

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

1 WHIRINGA-Ā-RANGI 2019

CLAIRE CHARTERS, KAYLA KINGDON-BEBB, TĀMATI OLSEN, WAIMIRIRANGI ORMSBY,
EMILY OWEN, JUDITH PRYOR, JACINTA RURU, NAOMI SOLOMON AND GARY WILLIAMS

HE PUAPUA

"He puapua" means "a break", which usually refers to a break in the waves. Here, it refers to the breaking of the usual political and societal norms and approaches. We hope that the breaking of a wave will represent a breakthrough where Aotearoa's constitution is rooted in te Tiriti o Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples.

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PROTECTING Papatūānuku: THE WERO FROM OUR RANGATAHI

As kaitiaki (guardians), Māori draw strength from surrounding natural elements in the fight for their protection. In pepeha (geographical connections), Māori acknowledge the significant regional mountains and waterways when introducing oneself. In whakapapa (genealogical connections), mountains, waterways and other significant environmental embodiments are respected and recognised as tuākana (senior).

Papatūānuku (earth mother) and Ranginui (sky father) are our most senior deities who, together, are responsible for the sustenance of every living thing within their realm. Māori and other Indigenous peoples' worldviews are grounded in ancient knowledge systems that place Papatūānuku and Ranginui at the centre of all things as the absolute source of all creation. Papatūānuku and Ranginui, commonly referred to as the environment, are the centre of Māori existence, without whom we have no identity.

The state of our surrounding environment is reflective of the state of our people. Given increased and continued environmental crisis, our environment is in a state of emergency. We, Māori and other Indigenous peoples around the world are in a state of emergency.

The vision of *He Puapua* is that, should Māori have the ability to exercise full authority over our lands, waters and natural resources, uphold our responsibilities as kaitiaki and implement Indigenous solutions with resources and support to do so, Aotearoa will be a thriving country for all.

"E KORE TĒNEI WHAKAORANGA E HURI KI TUA O AKU MOKOPUNA"

THIS QUEST FOR SALVATION SHALL NOT GO BEYOND MY MOKOPUNA.

HE TONGIKURA NĀ KIINGI TAAWHIAO

Rangatahi that we engaged with passionately reiterated this tongikura, and the wero (challenge) that the fight to **be Māori** in the context of the impacts of colonisation is not inherited by our mokopuna (grandchildren).¹ The Declaration Working Group ("DWG") were inspired by this wero and *He Puapua* is a step towards addressing it. It puts Papatūānuku at the forefront as we work to restore her rightful place to care for Ranginui, for humankind, for Māori, and for all living things. Ultimately, *He Puapua* enables Māori to thrive as Māori in an environment that supports their aspirations to do so.

¹ Te Wehi Wright, Te Huia Taylor, Tamoko-o-te-Rangi Ormsby, Manawaoterangi Vercoe and Ngaa Rauira Pumanawawhiti.

Dr Claire Charters

Chairperson

Technical working group on a plan for the UN Declaration on the Rights of Indigenous Peoples (DWG)

c.charters@auckland.ac.nz

1 November 2019

Hon Nanaia Mahuta

Te Minita Whanaketanga Māori

Parliament Buildings

WELLINGTON

nanaia.mahuta@parliament.govt.nz

Kei te rangatira, tēnā koe,

REPORT OF THE WORKING GROUP ON A PLAN TO REALISE THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: *HE PUAPUA*

On behalf of the DWG, the technical working group on the plan to realise the Declaration, it is my pleasure to attach an advance, unedited version of our report and appendices, *He Puapua*. I also attach an executive summary.

The preface to the report is a wero from our rangatahi, which reminds us that our work on a Declaration plan is of the utmost importance to our youth, and that Papatūānuku and her protection is central to te Ao Māori.

The Declaration plan sets out our vision for 2040 in which the Declaration is realised, and a roadmap to achieve that. The roadmap is underpinned by chronologically organised proposals for action set out in tables. The tables include examples of practical immediate initiatives, as well as a line of sight to Vision 2040. It must be noted, however, that given the short time available to us to hui and prepare *He Puapua*, we have not been able to be as comprehensive in our review of existing initiatives as we might have liked. Moreover, our proposals and examples are subject to engagement with and support from Māori especially.

Our advice on engagement is that it be broad and inclusive, and we provide some guidance about how this might be achieved using a staggered approach. We draw on Cabinet-approved guidelines for engagement with Māori for this.

The report as a whole is driven by:

- the government's priorities of well-being, inclusive economy and pride in New Zealand;

- a rangatiratanga-centric approach; and
- our understanding that te Tiriti is New Zealand's constitutional foundation, and central to the realisation of the Declaration.

New Zealand has made some important progress towards Declaration realisation by enabling Māori participation in kāwanatanga Karauna (state governance), even if more can be done. However, New Zealand is comparatively weaker in supporting the realisation of Māori self-determination, which we understand to be Māori control over Māori destinies. Based on evidence, we would expect Māori wellbeing to improve as our authority over our lives increases.

The DWG would appreciate the opportunity to present He Puapua to you and your colleagues kanohi ki te kanohi at an appropriate time.

We are hopeful that our report will be published once it has been considered by the Crown, as we think it will contribute positively to the ongoing socialisation of the Declaration.

Finally, we thank you and this government for your commitment to the Declaration, and ambition to improve the wellbeing of all. All members of the DWG are individually and collectively inspired by this kaupapa and strongly support it moving forward.

Nāku noa, nā,

Dr Claire Charters

Chairperson

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ACRONYMS / DEFINITIONS

DWG:	Declaration Working Group: Technical Working Group to develop proposals for a plan articulating New Zealand's commitment to the UN Declaration on the Rights of Indigenous Peoples.
EMRIP: Peoples.	The United Nations Expert Mechanism on the Rights of Indigenous Peoples.
FPIC:	Free, prior and informed consent.
IMM:	The Aotearoa Independent Monitoring Mechanism, monitoring state compliance with the Declaration.
Te Tiriti:	Te Tiriti o Waitangi
The Declaration:	The United Nations Declaration on the Rights of Indigenous Peoples.
UN:	United Nations

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EXECUTIVE SUMMARY

INTRODUCTION

1. The report of the DWG, the technical working group on the Declaration, provides a roadmap to achieve a "Vision 2040". That is, realisation of the Declaration by 2040, the bicentenary of the signing of te Tiriti o Waitangi. We have chosen this date as te Tiriti o Waitangi is central to the DWG's report, and in the Aotearoa context it is inextricably intertwined with the Declaration.
2. Aotearoa is comparatively advanced globally in providing for Māori inclusion in kāwanatanga Karauna (state governance) and cultural rights, although there remains room for improvement. Accordingly, the main contribution of the DWG is to recommend a re-focus on rangatiratanga Māori (self-determination). This focus reflects the central pillar of the Declaration that all other rights rest on: self-determination.
3. The meaning of self-determination and how it is exercised is up to Indigenous peoples to determine. However, it ranges from full independence at one end of the spectrum to participation in state government at the other. In between are self-government arrangements and autonomous authority in agreed areas (e.g. independent indigenous education systems and healthcare services).
4. The context for the creation of a Declaration plan is the long-standing Māori assertion of the right to exercise rangatiratanga and protect our land and territories. This includes, since the 1920s, engagement in international fora for recognition of our rights under te Tiriti o Waitangi. The context also includes New Zealand's support for the Declaration in 2010, commitment to a Declaration plan in 2014, and UN human rights bodies' support for a Declaration plan.
5. We consider Aotearoa has reached a maturity where it is ready to undertake the transformation necessary to restructure governance to realise rangatiratanga Māori. This maturity is reflected in some existing governmental initiatives, laws and policy, the voices of Māori and jurisprudence. In addition, there is extensive literature and empirical evidence that demonstrate the positive outcomes realised when Indigenous peoples make decisions for their own economic, social and cultural development.
6. The scope of the Declaration is broad, and touches upon nearly every aspect of Māori-Crown relations. The DWG has divided up its consideration of the Declaration into the following thematic areas: self-determination/rangatiratanga; participation in kāwanatanga Karauna; lands, territories and resources; culture; and equity and fairness. For each section we set out the key relevant Declaration articles, outline a Vision 2040 for Declaration realisation, comment on the application of the Declaration articles to New Zealand, and provide a roadmap that gives examples of practical and incremental actions towards realising Declaration compliance. For ease of reference we have also included chronologically

designed tables that reflect these suggested steps. These tables are the heart of the DWG's report.

7. Central to the DWG report are the government's priorities of wellbeing, economic inclusivity and pride in Aotearoa, as well as existing work and ongoing related initiatives, such as those related to Te Pae Tawhiti and te reo. The rights and interests of tangata whaikaha (disabled), wāhine Māori (women), kaumātua (the elderly), rangatahi (youth), tamariki Māori (children) and takatāpui (LGBTQI+) communities must also be front and centre of both a Declaration plan and engagement.
8. *He Puapua* only forms the first step towards the creation of a Declaration plan. Any plan must be progressed through engagement and partnership with Māori.
9. New Zealand is the first state to embark on a process for a Declaration plan, and has the capacity to be a world-leader in realising Indigenous peoples' rights, especially if it is ambitious.²

MANDATE OF THE DECLARATION WORKING GROUP (DWG)

10. In 2019 Cabinet established the DWG as an independent body to develop a plan and an engagement process strategy to realise the Declaration. It is comprised of five non-state representatives and four government officials.
11. The DWG has been constrained by time, which has hindered our capacity to review and take into account relevant initiatives, policies and laws including recommendations of advisory and other working groups on related kaupapa.

VISION 2040 FOR DECLARATION REALISATION

12. Our vision is that in 2040 rangatiratanga Māori is realised, Māori and the Crown enjoy a harmonious and constructive relationship and work together to restore and uphold the wellbeing of ngā tangata, Papatūānuku and the natural environment. In this report we set out key elements of Vision 2040 in relation to the following five thematic areas.

<p><i>1. Rangatiratanga</i></p>	<ul style="list-style-type: none"> • Māori will be exercising authority over Māori matters as agreed by Māori, and including exclusive and/or shared jurisdiction over their lands, territories and resources and over matters to do with taonga tuku iho and culture. • Iwi and hapū will have agreed and established their governance structures, with their authority recognised. • Tikanga Māori will be functioning and applicable across Aotearoa under Māori (national, iwi, hapū, whānau) authority and also, where
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² New Zealand is not the first state to take action to incorporate the Declaration into legislation. A Declaration bill was tabled in British Columbia's legislature on 24 October 2019.

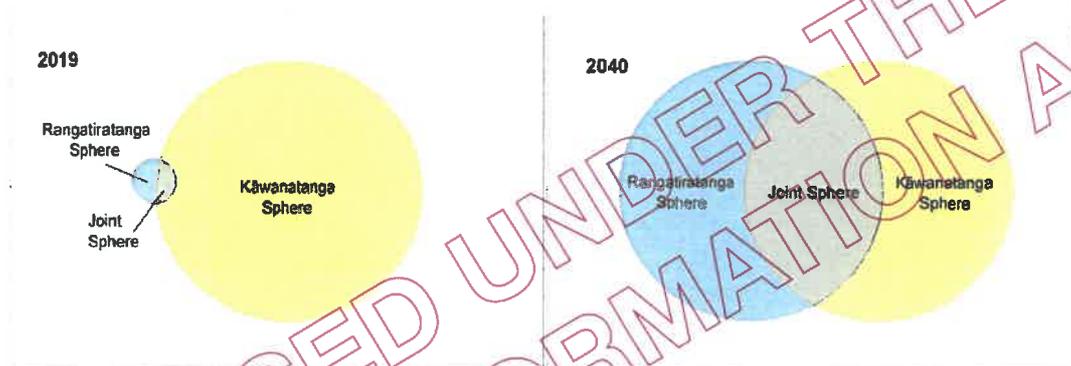
	appropriate, under Crown/kāwanatanga authority.
2. Participation in kāwanatanga Karauna	<ul style="list-style-type: none"> • Māori participation in central and local government will be strong and secure. • Māori will have a meaningful, and sometimes dominant voice in resource management decisions. • The kāwanatanga Karauna sphere will be bicultural. • There will be strong protection for te Tiriti o Waitangi and human rights in state law and policy. • Māori will be providing for Māori.
3. Lands, Territories and Resources	<ul style="list-style-type: none"> • The nation will know and appreciate iwi tribal boundaries, where the practice of mana whakahaere is evident. • There will be an enlarged iwi/hapū/whānau estate, supported by significantly increased return of Crown lands and waters, including takutai moana, to Māori ownership (in addition to Treaty of Waitangi settlements). • Law, policy and processes will support flourishing iwi territories, including where iwi/hapū/whānau can positively contribute towards the control of, access to, and management of all lands and resources within their rohe, in accordance with tikanga and mātauranga Māori. • There will be greater relinquishment of Crown-assumed exclusive kāwanatanga authority over land, resources and taonga. • Law, policy, processes and entities will support a successful bicultural joint sphere of governance and management of resources, taonga and Crown lands.
4. Culture	<ul style="list-style-type: none"> • Iwi, hapū and whānau will be exercising authority over all aspects of their culture, including the ability to control, protect and develop their cultural and natural heritage - ngā taonga tuku iho. • Te reo Māori will be flourishing, its use will be widespread, and its integrity will be protected - te reo kia tika, te reo kia rere, te reo kia Māori. • All Māori will have the opportunity to access, practise and develop their culture and reo, connect with their whakapapa, and be confident in their Indigenous identity. • All New Zealanders will embrace and respect Māori culture as an integral part of national identity, and this will also be reflected in a bicultural, mātauranga-informed state service/kāwanatanga Karauna.
5. Equity	<ul style="list-style-type: none"> • Aotearoa will be a nation where Māori will be thriving and prosperous in all aspects of life, including across generations. • There will be equity between peoples, which means that rangatiratanga and Māori authority is recognised and respected. • There will be genuine partnership bodies in the relational sphere. • All Māori will enjoy equity in opportunity and outcomes. • New Zealand's understanding of wellbeing will incorporate a holistic te Ao Māori and mātauranga Māori perspective.³

TE TIRITI / RANGATIRATANGA FRAMEWORK

³ This extends beyond people to include te mauri o te taiao (the environment).

