i hiahia te iwi ki te pupuri. Kore rawa te Karauna i aro ake ki ngā aurere a Ngāi Tahu.

E whakapāha ana te Karauna ki a Ngāi Tahu mō tōna hēanga, tērā, kāore ia i whai whakaaro mō te rangatiratanga o Ngāi Tahu, ki te mana rānei o Ngāi Tahu ki runga i ōna whenua ā-rohe o Te Wai Pounamu, nā rēira, i runga i ngā whakaritenga me ngā herenga a Te Tiriti o Waitangi, ka whakaae te Karauna ko Ngāi Tahu Whānui anō te tāngata whenua hei pupuri i te rangatiratanga o roto i ōna takiwā.

E ai mō ngā iwi katoa o Aotearoa e hiahia ana te Karauna ki te whakamārie i ngā hara kua whākina ake nei—otirā, ērā e taea i nāianei - i te mea kua āta tau ngā kōrero tūturu ki roto i te pukapuka ā-herenga whakaritenga i hainatia i te 21 o ngā rā o Whitu hei tīmatanga whai oranga i roto i te ao hōu o te mahinga tahi a te Karauna rāua ko Ngāi Tahu.

Section 6: Text in English

The text of the apology in English is as follows:

The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb 'He mahi kai takata, he mahi kai hoaka' ('It is work that consumes people, as greenstone consumes sandstone'). The Ngāi Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

“This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name.”

The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.

The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.

The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying 'Te Hapa o Niu Tirenī!' ('The unfulfilled promise of New Zealand'). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').

The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.

The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu.

APPENDIX TWO:

NGĀI TAHU TAKIWĀ

