

Office of Te Minita Whanaketanga Māori

Chair

Cabinet Māori Crown Relations: Te Arawhiti Committee

DEVELOPING A PLAN ON NEW ZEALAND'S PROGRESS ON THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Proposal

1. I seek Cabinet approval to lead the development of a national plan of action, strategy or other measure (a "**plan**") on New Zealand's progress towards the objectives of the United Nations Declaration on the Rights of Indigenous Peoples (the **Declaration**).

Executive Summary

2. In 2010, New Zealand supported the Declaration, recognising that it contains principles consistent with Te Tiriti o Waitangi such as working in good faith and partnership. New Zealand is committed to the common objectives of Te Tiriti o Waitangi and the Declaration, alongside our existing legal and constitutional frameworks.
3. Since it was adopted, international forums on indigenous issues have begun asking countries to report on their implementation of the Declaration. New Zealand government agencies, however, consider the Declaration on an ad hoc basis, if considered directly at all.
4. Although many government actions on Māori development and wellbeing are consistent with the aspirations of the Declaration, we do not currently have a way to accurately describe our progress and demonstrate active engagement with the Declaration in our business as usual work.
5. I seek approval to lead a process to develop a Declaration plan that draws on our approach as guided by the Living Standards Framework and the government's commitment to improve Māori wellbeing outcomes. Developing a plan on the Declaration is an opportunity to reflect the progress being made across government on Māori wellbeing and development, and use our current and future examples to inform New Zealand's narrative on indigenous rights for domestic and international audiences.
6. I propose to establish a working group of technical experts from government and Māoridom in April 2019 to help develop proposals for the plan and an engagement process with iwi, hapū, whānau and civil society. In making my decisions about this group, I will consult with the Minister for Māori Crown

Relations: Te Arawhiti, the Minister of Justice, the Attorney-General, the Minister of Commerce and Consumer Affairs, and the Minister of Conservation.

7. As I receive advice from the working group, I will consult with Ministers with portfolio interests in a Declaration plan. I expect this will include the Ministers in paragraph 6 and, where required, the Minister for the Environment, and the Minister for Trade.
8. I intend to report back to Cabinet in August 2019 to seek initial decisions on the Declaration plan and our approach to discussing it further with Māori.

Background

9. The Declaration records the standards and aspirations of governments and indigenous peoples in achieving harmonious and cooperative relations, pursued in a spirit of partnership and mutual respect (see the preamble of the Declaration in particular, Appendix 1). It covers a broad range of rights and freedoms, including the right to self-determination, culture and identity, and rights to education, economic development, religious customs, health and language.
10. New Zealand announced its support for the Declaration in 2010 and in doing so reaffirmed the importance of Te Tiriti o Waitangi as a unique feature of indigenous rights in New Zealand, alongside our other legal and constitutional frameworks [CAB Min (10) 10/11 refers]. New Zealand's support for the Declaration recognises that the Declaration is consistent with the duties and principles inherent in Te Tiriti o Waitangi and confirms the special cultural and historical position of Māori as tangata whenua of New Zealand. Our support also reflects the government's continuing endeavours to work with Māori for a fairer and more prosperous future for everyone.

The Declaration in New Zealand

11. New Zealand has previously made commitments to:
 - take concrete measures to ensure the implementation and promotion of the Declaration [CAB Min (14) 17/5]¹; and
 - cooperate with indigenous peoples through their own representative institutions to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration.²
12. Māori want to understand how the government intends to progressively realise the Declaration in the New Zealand context. The Declaration is, for example, increasingly being raised and applied in our domestic courts and the Waitangi Tribunal.³ New Zealand law will continue to evolve in relation to the Declaration,

1 This commitment results from New Zealand's acceptance of a Universal Periodic Review recommendation on the Declaration in 2014.

2 This commitment results from New Zealand's support for the United Nations (UN) General Assembly resolution recognising the Outcome Document of the World Conference on Indigenous Peoples in 2014.

3 For example, in the Waitangi Tribunal's *Whaia Te Mana Motuhake: Report on the Māori Community Development Act Claim*, the Waitangi Tribunal considered that the obligations described in the Declaration's articles are a circumstance they can take into account in assessing the Crown's actions,

while the government has not yet taken up the opportunity this presents to help shape the discussion around what the Declaration means in New Zealand.