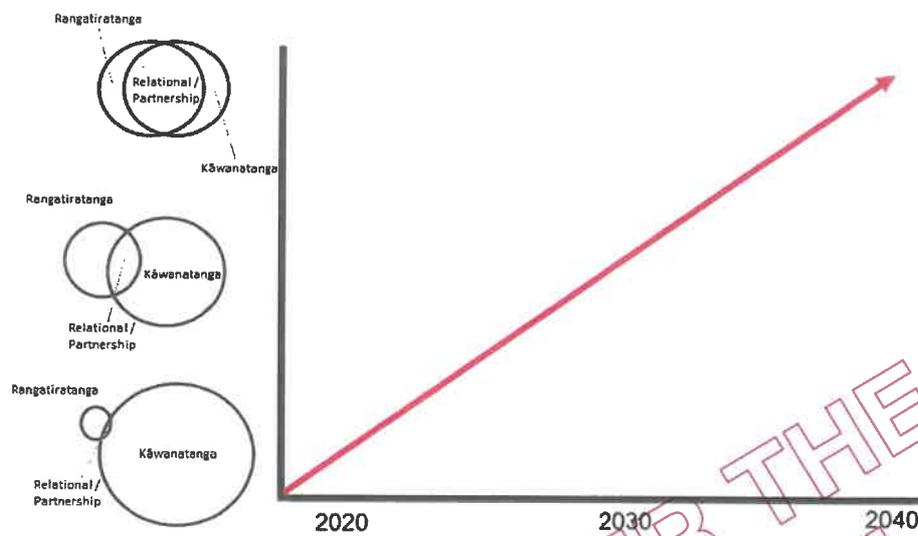
13. Drawing on the report of Matike Mai Aotearoa, the DWG has adopted a Tiriti model based around 'spheres of authority'.

Diagram 1: Rangatiratanga/Joint/Kāwanatanga Spheres



14. The rangatiratanga sphere reflects Māori governance over people and places. The kāwanatanga sphere represents Crown governance. There is a large 'joint sphere', in which Māori and the Crown share governance over issues of mutual concern.
15. If they choose, Māori must be able to participate in Crown governance. This is reinforced by Article 3 of te Tiriti, which confirms Māori equity and equality. There is much room for improvement in the kāwanatanga sphere, as Māori remain a minority with their rights vulnerable to the majority and face disproportionate socio-economic disparities.
16. The spheres, as they currently operate, do not reflect te Tiriti. The suggested roadmap, to be developed into a Declaration plan, has incremental step-changes that go towards rebalancing the spheres and giving greater space for the operation of rangatiratanga over time. This is represented in the figure below.

Diagram 2: Declaration consistency 2020-2040



17. The relational sphere reflecting co-governance might entail a joint governance structure, or it might involve mechanisms for the respective governance entities to coordinate to make law and policy. There may be a need for a Tiriti body or court to regulate jurisdictional boundaries.
18. Shared authority and jurisdictional arrangements are not novel. New Zealand can learn from other jurisdictions, such as Canada, which is currently in the process of implementing shared jurisdiction arrangements created by modern treaties and self-government agreements between First Nations and the Crown.

ENGAGEMENT

19. The approach the DWG has taken to engagement with Māori is informed by Cabinet-approved engagement guidelines. We consider a Declaration plan dealing with Māori rights sits at the 'significant' end of the engagement spectrum and as such requires partnership and/or co-design approaches.
20. We have suggested a phased approach to engagement with Māori. This includes initial targeted engagement with key Māori organisations and groups, followed by wide and open engagement, then targeted thematic engagement.
21. We stress that engagement should not prevent the Crown from simultaneously commencing "Declaration-friendly activities" while engagement on the further development of the Declaration plan takes place.
22. The Declaration plan will need to evolve over time to respond to future developments, such as the impacts of climate change. It must be substantively revisited through ongoing, iterative engagements between Māori and the Crown, especially in the rangatiratanga-building and design phases.

23. Public engagement and a strong public education campaign will be necessary to reach Vision 2040.

THE ROADMAP TO DECLARATION CONSISTENCY

24. The DWG's report and tables provide options and examples for the staggered and progressive realisation of Declaration consistency between now and 2040 across the 5 Declaration themes.
25. Action is needed across all themes. Declaration realisation will not be achieved if the Crown concentrates on certain thematic areas (e.g. culture) to the exclusion of others (e.g. self-determination). At any point in time we recommend multiple simultaneous initiatives related to the substance of the Declaration plan and engagement.
26. In suggesting steps, we have sought to find a balance between providing concrete examples while not pre-determining matters that should be informed by a participatory engagement process, and/or are best determined by Māori through the exercise of rangatiratanga.
27. Our starting point is that government takes seriously its responsibilities under te Tiriti. This is evidenced by recent decisions to establish the Office for Māori Crown Relations: Te Arawhiti; proposed State Services Act reform (which includes improving public service responsiveness to the needs and aspirations of Māori); and the commitment to reflect te ao Māori perspectives within the new Living Standards Framework. Current government priorities such as climate change, housing and trade negotiations are also relevant to meeting the objectives of the Declaration. These can all be built on.
28. We expect the journey to Declaration consistency to unfold over several years. We provide below an indicative outline of what that journey to 2040 might look like, including actions that can be taken immediately.

Timeframes	Steps
<i>Now to Dec 2020</i>	<ul style="list-style-type: none"> Public announcement of the receipt of <i>He Puapua</i> with an outline of next steps. <i>He Puapua</i> and its recommendations considered by Cabinet with decisions about how to further implement a Declaration plan. Continued socialisation of the Declaration by DWG members in their everyday mahi, and Te Puni Kōkiri and Te Arawhiti within government. Announcement of the government's commitment to a Declaration plan at a significant event domestically (e.g. at Waitangi in February 2020), or internationally (e.g. at the next hui of the Expert Mechanism on Indigenous Rights in June 2020). This announcement might include an

Timeframes	Steps
	<p>outline of immediate and long-term goals.</p> <ul style="list-style-type: none"> • Commencement of the first targeted phase of engagement. • Establishment of a governance rōpū and secretariat, responsible for guiding realisation of the Declaration plan into the future (including accountability process such as monitoring, reviewing and taking remedial action). • Commencement of the wide and inclusive second phase of engagement. • Finalisation of the Declaration plan and strategies for implementation from 2020 and beyond.
<i>To 2021</i>	<ul style="list-style-type: none"> • Starting the journey towards Declaration consistency. • The government will have undertaken engagement, and established ways in which progress will be measured. It will have a reasonable mandate from Māori around the content and direction of the work that needs to be undertaken to achieve Declaration consistency by 2040. • The Crown will have initiated additional pieces of work designed to further lay the groundwork for Declaration consistency. • The government will have initiated a public education campaign to give all New Zealanders the tools to have informed discussions about our constitutional arrangements, and set up a process for the Crown to determine how it should partner with Māori in a Tiriti-based constitution.
<i>To 2025</i>	<ul style="list-style-type: none"> • Continuing the journey towards Declaration realisation. • Monitoring: shows positive progress towards Vision 2040; identifies areas for improvement; and highlights whether further engagement is needed to address these areas. • The government will have made significant progress on the initial work established and begun further pieces of work designed to further advance the plan. • The government will have held a constitutional convention on the Crown's role as Treaty partner in a future constitution. • The government will have continued the public education campaign and encouraged the Human Rights Commission to partner with NGOs to build alliances and shape the public conversation about

Timeframes	Steps
	constitutional arrangements.
To 2030	<ul style="list-style-type: none"> • Reaching the mid-point of our journey to Declaration realisation. • Monitoring: shows continued positive progress towards Vision 2040; identifies any areas for improvement; and highlights whether further engagement is needed to address these areas. The government will have continued to make significant progress on the initial work established and will have identified areas where work can be improved, and further work will have been initiated to advance the plan. • The government will have designed and initiated a multi-stage process of constitutional transformation, with three streams reflecting different interests: the Rangatiratanga stream (for Māori), the Kāwanatanga stream (for the Crown) and the Rite Tahī stream (for all New Zealanders). A process for joint deliberation will also have been established.
To 2035	<ul style="list-style-type: none"> • Nearing the end of the journey, with the destination of Declaration realisation in sight. • Monitoring: shows continued positive progress towards Vision 2040; identifies any areas for improvement; and highlights whether further engagement is needed to address these areas. <p>The government will have implemented the actions identified to achieve Declaration consistency, and enabled Māori governance and/or participation in the design and delivery of public services.</p> <ul style="list-style-type: none"> • The government will have concluded a wide-ranging programme of engagement on constitutional transformation and will have established a final constitutional convention bringing together the three streams (Rangatiratanga, Kāwanatanga and Rite Tahī) to identify the instruments and processes needed to form a Tiriti-based constitution.
To 2040	<ul style="list-style-type: none"> • Arriving at our destination: realising the Declaration. • The government will have implemented the actions identified to achieve Declaration consistency, and enabled Māori governance and/or participation in the design and delivery of public services. • The government will have implemented the relevant instruments to share power more fairly with Māori in our constitutional arrangements.

IMMEDIATE STEPS: A GOVERNANCE RŌPŪ

29. As an immediate action, we recommend the establishment of a high-level co-governance body comprised of equal numbers of government ministers and Māori representatives, with responsibility to:
- (a) approve the final engagement strategy on the Declaration plan;
 - (b) direct the development of and sign-off on the final Declaration plan
 - (c) provide high-level leadership to the realisation of the Declaration between now and 2040 (and possibly beyond); and
 - (d) oversee the accountability process including monitoring, review and remedial action.
30. Given the significant overlap and synergy between the development of a Declaration plan and Te Pae Tawhiti (the work to organise and deliver a whole-of-government response to Wai 262), we consider the Ministerial Oversight Group associated with Wai 262 might be amalgamated with a governance rōpū. Māori should appoint their own representatives to a governance rōpū.
31. The governance rōpū could be supported by a secretariat comprised of iwi appointees, independent advisors and State officials, and should be independent of the existing governmental bureaucracy. It might be led by an Indigenous Rights Commissioner or Treaty Relations Commissioner.

ACCOUNTABILITY

32. There needs to be a robust mechanism established that can identify whether Declaration rights are being realised as well as, in the interim, the effectiveness of the steps in that direction. This might include:
- (a) Monitoring: data and information on what is happening relevant to the Declaration plan.
 - (b) Review: checking that those with responsibilities under the plan are achieving the plan's objectives.
 - (c) Remedy: taking steps to remedy shortcomings exposed by the review.

THE WERO FROM OUR RANGATAHI

33. Our rangatahi remind us that our work on a Declaration plan is of utmost important to our youth, and that Papatūānuku and her protection is central to te Ao Māori. As we were challenged, *He Puapua* aims to provide a framework for change that enables Māori to thrive as Māori in an environment that supports our aspirations to do so. We encourage the government to be ambitious in living up to the challenge.

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INTRODUCTION

OUR MANDATE

In March 2019, Cabinet agreed to the establishment of the DWG to provide te Minita Whanaketanga Māori with advice and recommendations on:⁴

- the form and content of a Declaration on the Rights of Indigenous Peoples' (Declaration) plan that focuses the government's priority activities into actions representing the mutual priorities of government and Māori that contribute to the progressive realisation of the Declaration; and
- an engagement process with iwi, hapū and whānau that embodies New Zealand's best practice under te Tiriti o Waitangi and the Declaration.

The background advice to Cabinet from te Minita Whanaketanga Māori states that actions in a Declaration plan should:⁵

- 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; and
- demonstrate, where possible, ambitious action as opposed to business as usual.

Cabinet also recommended an engagement approach that embodies the principles of te Tiriti o Waitangi and the aspirations of the Declaration.

In line with our terms of reference, we have not assessed:

- New Zealand's position of support for the Declaration;
- New Zealand's past and present implementation of the Declaration; or

⁴ Cabinet Māori Crown Relations - Te Arawhiti Committee Minute of Decision "New Zealand's Progress on the United Nations Declaration on the Rights of Indigenous Peoples: Development of National Plan" (5 March 2019) MCR-19-MIN-0003. In September 2018 the Declaration plan was signaled by Minita Mahuta at the Ngā Taonga Tuku Iho conference, Nelson.

⁵ Letter from N Mahuta (Minita Whanaketanga Māori) to the Māori Chair Cabinet Māori Crown Relations: Te Arawhiti Committee regarding Developing a plan on New Zealand's progress on the United Nations Declaration on the Rights of Indigenous Peoples (5 March 2019).

- whether a Declaration plan or engagement is required.

Our contribution is to provide the basis of a roadmap and engagement strategy for the realisation of the Declaration as a contemporary expression of Māori rights affirmed in te Tiriti and He Whakaputanga o te Rangiratanga o Nu Tireni (He Whakaputanga).

The DWG is comprised of nine members all appointed by te Minita Whanaketanga Māori. Five members are appointed from Māoridom, and four are officials in relevant government agencies. The DWG has worked constructively and adopted a consensus-based decision-making approach.

LIMITATIONS

The DWG's main constraint has been time. The DWG was established in the latter part of August 2019, and was requested to report back just over two months later on 1 November, after meeting for 15 days. As such, the DWG has considered related policy, recommendations and reports from Māori, government and non-state actors in a relatively arbitrary and cursory way. This has hindered our ability to provide advice on specific steps in the short term, and there has not been time to conduct comprehensive knowledge gathering. As a result, our immediate recommendations include that the Crown:

- map all relevant Māori and governmental initiatives with a Declaration "dimension";
- ensure that all current government initiatives and policy are te Tiriti and Declaration consistent (some examples are highlighted in the tables);
- over time, bring all legislation, policy and initiatives in line with te Tiriti and the Declaration; and
- collate centrally and make publicly available recommendations made by expert groups and the Waitangi Tribunal relevant to the Declaration.

Also, there was insufficient time for the DWG to engage widely, although we were able to have some very fruitful conversations with some rōpū and individuals.

ACKNOWLEDGEMENTS

We thank Minita Mahuta (te Minita Whanaketanga Māori) and Cabinet for their ambition in working towards a Declaration plan, and stress our ongoing collective and individual support for this mahi going forward.

We would also like to thank our tripartite secretariat, who provided administrative support throughout the process, with members working collaboratively across three organisations, including: Tracey Whare (IMM); Jessica Ngatai (Human Rights Commission); and Te Puni Kōkiri officials.

We were very fortunate to have had the benefit of the skill of Natalie Coates and Joanna Judge of Kāhui Legal, who helped us bring together the written report. Moreover, we benefited

tremendously from the informal but very thoughtful contributions from rōpū of tangata whaikaha (Ruth Jones, Helena Tuteao, Chrissie Cowan and Pati Umaga) and rangatahi (Te Wehi Wright, Te Huia Taylor, Tamoko-o-te-Rangi Ormsby, Manawaoterangi Vercoe and Ngaa Rauira Puumanawawhiti) as well as Matthew Tukaki (New Zealand Māori Council), Professor Margaret Mutu (IMM) and Lil Anderson (Te Arawhiti).

Finally, thanks to our respective whānau, without whose care and support we could not have taken the time to hui and to put together this report.

CONTEXT TO A DECLARATION PLAN

New Zealand's decision to develop a Declaration plan has a long history in Māori engagement in international political fora to seek protection and respect for te Tiriti, rangatiratanga, culture and lands, territories and resources. Famously, Tahupōtiki Wiremu Rātana attempted to present a petition related to Māori loss of authority and land to the League of Nations in Geneva in 1924.⁶ Since then, Māori from across Aotearoa have continually raised this kaupapa internationally and with particular vigour since the late 1970s, when the United Nations (UN) began to address Indigenous peoples' rights in earnest.

In relation to the drafting of the Declaration, we mihi to those advocates including Erihapeti Murchie, Ngāneko Minhinnick, Moana Jackson, Aroha Mead and Archie Tairoa (amongst others), who engaged in the drafting of the Declaration during the sessions of the UN Working Group on Indigenous Populations. Since the Declaration's adoption, statutory bodies such as the New Zealand Māori Council (NZMC) have advocated for its implementation. From its inception in 2015, the Independent Monitoring Mechanism (IMM), established by the National Iwi Chairs Forum to monitor New Zealand's compliance with the Declaration, and led by Professor Margaret Mutu has consistently called for a plan for the Declaration and provided much of the pressure on, thinking around, and support for this kaupapa.

The government has expressed support for the Declaration since 2010, led by Tā Pita Sharples. New Zealand has made various commitments to implementing the Declaration, including to the UN Human Rights Council,⁷ and in 2014 in the General Assembly when it committed to a plan of action to achieve the ends of the Declaration.⁸

The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) conducted a mission to New Zealand to support the development of a plan on the Declaration in April 2019. The EMRIP

⁶ S James Anaya *Indigenous Peoples in International Law* (2nd ed, Oxford University Press, New York, 2004) at 57. J McLeod Henderson *Ratana: the Origins and the Story of the Movement* (Polynesian Society, Wellington, 1963) 58-59.

⁷ *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* New Zealand UN Doc A/HRC/WG.6/32/NZL/1* (13 November 2018) at para 21 and *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* New Zealand UN Doc A/HRC/WG.6/18/NZL/1* (8 November 2013) at para 20.

⁸ *Outcome Document of the High-Level Plenary Meeting of the General Assembly known as the World Conference on Indigenous Peoples GA Res 69/2, A/Res/69/2* (2014), para 8.

Advisory Note included recommendations that the development of a Declaration plan should ensure:⁹

- respect for the self-determination of Māori during the process of developing a national plan of action;
- the consultation, participation and partnership of Māori in the initiation, development, implementation, monitoring and evaluation phases of the national action plan process;
- that the whole process is culturally appropriate and transparent, and takes into account te Ao Māori;
- that a broad section of Māori participate in and are consulted throughout this process, including whānau, hapū, and iwi in different geographic locations, as well as existing mandated groups, like the National Iwi Chairs Forum, and other leading Māori organisations;
- that participation is comprehensive, inclusive and accessible, taking into account the special needs of Indigenous elders, women, children, youth and persons with disabilities;
- power imbalances in the Crown-Māori relationship are addressed;
- the participation of non-Māori, as well as relevant government agencies, parliamentarians, relevant independent institutions and senior government officials;
- equitable partnership and support Māori to engage effectively, including through capacity building programmes and awareness raising of their rights under the Declaration; and
- that the process of developing the plan and the goals therein are adequately resourced, in both human and financial aspects.

VISION 2040

Our Vision 2040 is one where rangatiratanga is realised, where Māori and the Crown enjoy a harmonious and constructive relationship, and work in partnership to restore and uphold the wellbeing of Papatūānuku, tāngata and the natural environment.

Aotearoa has reached a moment in time, a maturity, where we can honestly reflect on how we might realise te Tiriti promises agreed to in 1840 by the bicentenary of its signing.

⁹ *Expert Mechanism on the Rights of Indigenous Peoples* "Country Engagement Mission (8-13 April 2019) New Zealand, Advisory Note" (14 July 2019). The Independent Monitoring Mechanism and the Human Rights Commission invited the EMRIP to Aotearoa. During the week-long visit, the EMRIP met with Ministers and government agencies, as well as a range of community organisations and experts, and attended two public hui. The resulting advice from the EMRIP covers issues such as: self-determination; participation and partnership; health, education, health and justice; and systemic challenges. The Advisory Note offers both high level and practical guidance that should continue to be taken into account as the Declaration plan is developed. The EMRIP have signaled a strong interest in ongoing involvement, and in follow up engagement as the development of the Declaration plan progresses.

The Declaration – with its focus on self-determination and the social, cultural, political, environmental and intergenerational wellbeing of Indigenous peoples – offers an important tool to guide, inspire and assist us in living up to the commitments in our founding constitutional documents. Work to develop a Declaration plan provides an opportunity for Aotearoa to build a stronger Tiriti partnership, where Māori whānau, hapū and iwi can exercise rangatiratanga, uphold their kaitiaki responsibilities, control their destinies, and achieve their potential. Our Vision 2040 is of an inclusive society with te Tiriti at its heart: a fairer system we can all take pride in, and which enables all New Zealanders to thrive.

We view the Declaration plan process as creating a roadmap to Vision 2040 where the rights in te Tiriti and the Declaration are not just words on paper, but a reality for all Māori and all New Zealanders. A Declaration plan can identify the concrete and practical steps that need to be taken progressively over the period between now and 2040.

We have a specific Vision 2040 with respect to the 5 thematic areas addressed in the Declaration: rangatiratanga; participation in kāwanatanga Karauna; lands, territories and resources, culture, and equity.

NEW ZEALAND CAN BE A GLOBAL LEADER

New Zealand is the first state to embark on the development of a Declaration plan, although other states are hot on our heels.¹⁰ If done well, with a genuine commitment to the Declaration in both process and substance, and ensuring Māori support, New Zealand has the opportunity to lead the way globally for the progressive realisation of the Declaration. It behoves New Zealand to support a Declaration plan that builds upon what Cabinet envisaged, i.e. the Declaration plan is “ambitious, as opposed to business as usual”.

HUMAN RIGHTS ARE UNIVERSAL

Given our mandate to develop a Declaration plan, our focus is on Indigenous peoples’ rights. We note, however, that all New Zealanders have human rights. For everyone's benefit, New Zealand should strive to be fair, open and tolerant, based on its foundation in the coming together of Māori and the Crown under te Tiriti o Waitangi.

PEOPLE THAT SHOULD BE FRONT AND CENTRE

There is a need for particular attention to be paid to the rights and needs of elders, women, youth, children, people with disabilities and LGBTQI+ people in the implementation of the Declaration.¹¹ These groups are often marginalised, and so should be a particular focus of, and have a strong voice in a Declaration plan. Targeted engagement should take place with these communities, and

¹⁰ On Thursday 24 October 2019, legislation was tabled in British Columbia, Canada to implement the Declaration, and there is a likelihood that the federal government Canadian Bill C-262 will be tabled again shortly.

¹¹ *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 61/295, A/RES/61/295 (2007) articles 21 and 22.

efforts be made to ensure their representation in decision-making processes and governance of the plan.

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THE DWG'S MAIN CONTRIBUTION: A RANGATIRATANGA-CENTRIC APPROACH

The Declaration comprehensively articulates Indigenous peoples' rights to self-determination; participation in state governance; lands, territories and resources; culture; and equity. Self-determination is the central pillar of all rights under the Declaration. Te Tiriti o Waitangi and He Whakaputanga o te Rangatiratanga o Nu Tirenī guarantee Māori chiefs their ongoing rangatiratanga, protection of taonga and, in the case of te Tiriti o Waitangi, Crown kāwanatanga, or governance over non-Māori settlers.

At their heart, the Declaration, te Tiriti o Waitangi and He Whakaputanga mirror one another in expressing Māori authority to govern themselves and determine their own destinies, to participate in Crown governance, law and policy, and to have their rights protected. The former is a contemporary expression of globally agreed Indigenous peoples' rights, and the latter are compacts between leaders of peoples at the formation of a nation comprised of those peoples: they are New Zealand's constitutional foundation.

NEW ZEALAND HAS WORK TO DO

New Zealand is renowned internationally for comparatively strong protection of the rights of Indigenous peoples, and aspects of New Zealand's governance system, law and policy are, today, deserving of that reputation. New Zealand has institutions, methods of governance, laws and policies that enable Māori to participate in and influence state law and policy, principally in the form of guaranteed Māori seats in Parliament.

In more recent times, governments on all sides of the political spectrum have supported the revitalisation of Māori culture, for example, te reo Māori and Māori authority over aspects of associated policy and initiatives.¹² There are a number of "Declaration-promising" governmental initiatives such as an overall wellbeing approach, Whānau Ora, Te Pae Tawhiti, and proposed changes to the criminal justice system. We conceptualise this activity as Māori involvement in the "kāwanatanga Karauna" sphere.

New Zealand is comparatively less advanced in relation to many other states in respecting and recognising Indigenous authority over Indigenous places and spaces. Given this, the most important contribution of the DWG is to advise on a pathway for New Zealand to refocus on and prioritise the realisation of rangatiratanga Māori. We can do this by outlining a roadmap with immediate and longer-term initiatives to achieve rangatiratanga Māori, which is essential to truly give effect to *all* the rights in the Declaration, te Tiriti and He Whakaputanga, including rights to lands, territories and resources, culture, and equity.

¹² For example, Te Ture mō te Reo Māori 2016 Māori Language Act 2016.

RANGATIRATANGA NEEDS TO BE MEANINGFUL

The DWG is inspired by the need for the Declaration plan to be meaningful for Māori, by positively impacting on the everyday lives of Māori and the nation as a whole.

Restoring Māori authority over Māori destinies will empower Māori to determine their own future with respect to important areas of life, rather than have decisions made about them by a government distant from them. There is strong research and empirical evidence that outcomes for Indigenous peoples improve, and Indigenous peoples enjoy greater wellbeing where they are self-determining, as is explained in the rangatiratanga Māori chapter.

More concretely, policies and initiatives that form part of the Declaration plan will, it is hoped, result in tangible and concrete improvements in the lives of Māori in the shorter as well as longer term.

The chapter on rangatiratanga is therefore the most pivotal to the realisation of the Declaration, and all rights therein.

DRAWING ON THE GOVERNMENT'S AND MĀORI PRIORITIES

There is increasing appetite for the realisation of rangatiratanga Māori within Māoridom, the government, and New Zealand more widely, from which a Declaration plan might be built. Realising rangatiratanga Māori is consistent with all of the three governmental priorities for Aotearoa, namely wellbeing, an inclusive economy and pride in New Zealand.

Successive governments have driven some positive programmes and initiatives for Māori. The establishment of the Māori-Crown relations ministerial portfolio and Te Arawhiti office, renewed commitment to strengthening te Tiriti partnership, and proposed state sector reforms to enhance public sector responsiveness to Māori are examples of a continued trajectory towards greater realisation of te Tiriti and Indigenous rights.

A rangatiratanga-centric approach reflects the aspirations of Māori in te Tiriti and has been expressed in multiple ways since 1840 domestically and internationally, including most recently in Matike Mai, which drew on the thinking of Māori expressed in over 250 hui around the motu to recommend models for constitutional transformation.¹³

MATIKE MAI AOTEAROA

The Independent Working Group on Constitutional Transformation (2016) was formed under the auspices of the National Iwi Chairs Forum, and was led by Professor Margaret Mutu and Dr Moana Jackson. The Working Group's terms of reference were: "To develop and implement a model for an inclusive Constitution for Aotearoa based on tikanga and

¹³ Matike Mai Aotearoa, (2016), *He Whakaaro Here Whakaumu mō Aotearoa. The Report of Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation*. Retrieved from: <http://www.converge.org.nz/pma/MatikeMaiAotearoaReport.pdf>.

kawa, He Whakaputanga o te Rangatiratanga o Nu Tireni of 1835, Te Tiriti o Waitangi of 1840, and other Indigenous human rights instruments which enjoy a wide degree of international recognition.” Its 2016 report identified several potential constitutional models as indicative options for further discussion.

There is a wealth of guidance with respect to realising rangatiratanga in Waitangi Tribunal reports. For example, in relation to health, the Tribunal has made an interim recommendation that the Crown commit to exploring the concept of a stand-alone Māori primary health authority, with specific steps to be completed by 20 January 2020.¹⁴

CONSTITUTIONAL TRANSFORMATION NEEDED

As noted in the *Matike Mai* report, realising rangatiratanga Māori will require constitutional transformation.¹⁵ Similarly, multiple advisory groups have made recommendations to support rangatiratanga Māori, including with respect to criminal and family justice, rights to water and te reo Māori.¹⁶ There is growing recognition of and momentum for ‘transformational change’ that includes better, sustained support for Māori led solutions, greater recognition of te ao Māori, and implementation of te Tiriti as the foundation for improved and enduring Māori Crown relationships.¹⁷

The clear message coming from working group recommendations and reports are that our current systems are not working for Māori,¹⁸ evidenced in negative statistics and the lived experiences of many Māori. They highlight the ongoing impacts of colonisation as underlying factors in these inequities and the need for structural and systemic changes to give effect to the promises of te Tiriti.