13. The Declaration is also considered in an ad hoc manner by government agencies. A Te Puni Kōkiri stocktake in 2016 found that while there are activities taking place across government that are making progress towards the aspirations of the Declaration (such as greater opportunities for iwi, hapū and whānau in decision making), there is often no line of sight between these activities and New Zealand's commitment to take concrete actions on the Declaration.
14. This has been observed by the Independent Monitoring Mechanism (the **IMM**), established by the Iwi Chairs Forum in 2014 to independently monitor New Zealand's implementation of the Declaration and report annually to the United Nations Expert Mechanism on the Rights of Indigenous Peoples (**EMRIP**) in Geneva. They have now submitted four annual reports that highlight the progress government has made in some areas, but emphasising that slow development remains in other areas.

Comment

15. The work of the IMM and other civil society groups in international forums on indigenous issues highlights the challenges we face in tackling intergenerational and systemic challenges in New Zealand. New Zealand has acknowledged these challenges in its human rights reporting to United Nations bodies, and is nonetheless often considered internationally as a leader in indigenous rights. We have an opportunity to contribute better in this area.
16. Developing a Declaration plan would demonstrate our ongoing commitment to the international framework with respect to indigenous issues. Since its adoption, international experts and forums have highlighted an 'implementation gap' that persists in action towards the realisation of indigenous peoples' rights. National action plans and other measures have been identified internationally as an important mechanism for concrete actions improving outcomes for indigenous peoples. For New Zealand, it will provide a clearer narrative about New Zealand's indigenous rights journey, strengthening our ability to participate in and influence leadership on indigenous rights.
17. We also have an opportunity to establish greater coherence across government in delivering beneficial outcomes for Māori. This government's approach to improving wellbeing outcomes for Māori and building new partnerships for the future is, by necessity, important to our priorities across portfolios in improving the wellbeing of New Zealanders and their families; developing an economy that is growing and working for all of us; and making New Zealand proud. We already know that improving our whole of government investment approach to lifting outcomes for Māori requires greater integration and coordination across the public sector.
18. New Zealand's support for the Declaration provides a context in which we can set stretch targets and measure our progress in the terms that speak to our ambitions for a more holistic approach to wellbeing and prosperity. A Declaration plan is also an opportunity to report on how the government is giving effect to the making it relevant to the manner in which the principles of Te Tiriti should be observed by officials.

principles of Te Tiriti o Waitangi and its corresponding aspirations in the Declaration.

My proposal to develop a Declaration plan

19. I propose leading the development of a Declaration plan that articulates our commitment to action on Māori wellbeing and development. To show how we are making a difference, the Declaration plan will connect the relevant international standards to issues that matter most to whānau in our communities. This includes actions that realise the fundamental rights of Māori equal to all other citizens, alongside those that lead to greater opportunities for partnership and mutual leadership.
20. The starting point for the plan should assume that government takes seriously its commitment to Māori. This can be seen in our decisions to establish the Māori Crown Relations: Te Arawhiti office; a Māori wellbeing approach to supporting government investments; State Sector Act reform to raise the bar on how the Public Service responds to the needs and aspirations of Māori; and acknowledging the need for te ao Māori perspectives within the Living Standards Framework. Other areas that we are responsible for – such as the tax working group, climate change, housing, the development of the Trade for All agenda, and freshwater – are all part of the relevant context for aligning what the government is seeking to achieve, and how, with the objectives of the Declaration.
21. A Declaration plan could be a national plan of action, a strategy, or some other tool that provides a map that demonstrates and guides progress across government. I expect the Declaration plan to include time-bound, measurable actions that show how we are making a concerted effort towards achieving the objectives of the Declaration. In this sense, these actions should:
- come from the intersect between government priorities, Māori aspirations and international indigenous rights discourse
 - contribute to enhancing the self-determination of Māori as the indigenous peoples of Aotearoa / New Zealand
 - contribute to improving intergenerational Māori wellbeing
 - demonstrate ambitious action as opposed to business as usual.
22. In taking this approach, I expect the Declaration plan to inform emerging government practice and support New Zealand's present and future reporting needs on the implementation of the Declaration in New Zealand. In light of the government's increased focus on wellbeing, Te Puni Kōkiri has also refreshed its monitoring function, providing state sector agencies with assurance of their progress towards improving Māori wellbeing [CAB-18-Min-0643 refers]. Together, these mechanisms will provide a comprehensive picture of how Māori are progressing towards better wellbeing outcomes across a range of domains that reflect their needs, aspirations and interests.