¹⁴ Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 165.

¹⁵ For example, this emerged as a common topic of discussion in the Crown/Māori Relations hui held in 2018. Ministry of Justice, (2018), *Crown/Māori Relations: Summary of Submissions*. Retrieved from: <https://tearawhiti.govt.nz/assets/Māori-Crown-Relations-Roopu/3ca45b2b2b/Final-Submissions-Summary-Report.pdf>.

¹⁶ Independent Panel examining the 2014 family justice reforms, (2019), *Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms*. Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf>. Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group, (2019), *He Waka Roimata: Transforming Our Criminal Justice System*. Retrieved from: https://safeandeffectivejustice.govt.nz/assets/Uploads/fa55462d44/teuepureport_hewakaraimata.pdf. Kāhui Wai Māori, (2019), *Te Mana o te Wai: The health of our wai, the health of our nation*. Retrieved from: <https://www.mfe.govt.nz/publications/fresh-water/te-mana-o-te-wai-health-of-our-wai-health-of-our-nation-k%C4%81hui-wai-m%C4%81ori>.

¹⁷ See, for example, Hui Māori, (2019), *Ināia Tonu Nei*; Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019); Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group, (2019), *He Waka Roimata: Transforming Our Criminal Justice System*; Kāhui Wai Māori, (2019), *Te Mana o te Wai: The health of our wai, the health of our nation* and Independent Panel examining the 2014 family justice reforms, (2019), *Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms*.

¹⁸ *Ibid.*

The Waitangi Tribunal's 2011 report *Ko Aotearoa Tēnei* recommends solutions based on a fundamental shift in philosophy and approach by the government. The Tribunal stated:¹⁹

Unless it is accepted that New Zealand has two founding cultures, not one; unless Māori culture and identity are valued in everything government says and does; and unless they are welcomed into the very centre of the way we do things in this country, nothing will change. Māori will continue to be perceived, and know they are perceived, as an alien and resented minority, a problem to be managed with a seemingly endless stream of taxpayer funded programmes, but never solved.

There is no one way to achieve constitutional transformation. It might involve a written constitution, or it might not. It behoves New Zealand to be creative and not allow form to dictate substance. A Declaration plan is one way that the New Zealand government might start down the road to constitutional transformation, and it has the potential to be an effective method indeed.

EMPOWERING LEGITIMACY TO GOVERN

Contrary to some views in public, Te Tiriti does not constitute Māori consent to indivisible and absolute Crown sovereignty. Moving towards a Declaration-compliant nation enables an important opportunity for the Crown to reassess its assumptions of ownership and power, including exclusive sovereignty. The DWG supports critique of common law doctrines such as the doctrine of discovery and associated notions of terra nullius as a basis to legitimise Crown exclusive sovereignty.

MĀORI AUTHORITY AND NEW ZEALANDERS

It is important to emphasise that under a rangatiratanga Māori model, Māori are seeking authority to determine their own destinies, rather than to regulate all people in Aotearoa. Rangatiratanga Māori will not detract from the Crown's duties to respect and protect the human rights of all individuals. It is a model inspired by an understanding of equity that means all peoples and individuals should be able to realise their potential, but that this might only be possible if different approaches are taken for different peoples and individuals. It does not mean that all individuals must be treated the same.

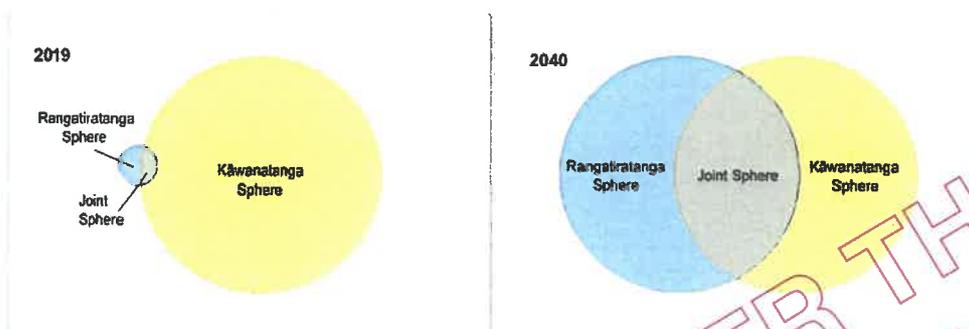
TE TIRITI / RANGATIRATANGA FRAMEWORK

The DWG's focus on a rangatiratanga-centric model and our terms of reference, which instruct us to consider actions that "contribute to enhancing the self-determination of Māori as the Indigenous peoples of Aotearoa New Zealand" (TOR, s4(a)(ii)), mean ensuring rangatiratanga and kāwanatanga are reflected and balanced in a fair and equitable way at the constitutional level.

¹⁹ Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi*, (Wai 262, 2011), at xviii.

Drawing on the *Matike Mai* report, we have found it helpful to conceptualise this using a visual model based around 'spheres of authority'. This conceptual framework seeks to reorient the balance between the rangatiratanga and kāwanatanga spheres, and broaden the joint (or relational) sphere as part of our Vision 2040.

Diagram 1: Rangatiratanga/Joint/Kāwanatanga Spheres



These diagrams represent the conceptual basis on which we have approached our work.

The rangatiratanga sphere reflects Māori governance over people and places. The kāwanatanga sphere represents Crown governance. In line with one of the models posited by *Matike Mai*, we envision a key feature of a Declaration-compliant future to be a larger 'joint sphere', in which Māori and the Crown share governance over issues of mutual concern. This sphere is effectively the intersection of Articles 1 (kāwanatanga) and 2 (rangatiratanga), with an overlay of Article 3 (equity). The Crown's right to kāwanatanga (Article 1) itself is informed by rights to self-determination in the Declaration. If they choose, Māori must be able to participate in Crown governance. This is reinforced by Article 3 of te Tiriti, which confirms Māori equity and equality with other citizens.

As incremental step-changes are achieved – as Māori institutions are strengthened, as opportunities/mechanisms for exercising self-determination are broadened and developed, and as Māori decide they wish it – then certain governance functions (e.g., education, health, social services etc) may shift from the kāwanatanga to the rangatiratanga sphere. This shifting nature of governance responsibilities and authority may also impact on the requirements of participation in the kāwanatanga sphere, i.e. the greater the authority in the rangatiratanga sphere, the lesser the need for consent/control in the kāwanatanga sphere. As the chapter on participation in kāwanatanga Karauna illustrates, there is much room for improvement in the kāwanatanga sphere, both structurally, as Māori remain a minority with their rights vulnerable to majority will, and instrumentally, as socio-economic disparities make brutally clear.

The relational sphere reflecting co-governance might require a joint governance structure, or it might involve mechanisms for the respective governance entities to coordinate to make law and policy with respect to certain subjects. There may be a need for a Tiriti body or court to regulate jurisdictional boundaries.

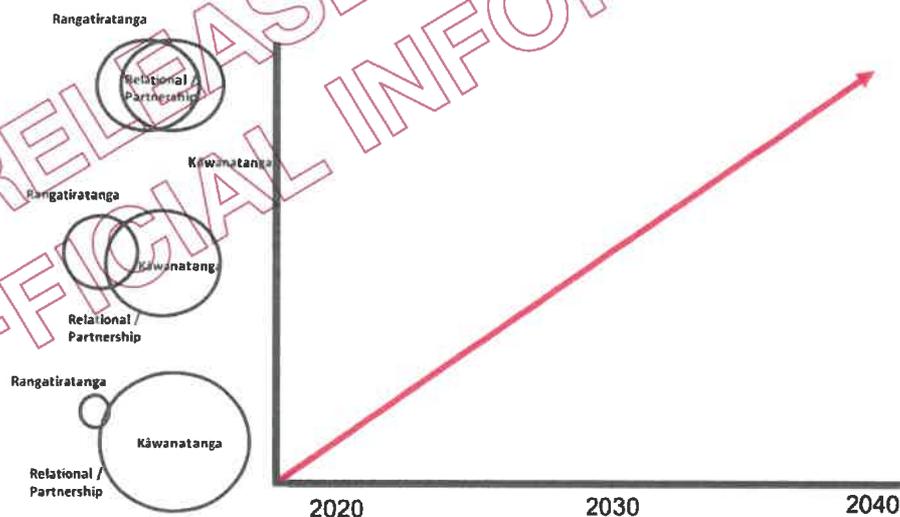
A ROADMAP TO DECLARATION CONSISTENCY

The DWG has attempted to provide practical and concrete steps towards the realization of our Vision 2040, based on te Tiriti and the Declaration, and organised around the themes of:

- rangatiratanga;
- participation in kāwanatanga Karauna;
- lands, territories and resources;
- culture; and
- equity.

These are presented in tables, which are the heart of the proposed Declaration plan.

Diagram 2: Declaration consistency 2020-2040



BALANCING VISION AND A DESIRE FOR IMMEDIATE PRACTICAL ACTION

We have sought to find a balance between providing practical, concrete advice, and to move the process forward, while being conscious not to pre-determine matters that should be informed by a participatory engagement process, and/or are best determined by Māori through the exercise of

rangatiratanga. As a result, we have recommended a process, and have proposed initial draft actions as a starting point for further discussion.

THE DECLARATION PLAN AS AN UMBRELLA

The Declaration touches upon nearly every aspect of Māori-Crown relations. It substantively directs the Crown but also manifests in the daily lived realities of iwi, hapū, whānau, and individual Māori.

A range of work programmes related to the objectives of the Declaration are currently in progress, a number of which are direct extensions of agreed Government priorities.²⁰ To support the efficient progressive achievement of Declaration consistency, we consider all relevant discrete work programmes should be linked up under the 'umbrella' of the Declaration plan.

Looking forward, there is a clear need for the Crown to develop a holistic and coordinated approach to engagement with Māori on issues and policy work related to te Tiriti and the Declaration. This is a logical extension of the government's commitment to build closer partnerships with Māori. Further to this, it will be critical to enabling proactive action on Waitangi Tribunal kaupapa enquiries and te Tiriti-compliant engagement on other cross-cutting issues, such as trade and health.

The development of a holistic and coordinated approach to engagement with Māori will require better alignment across the public service. We consider the creation of governance and institutional structures to support the further development of a Declaration plan present a tangible opportunity to drive this change, perhaps building on the existing work to organise and deliver Te Pae Tawhiti.

As discussed below, to guide the development of a Declaration plan in a te Tiriti and Declaration-consistent manner, we recommend a governance rōpū be established to include both Ministerial members and Māori members (to be appointed by Māori). We are aware that a similar governance structure is being considered for Te Pae Tawhiti in the form of a Ministerial Oversight Group to engage with a representative kaitiaki rōpū. Noting that adjustments to Te Pae Tawhiti structure may be required to respond to the wider breadth of issues covered in the Declaration plan (e.g. climate change), we consider this governance structure might usefully be adapted to respond to both kaupapa.

A HIGH-LEVEL GOVERNANCE RŌPŪ

We recommend the establishment of a high-level governance rōpū to lead further development of the Declaration plan and act as a partnership decision-making body. The governance rōpū should be comprised of equal numbers of Ministers and Māori. Like the Waitangi Tribunal recommended

²⁰ Refer to Appendix B for a list of the various initiatives we have considered in the context of this report.

in its Stage 2 Report on National Freshwater and Geothermal Claims (2019), there should be 50/50 Crown/Māori representation.²¹

Consistently with the Declaration and also the Waitangi Tribunal's recommended approach in Wai 2417, Māori should appoint their own representatives to the high-level governance rōpū. How Māori do this is, consistent with the right to self-determination, up to Māori. As Māori do not traditionally organise nationally under a single entity, this process may take time.

The governance rōpū might have the responsibility to:

- approve the final engagement strategy on the Declaration plan;
- direct the development of and sign-off on the final Declaration plan;
- provide high-level leadership to the realisation of the Declaration between now and 2040 (and possibly beyond); and
- oversee the accountability process including monitoring, review and remedial action.

As outlined above, it might be appropriate to amalgamate the ministerial advisory groups associated with Wai 262 with the governance rōpū.

A SECRETARIAT BODY TO DRIVE THE WORK

Strong support and resourcing are essential to realise the Declaration and any associated plan. We suggest that a Declaration secretariat body is established to support the governance rōpū. The Declaration secretariat would be responsible for undertaking the engagement and work to develop the Declaration plan.

The Declaration secretariat might be comprised of iwi advisors and government officials, and independent advisors, possibly associated with the Human Rights Commission. The Declaration secretariat should be independent of the existing governmental bureaucracy and could possibly sit inside the Human Rights Commission. It might also be led by, for example, an Indigenous Rights Commissioner or Treaty Relations Commissioner (who may also sit on the high-level governance rōpū).

While independence is key, there would undoubtedly need to be a strong relationship between the Declaration secretariat and Te Puni Kōkiri, as the Ministry responsible for increasing Māori capability and capacity, and Te Arawhiti, tasked with building Crown capability to have strong, ongoing and effective relationships with Māori.

CROWN ACCOUNTABILITY

The Crown will continue to be held to account for its realisation of the Declaration by international human rights mechanisms as a matter of course. These bodies include:

²¹ Waitangi Tribunal, *The Stage 2 Report On The National Freshwater And Geothermal Resources Claims*, 7.7.3 at 560.

- the Expert Mechanism on the Rights of Indigenous Peoples;
- the Special Rapporteur on the rights of Indigenous Peoples;
- human rights treaty bodies, including the UN Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights; and
- under the Human Rights Council's universal periodic review process.

It is foreseeable, too, that Māori, including the IMM, will continue to assess New Zealand's progress towards compliance with the Declaration. The Human Rights Commission and other independent or non-governmental bodies may do this also.

While the DWG does not provide proposals for a specific and concrete accountability mechanism associated with the Declaration plan, we are of the firm view that there needs to be a robust instrument that can identify whether the Declaration rights are being realised, as well as, in the interim, the effectiveness of the steps in that direction.²² We note also the recommendations made by the EMRIP in this regard.²³

It is important that the Crown does more than just monitor its progress on the Declaration, although this is an important step to gather data. The Crown must also review and measure its progress and, where progress is found to have stalled, action must be taken to reverse that trajectory. If necessary, remedial action should also be taken.

There might be three steps taken in an accountability process:²⁴

- **Monitoring:** collecting data and information to track activities relevant to the Declaration plan.
- **Review:** checking that those with responsibilities under the plan are achieving the objectives. This element might be undertaken by:
 - the Declaration governance rōpū and/or Declaration secretariat; and
 - an independent body or person who ensures that promises under the plan are being kept, and then passes their (public) report to the Declaration governance rōpū.
- **Remedy:** taking steps to remedy shortcomings exposed by the review.

As reflected above, there are a number of entities that might be involved in the accountability process associated with the Declaration plan, including both independent and non-independent organisations.

²² Our views are consistent with those of the Waitangi Tribunal in its recommendations for the *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry (2019)*.

²³ *Expert Mechanism on the Rights of Indigenous Peoples "Country Engagement Mission (8-13 April 2019) New Zealand, Advisory Note"* (14 July 2019), at 11.

²⁴ For further discussion see: Carmel Williams & Paul Hunt, (2017), Neglecting human rights: accountability, data and Sustainable Development Goal 3, *The International Journal of Human Rights*, 21(8), 1114-1143. DOI: 10.1080/13642987.2017.1348706.

Review should take place regularly, but not so regularly as to divert important resources away from achieving the Declaration plan steps themselves. It might be appropriate to review progress every five years between now and 2040.

PUBLICATION OF THE DWG'S REPORT

We strongly recommend that our report is published once it has been considered by Cabinet, in order to facilitate and be a part of the overall socialization of the Declaration, the Declaration plan and a Vision 2040 for New Zealand.

Our report might be also be summarised in a condensed and attractive publication for wide dissemination nationally, to Māori particularly. It might also form part of the education and engagement strategies associated with the Declaration plan.

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"KIA OHO KIA MATAARA": DRAFT ENGAGEMENT PLAN

WHĀINGA: OUR AIM

The DWG terms of reference direct us to propose "an engagement approach for discussing the initial Declaration plan with Māori that embodies the principles of te Tiriti o Waitangi and the aspirations of the Declaration". Accordingly the engagement approach should include: iwi; hapū; whānau; Māori individuals; and civil society. This engagement should inform an action plan that ultimately reflects "the intersect between government priorities, Māori aspirations and international Indigenous rights discourse", and which "contributes to enhance the self-determination of Māori".²⁵

TŪĀPAPA: THE FOUNDATION

The rights of Indigenous peoples to free, prior and informed consent, consultation and to participate in decision-making on matters affecting them are integral to the Declaration. It is imperative that the process for developing the plan, as well as ongoing work in relation to the plan, reflect and uphold these standards.

All Māori should have an opportunity to have a say. Opportunities for engagement should extend to all Māori as individuals as well as collectives. Targeted engagement should be undertaken to ensure that all population groups whose voices are often marginalised are able to participate. This should include: tangata whaikaha; wāhine Māori, kaumātua, rangatahi, tamariki, and takatāpui communities. These groups should determine for themselves how they want to participate in ongoing thematic engagement (outlined below).

ENGAGEMENT WITH MĀORI MUST BE DONE RIGHT

Getting engagement with Māori right will take careful planning, adequate resourcing and time.

Both the Declaration and EMRIP provide helpful advice, including to "ensure the consultation, participation and partnership of Māori in the initiation, development, implementation, monitoring

²⁵ *Developing a Plan on New Zealand's Progress on the United Nations Declaration on the Rights of Indigenous Peoples: Declaration Technical Working Group Terms of Reference, August 2019.*

and evaluation phases of the national action plan process.” In line with the Cabinet approved engagement guidelines,²⁶ we consider that a Declaration plan dealing with Māori rights sits at the ‘significant’ end of the engagement spectrum, and as such, requires partnership and/or co-design, and empowerment approaches at particular points during the engagement process.

We expect that our recommendations for engagement will evolve once engagement with Māori begins. It is vital that Māori have significant influence on the engagement plan and, in many cases, lead engagement on the Declaration plan and associated work.

COORDINATION REQUIRED

The government needs to quickly develop a holistic and co-ordinated approach to engagement with Māori on issues and policy reviews related to te Tiriti, including Wai 262 and the Declaration plan. For example, it could be that Wai 262 becomes an important subset of the wider work required to ensure that Aotearoa is meeting its obligations under te Tiriti and the Declaration. It is important to avoid engagement fatigue.

HEI MANAAKI: LEADERSHIP AND SUPPORT

One role for the governance ropu will be to ensure the engagement strategy is implemented and the Declaration plan is rolled out and implemented as intended. The Declaration secretariat will also provide support. We also suggest that the Declaration secretariat develop a communications plan..

NGA WHAKAMAHUKI: SUMMARY OF RECOMMENDATIONS

Our recommendation is that Māori must both be involved in and lead the design and delivery of the engagement strategy. We consider that the engagement process should:

- be fully reflective of Tiriti partnership, and uphold Māori rights to self-determination, participation in decision-making and free, prior and informed consent;
- be as wide and inclusive as possible;
- use a range of channels and processes appropriate to different audiences,²⁷ including technology, to optimise outreach and maximise engagement;
- be carried out in multiple stages, and continue over the life of the plan; and

²⁶ Te Arawhiti, (2018), *Guidelines for Engagement with Māori*. Retrieved from: <https://tearawhiti.govt.nz/assets/Māori-Crown-Relations-Roapu/6b46d994f8/Engagement-Guidelines-1-Oct-18.pdf>.

²⁷ Including but not limited to NZ Sign Language, Read Easy.

- be accompanied by education and information to raise awareness of the Declaration and its relevance to te Tiriti.

RANGATAHI

In our view, a core purpose of the plan should be to uphold the rights and meet the needs of future generations. It is particularly important that the voices of young people - the leaders in 2040 - are heard in this process.

We suggest that younger age brackets may be a key target group for engagement throughout all stages, and processes should be tailored to suit their needs and to encourage and enable their participation. Rangatahi should also play a role in any governance. Provisions should be put in place so kohanga reo, kura kaupapa and wharekura students, parents and/or guardians have best access to engage.

To optimise engagement, we advise that rangatahi undertake engagement for rangatahi with adequate resourcing and support. Technology, and the development of digitised engagement systems will enable increased outreach and intentional, focused feedback, as well as wānanga and other forms of engagement.

There is a question around whether the governance rūpū should be established ahead of the first phase of targeted engagement. Our view at this stage is that it is likely more feasible to establish following this first phase. The call for Māori representatives could potentially be made at this stage.

PHASE 1: TARGETED ENGAGEMENT

To ensure meaningful engagement and leadership by Māori in the engagement strategy and Declaration plan, we first recommend that targeted short-term engagement (6-8 weeks) takes place on:

- the importance of the Declaration, why it matters and why the action plan is vital;
- the proposed engagement approach;
- the draft Declaration plan (initial feedback only);
- the institutional structure (governance rūpū) that will govern and drive the Declaration plan; and
- development of the Declaration plan (with the idea to link to wider work).

Targeted engagement at this stage could include meetings and workshops with: the National Iwi Chairs Forum; New Zealand Māori Council; Māori Women's Welfare League; National Urban Māori Authority; Whānau Ora agencies; other Māori bodies; rangatahi groups; tangata whaikaha; Te Rūnanga o ngā Kura Kaupapa Māori; the Rātana movement; Ngā Kura-ā-Iwi; Ngā Kaitūhono; other key national/sector groups, to name only a few. Individuals from within these groups may continue to take leadership roles in the ongoing Declaration Plan process, for example, as champions within their respective communities, organisations, and/or sectors.

If the governance rōpū has not been established, this phase could be undertaken by an interim oversight group including Māori and Te Puni Kōkiri, with changes made to the engagement strategy and draft Declaration plan as a result.

PHASE 2: WIDE ENGAGEMENT

Consistent with the Declaration, engagement should be with all affected groups, through the representative institutions they choose and/or establish. This includes engaging with: iwi, hapū, whānau, national and community organisations, and urban and regional communities.

It is vital that phase 2:

- raises awareness of the Declaration and te Tiriti;
- seeks feedback on the Declaration plan (is it focusing on the right things? Are important things missing?); and
- tests the draft visions and outcomes currently in place.

WĀNANGA - EDUCATION AND AWARENESS RAISING

Alongside engagement and consultation on the Declaration plan, there needs to be a programme of public education to build awareness and understanding of the Declaration, te Tiriti and our history.

In September 2019, the Government announced a new commitment that New Zealand history will be taught in all schools and kura by 2022.²⁸ The DWG commends this and recommends that the curriculum include material that provides a good knowledge base for why being a Declaration-consistent nation is important for New Zealand. The curriculum should not shy away from the difficult aspects of colonisation.

A bold and ambitious plan will have implications for broader Aotearoa New Zealand, including, in the long term, the way that power is fairly shared by Tiriti partners through our governance and constitutional structures. It is therefore important that all New Zealanders understand and are part of the plan, have an opportunity to help create Vision 2040, and are included in a continued national conversation.

Education and information materials should translate the Declaration into meaningful language, relating it to people's lived experiences. They should help to make the connection between the words of the Declaration and how people are impacted in their real lives.

A wide range of audiences need to be considered, and the narrative tailored to their needs. Information materials should be suitable for a range of audiences e.g. it should be written in plain language and be easy to read. Different accessible versions should also be available, including one in te reo Māori.

²⁸ See <https://www.beehive.govt.nz/release/nz-history-be-taught-all-schools>.

Previous campaigns and educational materials may be useful to draw on, e.g. materials developed for the 2013 constitutional review, Matike Mai New Zealand's constitutional primer, the information campaign for MMP, voter mobilisation campaigns, etc.

Engagement leaders and community ambassadors could be enlisted to assist. Extensive education and promotion of the Declaration should also be undertaken across government agencies.

HEI TAUIRA: ENGAGEMENT EXAMPLES

We are aware that numerous reviews, working groups and various consultations have been recently carried out, which can provide examples of good engagement practices. Feedback from these exercises should inform the action plan process - and we have drawn on these where we can. Engagement should build on, rather than repeat these previous engagements. Examples include:

I) MATIKE MAI AOTEAROA

From 2012 - 2015, over 250 hui were held, as well as several interviews, focus groups and meetings, including with national Māori organisations, Pākehā and Pasifika groups. A Rangatahi rūpū held four training hui and then led engagement with rangatahi through 70 regional wānanga.

II) THE CROWN MĀORI RELATIONS PORTFOLIO ENGAGEMENT PROCESS

Carried out across 2018, the Crown Māori Relations Portfolio Engagement Process is another useful model, and included: an open call for submissions; 20 public hui; 12 smaller focus hui including with five national organisations; and a final wānanga. It included a range of options for input, including online, email and postal submissions, and provided a discussion document setting out initial ideas as the basis for discussion. The process was publicised through news media, online, print and radio advertising, and by direct communications with target audiences.

III) TE UEPU HĀPAI I TE ORA

Te Uepu Hāpai i te Ora / the Safe and Effective Justice Advisory Group carried out extensive engagement from late 2018 to mid 2019 to inform their initial report. Engagements around the country included: a victims workshop, hosted by the Government's Chief Victims Advisor; a hui Māori (Ināia Tonu Nei) hosted by Māori; and a Pacific fono hosted by the Minister for Pacific Peoples. It also included meetings with: tangata whenua; local councils; non-governmental organisations (NGOs); Police; Courts; Corrections staff; prisoners; victims' groups; businesses; judges; politicians; and migrant and refugee communities. The group heard many diverse views and experiences.

Te Uepu Hāpai i te Ora held their own meetings / community conversations and also attended events, including the Justice Summit and Waitangi celebrations. Overall, the

engagement process included 220 hui as well as the receipt of online and email submissions.

PHASE 3: TARGETED THEMATIC ENGAGEMENT

Some topics covered in the Declaration plan will require more intensive and longer-term engagement. On the other hand, other topics might require less intensive engagement, especially where Māori or the government have already considered the issue in some depth. We also need to consider areas where there are existing Declaration-friendly initiatives in place, for example, initiatives to support te reo Māori. Potential approaches to engagement in this phase could include:

- ongoing education and awareness campaigns/activities;
- engagement at national, regional and local levels, e.g. through a series of national hui on thematic kaupapa; followed by regional and community hui and workshops with smaller groups;
- regional engagements may be via local Māori Women's Welfare League or NZ Māori Council branches, for example; or meeting with iwi leadership or Post-Settlement Governance Entities;
- engagement plans should aim to link in with existing hui, annual/regular meetings and events, e.g. National Iwi Chairs Forum hui, etc.; as well as being aware of any other government consultations taking place;
- targeted engagement with specific groups, including: tangata whaikaha; wāhine Māori, kaumātua, rangatahi, tamariki, and takatāpui communities.. These may be with the assistance of champions from those communities; in partnership with key groups/organisations from those sectors, and/or by training community facilitators from within those groups, e.g. *Matike Mai*, working with education institutions and organisations to engage with learners;
- organisations such as the Children's Commission;
- outreach to marginalised groups, including prisoners, people in alternative education, etc.;
- online feedback options and social media as part of the communications plan; and
- communication through varied channels and mechanisms, such as media (Māori and mainstream).

MONITORING AND REVIEW

It is important that people know their voices have been heard, and that the Declaration plan is implemented as intended. The Declaration plan should be a living, evolving plan that continues to be reviewed and developed through iterative conversations. Ongoing monitoring and review should ensure quality assurance, accountability, and reviews for currency over time.

TE HONO O TE KAHURANGI

This is an evaluative quality assurance framework used by NZQA to recognise educational success through Mātauranga Māori as relevant to ākonga Māori worldview, context and practices. Six kaupapa are at the heart of Te Hono o te Kahurangi, and these act as reference points for evaluators to measure what quality looks like, how ākonga, whānau, hapū, iwi needs are being met, and organisational capacity and capability. This evaluation framework is founded on Te Ao Māori principles and values in the educational space. We recommend a similar model be developed to monitor progression of the Declaration plan, where measures of success are directly reflective of Te Ao Māori indicators of success. These indicators are to be determined and identified by Māori during the engagement process.