A technical working group

23. I intend to establish a technical working group to develop initial proposals for a Declaration plan. They will report to me and will be supported by officials from Te Puni Kōkiri. They will provide me with recommendations and advice on:

- the form and content of a Declaration plan that focusses the government's priority activities into actions representing the mutual priorities of government and Māori, that contribute to the progressive realisation of the Declaration
- an engagement process with iwi, hapū and whānau that embodies New Zealand's best practice under Te Tiriti o Waitangi⁴ and the Declaration.⁵

24. I intend to appoint technical experts, including government officials and non-governmental experts on indigenous and human rights onto the working group. As a starting point, members may include people with experience working with the New Zealand Human Rights Commission (the **NZHRC**), the IMM and other groups from across Māoridom. The non-governmental working group members will be independent experts and will not represent any particular advocacy group.

25. From government, working group members will likely include officials from Te Puni Kōkiri, the Ministry of Justice, Māori Crown Relations: Te Arawhiti, the Crown Law Office, and where required, officials from the Ministry of Foreign Affairs and Trade, the Ministry for the Environment, and the Ministry of Business, Innovation and Employment.

26. I will make final decisions about the working group members and terms of reference for their work by April 2019, following consultation with the Minister for Māori Crown Relations: Te Arawhiti, the Minister of Justice, the Attorney-General, the Minister of Commerce and Consumer Affairs, and the Minister of Conservation. In selecting members and developing the terms of reference for the working group, I will consider how the interests of wāhine Māori (Māori women), kaumātua (the elderly), rangatahi (youth), tamariki Māori (Māori children), tangata whaikaha (disabled) and urban Māori will be represented, recognising that these groups face particular challenges in the realisation of their rights.

27. As I receive advice from the working group between April and August 2019, I will consult with Ministers with portfolio interests in the development of a Declaration plan. This is expected to include the Ministers in paragraph 26, and the Minister for the Environment and Minister for Trade, where required.

Next Steps

28. Subject to Cabinet's agreement, I will develop a terms of reference and establish the working group. I expect to begin consulting with the Minister for Māori Crown Relations: Te Arawhiti, the Minister of Justice, the Attorney-General, the Minister of Commerce and Consumer Affairs, and the Minister of Conservation on these decisions in March.

⁴ In particular, to actively protect Māori interests and act in good faith when making decisions that affect Māori interests.

⁵ The Declaration records that Indigenous Peoples have the right to self-determination and rights to participation in decisions across their interest areas. Article 38 also records that States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of the Declaration.

29. Following discussions with relevant portfolio Ministers in early 2019, I propose to report back to Cabinet in August 2019 seeking initial decisions on the Declaration plan, and a preferred option for engaging with Māori on the plan. Subject to those decisions, broader conversations with Māori on a Declaration plan will take place in the second half of 2019.
30. The UN Permanent Forum on Indigenous Issues is meeting in New York from 22 April – 3 May 2019. I expect to approach Cabinet soon with a proposal to attend this session of the Permanent Forum to deliver a statement on New Zealand's progress in enhancing indigenous wellbeing including our work to develop a Declaration plan.
31. In fulfilment of its independent role, the IMM has indicated that it is preparing its 2019 monitoring report on New Zealand's implementation of the Declaration. This report will be submitted to EMRIP, which is meeting in Geneva from 8-13 July 2019. I expect my officials to continue to engage openly and transparently with the IMM as we continue to develop a Declaration plan.