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Kia Oho, Kia Mataara
Declaration Engagement Strategy

Phase 1: Targeted

Phase 2: Wider

Time

6-8 WEEKS

6-12 MONTHS

ONGOING



Targeted Groups

- Māori, national, sectoral groups, etc.
- Identify Māori representatives for Governance Ropu?

Focus Groups

- Key themes/areas of work
- All engagement strategies must work for Māori

Purpose of Engagement

- Education around UNDRIP
- Provide feedback on Declaration plan & Engagement strategy
- Revise, recommend, review
- Views on Governance structures - identify representatives for Governance Ropu?

Kia Oho, Kia Mataara

- Māori-led
- Education and awareness of the Declaration and te Tiriti raised
- Is the Plan focussing on the right things?
- Are the visions and outcomes right?

Evaluation

- Approaches will change depending on the kaupapa
- Likely on-going education and awareness raising required across Aotearoa

Support

5 Delivery
5 Tūāpapa

5 Wai 262

5 Comms Plan
5 Tūāpapa

5 Monitoring
5 Tūāpapa

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THEME ONE: RANGATIRATANGA (TE TIRITI)/ SELF-DETERMINATION (DECLARATION)

Te Tiriti o Waitangi	Declaration ²⁹
<p><i>Article 2 (Māori):</i></p> <p>Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangitira ki nga hapū – ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa ...</p> <p><i>Article 2 (English):</i></p> <p>Her Majesty the Queen of England confirms and guarantees ... the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession ...</p> <p><i>Article 2 (Sir Hugh Kawharu translation of the Māori text):</i></p> <p>The Queen of England agrees to protect the chiefs, the subtribes and all people of New Zealand in the unqualified exercise⁷ of their chieftainship over their lands, villages and all their treasures...</p>	<p><i>Article 3:</i></p> <p>Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.</p> <p><i>Article 4:</i></p> <p>Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.</p> <p><i>Article 34:</i></p> <p>Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.</p>

VISION 2040

²⁹ These self-determination articles do not exist in isolation. While they focus specifically on decision-making, authority, status, self-government and institutional structures, these cannot exist separately from lands, territories and resources, from culture and from development.

To realise Māori rangatiratanga in 2040:

- Māori will be exercising authority over Māori matters as agreed by Māori, and including exclusive and/or shared jurisdiction over their lands, territories and resources and over matters to do with taonga tuku iho and culture;
- iwi and hapū will have agreed and established their governance structures with their authority recognised; and
- tikanga Māori will be functioning and applicable across Aotearoa under Māori (national, iwi, hapū, whānau) authority and also, where appropriate, under Crown/kāwanatanga authority.

THE DECLARATION, TE TIRITI AND APPLICATION TO AOTEAROA

Indigenous peoples' right to self-determination is a fundamental human right, recognised in the Declaration, the Charter of the UN, and in widely ratified and foundational human rights treaties.³⁰

The right to self-determination is the right of peoples to make decisions about themselves. Fundamentally, it is about peoples controlling their own collective destinies. Implicit in the right to self-determination is that its meaning and how it is exercised is up to Indigenous peoples to determine.

As a matter of international law, the right to self-determination can include, on one end of the spectrum, full independence. On another it can include forms of authority exercised within a wider state political framework, for example, as exercised by provinces within Canada. Practically, the realisation of Indigenous self-determination in contexts of colonisation or external domination of Indigenous people requires a working-out and reconsideration of the operation of authority and power. In practice, this requires the state to resile from some areas of law and policy-making to 'make room' for Indigenous authority.

In a New Zealand context, the concept of "self-determination" has a parallel in te Tiriti o Waitangi guarantee of "tino rangatiratanga" (in Article 2). A series of Waitangi Tribunal reports have found that tino rangatiratanga guaranteed Māori autonomy and self-government.³¹

TE PAPAHAHI O TE RAKI STAGE 1 REPORT, WAI 1040 (2014)

The Waitangi Tribunal, in its Te Papanahi o Raki report describes what was envisaged under te Tiriti in terms of both the reference to Māori "rangatiratanga" and Crown "kāwanatanga". It found that rangatira in 1840 consented to te Tiriti on the basis that it was a compact to share power and authority with Britain. The Crown was to have authority over British Subjects; however, Māori were to be equals with the Crown. Each were to have different roles and different "spheres of

³⁰ Including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

³¹ Waitangi Tribunal, *Te Papanahi o te Raki (Northland) Stage 1 Report*, Wai 1040 (2014).

influence". The detail of how the relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis.³² The Waitangi Tribunal Report also affirmed that the rangatira that signed te Tiriti in 1840 did not cede their sovereignty to Britain. That is, Māori did not cede their authority to make and enforce law over their people or their territories.

The Crown has not respected Māori inherent authority and jurisdiction as guaranteed by te Tiriti and He Whakaputanga o te Rangatiratanga o Nu Tireni (1835) and affirmed in the Declaration. Māori enjoy some opportunities to participate in Crown governance, and Māori rights are included in some law and policy. For example, there are references to Treaty of Waitangi principles and select tikanga concepts in state law. However, the rangatiratanga sphere, in which Māori have inherent power and authority, remains small and mostly outside state law and recognition.

The ability to exercise self-determination, to control and manage land and natural resources, and to make decisions for their own economic, social and cultural development has always been and continues to be a central concern for Māori. Historically, these efforts have found expression in movements such as the Kīngitanga³³ and the Kotahitanga parliamentary movement.³⁴ The assertion of self-determination can also be seen in active Māori efforts to prevent encroachment on independence, often in the context of land rights.³⁵

Territorial authority and the operation of tikanga (Māori law) outside of the state structure can clearly be seen in places like the marae. It was also evident in late 2017, when, in response to the threat of kauri dieback disease, Te Kawerau ā Maki laid a rāhui (prohibition) over the Waitākere forest.³⁶ Another example is Te Whānau ā Apanui's rāhui on fishing in the Motu river on Saturdays and on the 12th of every month to respect the tragic drowning of children in 1900.

Over the years, there have also been some attempts to provide and carve out areas for Māori self-governance within legislation and the state structure. In the nineteenth century, section 71 of the Constitution Act 1852 allowed for the provision of self-governing Māori districts.³⁷ In Te Urewera,

³² This is supported by recent scholarship. See also: Waitangi Tribunal, *Whāia te Mana Motuhake – Report on the Māori Development Act Claim*, Wai 2417 (2015), p 26.

³³ <https://teara.govt.nz/en/kingitanga-the-māori-king-movement>.

³⁴ <https://teara.govt.nz/en/kotahitanga-unity-movements/page-3>.

³⁵ There are many examples, including but not limited to: Hone Heke cutting down the flagstaff at Kororareka; the 1860s land wars; the passive resistance movement at Parihaka; the occupation of Bastion Point, the Raglan Golf Course, and Pakaitore; the 1975 land march led by Dame Whina Cooper; and more recent protests at Ihumātao.

³⁶ A rāhui is a ritual prohibition. The purpose of an environmental rāhui is to enable the environment to recuperate and regenerate without the presence and impacts of humans.

³⁷ <https://teara.govt.nz/en/self-government-and-independence/page-2>: Section 71 of the Constitution Act 1852 allowed for the provision of self-governing Māori districts – as envisaged in the 1846 constitution. Māori saw it as implementation of the tino rangatiratanga (sovereignty) guaranteed to them under te Tiriti o Waitangi. The Māori King movement sought such autonomy in Waikato before and after the New Zealand wars, as did the Kotahitanga (Māori parliament movement), which formed a Māori parliament in the 1890s. This was never recognised by the government. Section 71 remained unimplemented and was finally repealed by the Constitution Act 1986.

after much conflict between Tūhoe and the Crown in the 1860s, the Crown withdrew its forces and a peace compact was agreed to leave Tūhoe to manage their own affairs. Tūhoe convened Te Whitu Tekau (a Council of Chiefs) to uphold their mana motuhake. This Council closed access to its lands and marked their tribal boundaries.³⁸ The Urewera District Native Reserves Act 1896 was enacted to provide for local self-government over 656,000 acres, and for decisions about the use of land to be made collectively and according to Māori custom.³⁹ These provisions and their potential were subsequently ignored or actively undermined by the Crown in subsequent years.

As mentioned in the introduction, more recently, the necessity of allowing greater space within the Crown-Māori relationship for Māori to exercise tino rangatiratanga, and the associated need for constitutional reform emerged as a key theme in consultations on the Crown-Māori Relations portfolio.⁴⁰ Submissions highlighted the power imbalance in the current relationship and the constraints on the exercise of rangatiratanga. Constitutional issues were raised, alongside suggestions to enable Māori leadership, strengthen Māori institutions and organisations, as well as suggestions for enhancing existing constitutional mechanisms such as the Waitangi Tribunal.

Options for power-sharing were raised earlier this decade as part of parallel processes considering constitutional change. In its submission to the Constitutional Advisory Panel in 2013, the Human Rights Commission recommended the establishment of a Tiriti-based constitution, following a process to reach mutual agreement between the Crown and Māori on how to share power. The 2016 *Matike Mai Aotearoa* report is outlined in the introductory section. In brief, it recommended six indicative constitutional options for reconciling rangatiratanga and kāwanatanga through an inclusive constitution based on tikanga and kawa, He Whakaputanga, te Tiriti, and other Indigenous human rights instruments.

Self-determination and rangatiratanga require spaces and places for Māori to exercise authority, decision-making and choice within New Zealand's territories. Whilst rangatiratanga entails authority over a group's own people and rohe (lands, territories and resources), tikanga requires the exercise of manaakitanga towards all people within that rohe.

This will require attention to the drawing of jurisdictional boundaries and how the Crown and Māori will divide up who has authority over what and where. We also have our own promising models to draw from, even if Māori authority may require strengthening, including Te Urewera governance body and the dual governance model applied to te reo revitalisation. The latter involves both the Crown and Māori each responsible for advancing te reo within their respective sphere and working together to advance a shared vision (te whare o te reo mauri ora). Moreover, support will be needed to strengthen Māori decision-making processes and tikanga Māori, noting the impact of colonisation on traditional authority and tikanga Māori.

<https://www.waitanqitribunal.govt.nz/news/wai-894-te-urewera-pre-publication-part-iii-released-2/>: In 1896, special legislation was passed, the Urewera District Native Reserve Act, to establish a self-governing native reserve for Tūhoe.

³⁸ <https://teara.govt.nz/en/ngai-tuhoe/page-6> The catch cry of the Whitu Tekau was "Kaua te rori, kaua te rūri, kaua te rīhi, kaua te hook" (No roads, no survey, no leasing land, no selling land). Ngāi Tūhoe Deed of Settlement (2013), at 54. Accessible at: <https://www.govt.nz/treaty-settlement-documents/ngai-tuhoe/>.

³⁹ Urewera District Native Reserve Act 1896 (60 Victoriae 1896 No 27).

⁴⁰ Ministry of Justice, (2018), *Crown/Māori Relations: Summary of Submissions*, at 9.

New Zealand might learn from examples of greater self-determination internationally, for example from modern-day treaty making in parts of Canada, and also in the USA, where American Indians' inherent sovereignty is recognised and respected. Indeed, Indigenous peoples' self-determination is expressed in a variety of different forms, such as self-rule in Greenland, and the Saami parliaments in Norway, Sweden and Finland.⁴¹ In most cases, Indigenous peoples in these jurisdictions exercise more power and authority independent from the state than Māori in Aotearoa.

The DWG understands tikanga Māori, as a legal system, to be capable of evolution and development. It will need support to be rejuvenated as a functioning national legal system. Tikanga Māori is not, nor need be perceived to be, a "perfect" legal system. No legal system can claim perfection. Tikanga Māori may also need to be adapted to accommodate human rights, as Māori governing entities become duty-bearers subject to human rights obligations. This process would ideally be consistent with fundamental tikanga values and context.

NISGA'A SELF GOVERNMENT

In August 1998, the Nisga'a Nation, Canada, and British Columbia signed the Nisga'a Treaty, a Comprehensive Land Claims Agreement that included provision for Nisga'a self-government. This pioneering experiment facilitated a 'third order' of government in the Canadian constitutional framework and recognised a distinct sphere of legislative jurisdiction for the Nisga'a Nation. The Nisga'a Treaty endows the Nisga'a Lisims Government with law-making powers over a wide range of local and culturally specific areas that formerly fell within the jurisdictions of the provincial or federal governments. Nisga'a statutory law is subordinated to the Canadian Charter of Rights and Freedoms, the Nisga'a Constitution, and to the Nisga'a Final Agreement itself.⁴²

In areas such as education, resource management, and child and family services, provided that Nisga'a laws meet or exceed existing provincial and federal standards, the Nisga'a law in question prevails over any federal and provincial counterparts in the event of a conflict. Provincial and federal laws take priority in a separate category that includes such areas as environmental protection, health and social services, fish and wildlife sales, and regulation of intoxicants; however, in the instance of conflict, Nisga'a laws would be considered valid provided they employed either a stricter standard than their provincial and federal counterparts or a comparable but localised approach.⁴³ Within Nisga'a Lands, Nisga'a legislation can surpass but it cannot diminish or dilute standards set by the relevant federal or provincial laws.

While the Nisga'a Treaty recognises a sphere of Nisga'a jurisdiction, in reality Nisga'a law is more expansive than provided for by the definition given by the Treaty. Nisga'a

⁴¹ For example, see: UN Special Rapporteur on the Rights of Indigenous Peoples (2018) *Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples – An introductory comment on the issue of indigenous peoples and self-governance*, A/73/176, at para 82.

⁴² The Constitution of the Nisga'a Nation, 1998; Nisga'a Final Agreement (1999), Chapter 2: General Provisions, paragraph 9 (p. 18); Nisga'a Final Agreement (1999), Chapter 1: Nisga'a Governance, paragraph 6 (pp. 159-160).

⁴³ Nisga'a Final Agreement (1999), Chapter 10: Environmental Assessment and Protection, paragraph 11 (p. 157); Chapter 9: Wildlife and Migratory Birds, paragraph 70 (p. 146); Chapter 11: Nisga'a Government, paragraphs 110-111 (p.178).

customary law – "Ayuukhl Nisga'a" in the Nisga'a language – has enjoyed centuries of evolution and application in Nisga'a territory. This customary body of law is transmitted orally and has not been put into written form but persists within Nisga'a territory and amongst the Nisga'a people.

International studies have found that self-governing Indigenous peoples enjoy improved outcomes in educational achievement and employment levels.⁴⁴ Indigenous governance can also contribute to improved economic development outcomes.⁴⁵ In a 2018 report, the UN Special Rapporteur on the Rights of Indigenous Peoples concluded:⁴⁶

Indigenous governance systems have often proven to be better than external actors in providing services to and ensuring the wellbeing and rights of indigenous peoples. Furthermore, they contribute to conflict reduction, climate adaptation, conservation and protection of nature, culturally appropriate social services, economic progress and many other positive outcomes.

The so-called Harvard Project on Indigenous self-determination has examined what works in terms of Indigenous social and economic development, and has found that when Indigenous peoples have jurisdiction or sovereignty over major decisions such as resource allocations, project funding and development strategy, they consistently out-perform external decision-makers.⁴⁷

The primary impediment to the realisation of rangatiratanga is systemic: New Zealand's current constitutional structure does not recognise power residing outside the state or Crown structure. It will take time, resources and considerable capacity-building for Māori and capability-building for the Crown, and New Zealand as a whole to build a new power-sharing constitutional structure that adequately reflects and recognises rangatiratanga Māori. Drawing on historical attempts to realise rangatiratanga together with more contemporary and recent initiatives,⁴⁸ especially around the Matike Mai project, provides inspiration and possible models for designing a process to achieve the necessary constitutional transformation.

Increased Māori rangatiratanga will require considerable resourcing and capacity building. If Māori are to exercise governance power, there needs to be support for this, and it may take time. Tikanga Māori will evolve and develop to greater application in the modern world, but will also require support. The Crown's main contribution to capacity-building will be in resourcing. There are multiple streams from which financial contributions might be sourced, including, for example, levies on resource use where Māori have a clear interest if not strong claim to ownership, such as water.

⁴⁴ Indian and Northern Affairs Canada, *Evaluation of the Federal Government's Implementation of Self-Government and Self-Government Arrangements* (2011). Cited in UN Special Rapporteur, (2018) at para 71.

⁴⁵ UN Special Rapporteur (2018), above n43 at para 72.

⁴⁶ Ibid, at para 94.

⁴⁷ <https://hpaied.org/>.

⁴⁸ For example, refer to Te Uepū Hāpai i te Ora (2019) recommendations for rangatiratanga: Māori-led solutions for Māori to problems with the justice system: "Māori have an expectation to be decision-makers when it comes to solutions"; and, "Māori need to exercise rangatiratanga over funding."

GOING-FORWARD: RANGATIRATANGA IN A DECLARATION PLAN

This section deals with Māori self-determination as self-governance, autonomy and decision-making authority, while Māori participation in government decision-making, and how the state framework incorporates Māori rights, tikanga, and mātauranga is discussed in the following chapter, participation in kāwanatanga Karauna.

The long-term Declaration-consistent vision and overarching outcomes at 2040 are articulated at the start of this section. The approach we have taken is to set out a roadmap of concrete actions that can be taken towards reaching these objectives. In doing so we draw upon existing relevant work such as:

- the *Matike Mai* report;
- practices that demonstrate rangatiratanga, for example, the placing of rāhui over areas; and
- the report of the government-appointed Constitutional Advisory Panel ("CAP").

Under each category we set out more detailed options/examples. The accompanying table illustrates the roadmap in a more chronological and detailed form. The table is also divided up into three spheres: rangatiratanga; partnership (relational) and kāwanatanga.

ROADMAP: KEY STEPS TO GET THERE

MĀORI CAPACITY BUILDING AND GROUNDWORK

Much work needs to be done to build Māori capacity to exercise rangatiratanga. This will include Māori rebuilding: our own mātauranga Māori, governance institutions, and ways of connecting with dispersed communities. It may also involve temporary partnership agreements with the Crown to transfer knowledge between both Māori and the Crown.⁴⁹

Some suggested options to build Māori capacity to determine and exercise rangatiratanga include:

- implement a strategy and funding for Māori to determine what self-determination/rangatiratanga means for Māori, and how it might be exercised;⁵⁰
- continue to progress the work of *Matike Mai*, including conversations amongst Māori about constitutional issues and rangatiratanga, with a view to a convention being held by Māori in 2021;
- Māori to rebuild governance structures (national, iwi, urban) that are fit for purpose. This may require legislative change and dedicated Crown funding;

⁴⁹ E.g. As in the case of Tūhoe and Te Urewera.

⁵⁰ *Matike Mai Aotearoa*, (2016), *He Whakaaro Here Whakaumu mō Aotearoa*. See also: Constitutional Advisory Panel, (2013), *New Zealand's Constitution: A Report on a Conversation He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa*, at 16.

- establish and fund a tangata whenua Declaration plan oversight group, to ensure there is Māori involvement in monitoring of the Declaration plan;
- Crown to establish a fund or funds to support reconnecting individuals and whānau with their whakapapa (e.g. by wānanga and whānau reunions);
- Crown to provide mana-enhancing financing of rangatiratanga;⁵¹
- provide funding for Māori education institutions and mātauranga Māori development; and
- actively carve out space for tikanga and rangatiratanga to operate.

CROWN CAPABILITY-BUILDING AND GROUNDWORK

To achieve the proposed rangatiratanga aspirations, the Crown also needs to build capability and internally lay the groundwork for constitutional change.

Some suggested options include:

- train and educate the public sector about the Declaration, te Tiriti and tikanga;
- transform Te Arawhiti into a central government agency;
- further develop the Crown's understanding of itself as a Treaty partner, including where it might pull back authority (in agreement with Māori), e.g. winding back Crown oversight of Māori trust boards, Māori appointments to working groups being determined by Māori, etc;
- hold a constitutional convention/forum for the Crown to develop its thinking about its kāwanatanga role and responsibilities in respect of rangatiratanga; and
- draw together disparate pieces of work across government with a constitutional dimension that can be seen as a whole and built upon. This could include a cross-government working group, network or other mechanism.⁵²

BUILD ON TREATY SETTLEMENTS: INVOLVEMENT IN GOVERNANCE

We consider there is opportunity to build on models established by Treaty settlements to further enhance Māori self-determination, and ensure greater Māori input into governance and decision-making in those areas that have a particular impact on Māori.⁵³ Particularly novel relationship redress can be seen in respect of the co-management of the Waikato River, and the Te Urewera (Forest) and Te Awa Tupua (Whanganui River) Crown-Māori relationship models, which give legal personality to environmental entities, centre tikanga, and feature unique governance arrangements.

⁵¹ The capacity of Māori to finance rangatiratanga depends on the financial support provided by the Crown and the extent to which they are able to freely pursue their economic development. Financial support may be necessary in interim stages.

⁵² Relevant current work includes: response to Waitangi Tribunal kaupapa inquiries; the development of a whole-of-government strategy to response to Wai 262; and the creation of a Māori-Crown Relations portfolio and Te Arawhiti.

⁵³ The range of relationship-focused redress provided through Treaty settlements is broad, and includes: protocols and accords; advisory committees; the establishment of forums for regular engagement; and joint-management and co-governance arrangements.

Key features of models to-be-established might include:

- Māori involvement at all levels of decision-making, including governance, strategy, and operational implementation;
- the return of authority from the Crown to Māori over time;
- equal or greater representation of Māori on a joint Crown-Māori decision-making body;
- the transfer of significant powers to Māori to make bylaws and authorise activities; and
- appropriate models to fund the relationship.

ACTIVELY MAKE SPACE FOR RANGATIRATANGA BY RESILING FROM REGULATION OF ISSUES INTERNAL, INTEGRAL AND ESSENTIAL TO MĀORI

Canada's recognition of the inherent right of self-government is based on the view that Indigenous peoples have a right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and resources. The Crown could usefully consider how Canada's "*Inherent Right Policy*" might inform changes to be made in its exercise of kāwanatanga.⁵⁴

As a first step, the Crown could review legislation with a view to removing any current constraints on rangatiratanga Māori in relation to affairs internal to Māori and decisions relating to Māori land. For example, this might entail removing regulations that unduly restrict Māori decision-making about marae and building on Māori land. Subsequently, the Crown could work towards supporting the development of Māori institutions with territorial jurisdiction, as currently exist for Indigenous peoples in other states, including Canada, Sweden, the USA and others.

PUBLIC EDUCATION CAMPAIGN

To generate public support for the respect and recognition of rangatiratanga Māori, an inclusive national conversation will need to take place, accompanied by a public education campaign.

Some suggested options include:

- Initiate both a school and public education campaign that includes material on: te Tiriti; the Treaty settlement process; Aotearoa/New Zealand's current constitutional arrangements; and Treaty partnerships in contemporary society.⁵⁵ This might be led by an Indigenous Rights Commissioner and/or Tiriti Commissioner.

⁵⁴ See the Government of Canada, "The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government" (June 2020) retrieved from: <https://www.rcaanc-cirnac.gc.ca/enq/1100100031843/1539869205136>

⁵⁵ As recommended by the Constitutional Advisory Panel, (2013), *New Zealand's Constitution: A Report on a Conversation He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa*, at 16-17. Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/Constitutional-Advisory-Panel-Full-Report-2013.pdf>.

- Encourage the Human Rights Commission or similar non-governmental body to coordinate engagement with NGOs active in the Tiriti space and other key stakeholders to frame and guide the wider public conversation about constitutional change.

ESTABLISH A PROCESS FOR CONSTITUTIONAL CHANGE

There needs to be a process through which it is determined what the exercise of rangatiratanga looks like at the constitutional level, and how it relates to the kāwanatanga space. This should flow from interim steps, such as the constitutional convention for Māori in 2021 recommended in *Matike Mai*.⁵⁶

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⁵⁶ *Matike Mai Aotearoa*, (2016), *He Whakaaro Here Whakaumu mō Aotearoa*. See also: Constitutional Advisory Panel, (2013), *New Zealand's Constitution: A Report on a Conversation He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa*, at 11.

ROADMAP TO DECLARATION CONSISTENCY

The indicative tables we provide in each section, organised thematically and chronologically, are intended as a preliminary selection of ideas to illustrate our road map approach. Table formats differ slightly across themes, as we have structured them to suit the substance of each section.

These tables present a snapshot of potential actions that can be taken towards reaching 2040 objectives. We note that in the limited time available, we have not been able to fully research and explore these ideas. We include these as indicative options that need to be further developed and built upon.

RANGATIRATANGA: POTENTIAL ACTIONS - EXAMPLE - INDICATIVE OPTIONS ONLY

2019 - 2020

MORE OPPORTUNITIES FOR MĀORI TO EXERCISE RANGATIRATANGA ARE IDENTIFIED THROUGH THE DEVELOPMENT OF A DECLARATION ACTION PLAN. THE CROWN IDENTIFIES WAYS TO SUPPORT RANGATIRATANGA AND BUILDS ITS OWN CAPABILITY. THE GROUNDWORK FOR CONSTITUTIONAL CHANGE IS LAID.

	Rangatiratanga sphere	Partnership (relational) sphere	Kāwanatanga sphere
Current status and potential opportunities	<p>Expressions of rangatiratanga</p> <ul style="list-style-type: none"> A range of pan-iwi/Māori representative bodies exist, e.g. Iwi Chairs Forum, NZ Māori Council, National Urban Māori Authority, Federation of Māori Authorities, Māori Women's Welfare League Iwi and hapū exercise rangatiratanga through specific mechanisms, some of which are Western-style bodies, e.g. governance bodies, post-settlement governance entities (e.g. Te Whakakitenga o Waikato and Te Rūnanga o Ngāi Tahu), trusts and incorporations, iwi management plans Tikanga prevails in a marae setting Rangatiratanga responsibilities able to be exercised in some instances (e.g. Te Kawerau ā Maki rāhui in response to Kauri dieback disease in the Waitakere ranges) <p>Groundwork for constitutional change</p> <ul style="list-style-type: none"> Matike Mai Aotearoa process 	<p>Working in partnership to enhance rangatiratanga</p> <ul style="list-style-type: none"> Declaration Working Group provide advice on the form and content of a Declaration action plan. Engagement on the plan with Māori is expected from 2020 Te Pae Tawhiti whole-of-government approach to dealing with the issues regarding taonga and mātauranga raised in Wai 262 has been initiated with engagement taking place from mid-2020 Increased opportunities for partnership between Māori and the Crown, e.g. via the establishment of an Interim Rōpū (and subsequently an Enduring Form Rōpū) for the Joint Venture to eliminate Family and Sexual Violence; Maihi Māori, Maihi Karauna strategies for te reo Māori revitalisation Co-governance and co-management opportunities established via Treaty settlements, e.g. for Te Urewera and for the Waikato and Whanganui rivers 	<p>Support for rangatiratanga</p> <ul style="list-style-type: none"> Ongoing support for Māori development. Initiatives that help support rangatiratanga include: the Oranga Marae programme that provides whānau and hapū support, advice and investment for marae, e.g. by building projects and activities to revitalise cultural knowledge; Whānau Ora Cabinet portfolio of Māori-Crown relations has been established with a dedicated agency to support it (Te Arawhiti) <p>Groundwork for constitutional change</p> <ul style="list-style-type: none"> Announcement that NZ history will be taught compulsorily in schools The Crown is developing a response to NZ Bill of Rights Act declarations of inconsistency

Work to be established

Expressions of rangatiratanga

- Establish the tangata whenua side of the Declaration governance rōpū
- Ensure that people are supported to connect with their whakapapa e.g. tāngata whaikaha, rangatahi, adoptees, people who have been in state care, and generally those people who have lost connection
- Identify areas in which iwi/ hapū/ whānau wish to exercise jurisdiction, including personal or territorial jurisdiction