Consultation

32. The Minister for Māori Crown Relations: Te Arawhiti, Minister of Justice, Minister for Treaty of Waitangi, the Attorney-General, Minister for Economic Development, Minister for the Environment, Minister for Trade and Export Growth, Minister of Commerce and Consumer Affairs, Minister of Conservation, Minister for Land Information, Minister for Children, Minister of Internal Affairs, Minister for Seniors, Minister of Education, Minister of State Services, Minister for Social Development, Minister for Disability Issues, Minister of Health, Minister of Finance, Minister of Housing and Urban Development, Minister for Community and Voluntary Sector, Minister for Whānau Ora and the Minister for Youth have been consulted on this paper.
33. The Crown Law Office, the Department of Conservation, the Department of Corrections, the Department of Internal Affairs, Land Information New Zealand, the Ministry of Business, Innovation and Employment, the Ministry of Culture and Heritage, the Ministry of Education, the Ministry for the Environment, the Ministry for Foreign Affairs and Trade, the Ministry of Health, the Ministry of Justice, the Ministry of Primary Industries, the Ministry of Social Development, the Ministry for Women, the New Zealand Defence Force, the Office for Maori Crown Relations – Te Arawhiti, Oranga Tamariki Ministry for Children, the Treasury, and StatsNZ were also consulted. The Department of Prime Minister and Cabinet was informed.
34. I have also consulted on a draft version of this paper with a small group of independent experts with links to the NZHRC and the IMM. They have emphasised that action and awareness on the Declaration to date has largely been through iwi and non-governmental resource and promotion. They support the development of a Declaration plan and have indicated that they are pleased that I seek to progress this work.

Financial Implications

35. Financial implications associated with the proposals in this paper will be met within existing baselines. This includes the costs of the participation of non-governmental working group members, consistent with the Cabinet Office fees framework.

Human Rights

36. Developing a plan on the Declaration will align with New Zealand's existing human rights obligations and practices.

37. Any assessment of New Zealand's support for the Declaration will be out of scope of the work to develop a plan on the Declaration. If any opportunities are identified for strengthening New Zealand's support for the Declaration during the time that this work is underway, I will raise this with Cabinet.

Legislative Implications

38. There are no legislative implications.

Regulatory Impact Analysis

39. A regulatory impact analysis is not required.

Gender Implications

40. Opportunities for balanced gender representation will be considered in the development of the working group. I will request the working group to also consider gender implications in its development of proposals on the form and content of a plan on the Declaration.

Disability Perspective

41. I will request the working group to consider the interests of tangata whaikaha in the development of the proposed form and content of a plan on the Declaration.

Publicity

42. I will release a media statement before the end of February 2019 announcing that I am beginning discussions between government and Māori on a national plan of action, strategy or other measure on New Zealand's progress towards the objectives of the Declaration. As part of this media statement, I may explore options for a te reo Māori name for a Declaration plan that best reflects New Zealand's circumstances.

Proactive Release

43. I intend to release this Cabinet paper on the Te Puni Kōkiri website.

Recommendations

44. I recommend that the Committee:

1. **Agree** that the Minister for Māori Development lead a process to develop a national plan of action, strategy or other measure (a “**plan**”) on New Zealand’s progress towards the objectives of the United Nations Declaration on the Rights of Indigenous Peoples (the **Declaration**)
2. **Invite** the Minister for Māori Development, in consultation with the Minister for Māori Crown Relations: Te Arawhiti, the Minister of Justice, the Attorney-General, the Minister of Commerce and Consumer Affairs and the Minister of Conservation, to confirm terms of reference and establish a technical working group including non-governmental experts on human and indigenous rights, and government officials
3. **Note** that the working group will provide the Minister for Māori Development with advice and recommendations on:
 - a. the form and content of a Declaration plan that focusses the government’s priority activities into actions representing the mutual priorities of government and Māori, that contribute to the progressive realisation of the Declaration
 - b. an engagement process with iwi, hapū and whānau that embodies New Zealand’s best practice under Te Tiriti o Waitangi and the Declaration
4. **Note** that following advice from the working group, the Minister for Māori Development will consult with Ministers with portfolio interests in a Declaration plan, which is expected to include the Minister for Māori Crown Relations: Te Arawhiti, the Minister of Justice, the Attorney-General, the Minister for the Environment, the Minister for Trade, the Minister of Commerce and Consumer Affairs, and the Minister of Conservation
5. **Invite** the Minister for Māori Development to report back to Cabinet in August 2019 seeking initial decisions on a Declaration plan, and a preferred option for engagement with iwi, hapū, whānau and Māori.

Authorised for lodgement

Hon Nanaia Mahuta
Te Minita Whanaketanga Māori
/ / 2018

Appendix 1: The United Nations Declaration on the Rights of Indigenous Peoples

Released by the Minister for Māori Development