Groundwork for constitutional change

- Continue to build on the recommendations of *Matike Mai*, including holding formal and informal constitutional discussions, and discussing constitutional matters annually at national Māori organisation hui

Working in partnership to enhance rangatiratanga

- Engage Māori on the Declaration action plan through a wide and inclusive process, and establish a Declaration Governance Rōpū (perhaps via the oversight groups established for Wai 262)
- Identify opportunities for partnership in realising government priorities, including the Child and Youth Wellbeing Strategy and Justice Sector reform
- Support from Crown and local government for Māori exercising their rangatiratanga responsibilities, such as through rāhui
- Scope ways in which Whānau Ora could help build whānau and regional rangatiratanga, together with Māori
- Scope the establishment of an Indigenous Rights and/or Te Tiriti Commissioner(s) within the Human Rights Commission
- Continue Treaty settlements with those who wish to settle and continue to reorient those relationships from negotiation to identifying and building on partnership opportunities

Support for rangatiratanga

- Establish a ministerial oversight group (as for Wai 262 work), as the Crown side of the Declaration Governance Rōpū
- Resource the Māori side of the Declaration Governance Rōpū
- Continue to fund and improve programmes that support Māori aspirations, such as Oranga Mārae and Whānau Ora
- Initiate training across the public sector around the Declaration
- Review legislation with a view to removing any current constraints on Māori self-determination in relation to their internal affairs or decisions relating to their land, e.g. removing regulations that unduly restrict Māori decision-making about marae; building on Māori land
- Scope the establishment of dedicated financial support for rangatira/iwi/hapū to help individuals and whānau reconnect to their whakapapa, especially where disconnection has been caused by Crown action (e.g. where Māori have been put into state care)
- Scope the establishment of dedicated funding for Māori governance development
- Scope the elevation of Te Arawhiti to a central government agency such as the State Services Commission, Treasury and DPMC

Groundwork for constitutional change

- Work to develop the New Zealand history curriculum in schools continues
- Scope a public education programme to inform the wider public about constitutional matters, including: Te Tiriti relationships, civics, human rights (including the Declaration), and Te Tiriti partnerships in action
- Establish a Crown working group with terms of reference related to Crown responsibilities and obligations under Te Tiriti, including in respect to delegated authority, as a

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TO 2025

MĀORI ARE ABLE TO EXERCISE RANGATIRATANGA IN MORE WAYS, WITH GREATER RECOGNITION AND SUPPORT FROM THE CROWN. THE CROWN CONTINUES TO BUILD ITS CAPABILITY. AN INCLUSIVE PROCESS FOR CONSTITUTIONAL CHANGE IS ESTABLISHED.

	Rangatiratanga sphere	Partnership (relational) sphere	Kāwanatanga sphere
<p>Further actions for enhancing rangatiratanga and laying the groundwork for constitutional change</p>	<p>Expression of rangatiratanga</p> <ul style="list-style-type: none"> Continue the process of reconnection for individuals and whānau Exercise rangatiratanga in the areas identified, e.g. in personal or territorial jurisdiction Develop tikanga Māori for separate jurisdiction <p>Groundwork for constitutional change</p> <ul style="list-style-type: none"> Hold a Māori constitutional convention as per <i>Matike Mai's</i> recommendation in 2021 to further the discussion as to how Māori wish to exercise rangatiratanga at the constitutional level, and develop an engagement strategy Appoint a further constitutional working group to start considering relevant structural and procedural issues for Māori 	<p>Working in partnership to enhance rangatiratanga</p> <ul style="list-style-type: none"> Establish an Indigenous Rights and/or Te Tiriti Commissioner(s) within the Human Rights Commission Negotiate rangatiratanga jurisdiction, with the Crown responsive to Māori wishes Consider ways of expanding current practices that enable issues to be determined within Māori processes and tikanga, such as arbitration Ensure that strong references to tikanga are made in relation to any area of law that affects Māori Explore and fund ways to provide mana-enhancing financing to support rangatiratanga Expand Whānau Ora to further support whānau and regional rangatiratanga <p>Groundwork for constitutional change</p> <ul style="list-style-type: none"> Provide Crown financial support for delegates to attend the 2021 Matike Mai Aotearoa constitutional convention Establish an avenue for constitutional dialogue between te Tiriti partners, e.g. via a joint deliberative forum to consider a range of constitutional matters, including new governance institutions (e.g. Upper House, Māori parliaments) Initiate dialogue with other communities in the regions and nationally about constitutional change, possibly led by an 	<p>Support for rangatiratanga</p> <ul style="list-style-type: none"> Establish a fund or funds available to rangatira/iwi/hapū to support reconnecting individuals and whānau with their whakapapa through wānanga, whānau reunions, etc. Establish dedicated funding for Māori governance development Continue training across the public sector around the Declaration Transform Te Arawhiti into a central government agency Encourage the Māori Trustee to scope how it could transfer the lands and funds it holds back to Māori landowners Remove identified legislative constraints on Māori self-determination in relation to their internal affairs or decisions relating to their land <p>Groundwork for constitutional change</p> <ul style="list-style-type: none"> Roll out the compulsory teaching of NZ history in schools Initiate the public education campaign on constitutional matters, possibly led by the Indigenous Rights Commissioner and/or Te Tiriti Commissioner(s) Building on the initial Crown working group, further develop the Crown's understanding of itself as a Tiriti partner, including where it might pull back authority (in agreement with Māori) e.g. winding back Crown oversight of Māori trust boards, Māori appointments to working

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Indigenous Rights and/or Te Tiriti Commissioner(s)

groups, etc. are determined by Māori

- By 2025, the Crown holds its own equivalent to a constitutional convention to solidify its thinking about kāwanatanga and responsibilities in respect of rangatiratanga.

TO 2030

MĀORI ARE FURTHER ABLE TO EXERCISE RANGATIRATANGA IN THE WAYS THEY WISH, THE CROWN IS SUPPORTIVE OF THIS, AND HARMONIOUS RELATIONSHIPS BETWEEN THE TWO TE TIRITI PARTNERS CONTINUE TO DEVELOP. AN INCLUSIVE PROCESS FOR CONSTITUTIONAL CHANGE IS ESTABLISHED.

	Rangatiratanga sphere	Partnership (relational) sphere	Kāwanatanga sphere
<p>Further actions for enhancing rangatiratanga and establishing a process for constitutional change</p>	<ul style="list-style-type: none"> • Scope and establish an inclusive rangatiratanga space for iwi, hapū, whanau. Māori to agree on what the exercise of rangatiratanga will look like at the constitutional level, and how public power could be shared with the Crown, including constraints on the exercise of that power 	<ul style="list-style-type: none"> • Scope and establish an inclusive Rite Tahī space for the wider New Zealand public to engage on constitutional matters - this includes continuing and developing the public education campaign, and starting to frame the narrative and process for constitutional change with the wider public • Continue regular meetings of the joint deliberative forum to ensure continued dialogue about constitutional change 	<ul style="list-style-type: none"> • Scope and establish a kāwanatanga space for the Crown to agree to what its responsibilities are as the Crown in partnership with Māori, and how it can share the exercise of public power with Māori

TO 2035

MĀORI EXERCISE RANGATIRATANGA IN THE WAYS THEY WISH, THE CROWN IS SUPPORTIVE OF THIS, AND HARMONIOUS RELATIONSHIPS BETWEEN THE TWO TE TIRITI PARTNERS CONTINUE TO DEVELOP. AN INCLUSIVE PROCESS FOR CONSTITUTIONAL CHANGE TAKES PLACE.

	Rangatiratanga sphere	Partnership (relational) sphere	Kāwanatanga sphere
<p>Further actions for enhancing rangatiratanga and establishing a process for constitutional change</p>	<ul style="list-style-type: none"> • Rangatiratanga process takes place 	<ul style="list-style-type: none"> • Joint deliberative process to agree how power will be shared between Te Tiriti partners, including constraints on that power, avenues for separate and shared authority, funding, and other matters takes place 	<ul style="list-style-type: none"> • Kāwanatanga (for the Crown) and Rite Tahī processes (for all New Zealanders) take place

2040

MĀORI EXERCISE RANGATIRATANGA IN THE WAYS THEY WISH AND ENJOY HARMONIOUS RELATIONSHIPS WITH THE CROWN TO ADVANCE AGREED, SHARED GOALS. THE CROWN RESILES SOME OF ITS POWER TO MAKE SPACE FOR THE EXERCISE OF MĀORI RANGATIRATANGA IN AOTEAROA'S NEW CONSTITUTIONAL ARRANGEMENTS.

Rangatiratanga sphere

- Māori exercise rangatiratanga in the ways they wish including, potentially, jurisdictionally and personally
- Individuals and whānau are connected to their whakapapa and able to participate in the exercise of rangatiratanga in the ways they wish

Partnership (relational) sphere

- Constitutional processes for decision-making in rangatiratanga, kāwanatanga and partnership spheres identified through mutual agreement, and instruments to implement those agreements given effect

Kāwanatanga sphere

- The Crown resiles some of its power in agreed areas to make space for rangatiratanga
- The public service is bicultural and understands the ways in which it must support rangatiratanga

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THEME TWO: MĀORI PARTICIPATION IN KĀWANATANGA KARAUNA



Te Tiriti o Waitangi	Declaration ⁵⁷
<p><i>Article 1 (te reo Māori):</i></p> <p>Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kāwanatanga katoa o ratou wenua.</p> <p><i>Article 1 (English):</i></p> <p>The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.</p> <p><i>Article 1 (Sir Hugh Kawharu translation of the Māori text):</i></p> <p>The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government⁵⁸ over their land.</p>	<p><i>Article 5:</i></p> <p>Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.</p> <p><i>Article 18:</i></p> <p>Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.</p> <p><i>Article 19:</i></p> <p>States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.</p>

⁵⁷ The right of Indigenous peoples to be consulted and to participate in decision-making is highlighted in the preamble as well as many articles of the Declaration e.g., 3-5, 10-12, 14, 15, 17-19, 22, 23, 26-28, 30-32, 36, 38, 40, 41.

⁵⁸ 'Government': 'kāwanatanga'. Sir Hugh's view was that "there could be no possibility of the Māori signatories having any understanding of government in the sense of 'sovereignty': i.e., any understanding on the basis of experience or cultural precedent."

Article 3 (te reo Māori):

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kāwanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata Māori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

Article 3 (English):

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Article 3 (Sir Hugh Kawharu translation of te reo Māori text):

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

Article 32(2):

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

VISION 2040

To realise Māori participation in kāwanatanga Karauna (state governance) by 2040:

- Māori participation in central and local government will be strong and secure;
- Māori will have a meaningful, and sometimes dominant voice in resource management decisions;
- the kāwanatanga Karauna sphere will be bicultural;
- there will be strong protection for te Tiriti o Waitangi and human rights in law and policy; and
- Māori will be providing for Māori.

WHY IS IT IMPORTANT TO REALISE MĀORI PARTICIPATION IN KĀWANATANGA KARAUNA?

The Declaration contains more than 20 articles relevant to Indigenous peoples' participation in state decision-making. This includes a specific requirement for the state to obtain Indigenous

peoples' free, prior and informed consent (FPIC) on all matters which affect them.⁵⁹ The rationale and functions of Indigenous peoples' right to participate in state governance have been summarised by the UN Expert Mechanism on the Rights of Indigenous Peoples (the EMRIP) as follows:⁶⁰

The Declaration adapts this general right to participation to the needs and circumstances of indigenous peoples by seeking to achieve two objectives: first, to correct *de jure* and *de facto* exclusion of indigenous peoples from public life or decision-making processes... and, second, to revitalize and restore Indigenous peoples' own decision-making and representative institutions that have either been disregarded or abolished.

The standard of FPIC is similarly grounded in the right to self-determination and "has the potential to redress the power imbalance between Indigenous peoples and States, with a view to forging new partnerships based on rights and mutual respect".⁶¹ According to the EMRIP, states' obligations to consult with Indigenous peoples should consist of a qualitative process of dialogue and negotiation, with consent as the objective.⁶² Processes should enable Indigenous peoples to influence the outcome of decisions, not merely have their views heard. States should also ensure that Indigenous peoples have the capacity to effectively engage by supporting the development of their own institutions. States should establish preconditions for achieving FPIC, including building trust, good faith, culturally appropriate methods of negotiation and recognition, and respect for Indigenous peoples' rights. The EMRIP has stressed that these rights are collective rights, exercised through Indigenous peoples' own representative institutions in accordance with their customs and laws.⁶³

FPIC processes align with the recent guidance developed by Te Arawhiti on good practice for engagement with Māori. The Te Arawhiti Engagement Framework and Guidelines stress the importance of proactively engaging early, with the right people at the right levels, to obtain FPIC.⁶⁴

UN human rights treaty bodies have made several recommendations to New Zealand to strengthen Māori participation in kāwanatanga Karauna, including that New Zealand should:

- ensure compliance of law and policy with the Treaty, including its self-determination and participation obligations;⁶⁵

⁵⁹ "Indigenous participation in decision-making on the full spectrum of matters that affect their lives forms the fundamental basis for the enjoyment of the full range of human rights... Without this foundational right, the human rights of indigenous peoples, both collective and individual, cannot be fully enjoyed." EMRIP, (2010), *Progress report on indigenous peoples and the right to participate in decision-making: Report of the Expert Mechanism on the Rights of Indigenous Peoples*, A/HRC/EMRIP/2010/2, para 2. At <https://www.undocs.org/a/hrc/15/35>.

⁶⁰ EMRIP, (2018), *Free, prior and informed consent: A human rights based approach – Study of the Expert Mechanism on the Rights of Indigenous Peoples*, A/HRC/39/62, para 17. Retrieved from: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/62.

⁶¹ *Ibid.*, at para 11.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Te Arawhiti, (2018), *Guidelines for Engagement with Māori*.

⁶⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), (2018), Concluding Observations: New Zealand, E/C.12/NZ/CO/4, at para 9(d)-(e). UN Committee on the Elimination of Racial Discrimination (CERD), (2017), Concluding Observations: New Zealand, CERD/C/NZL/CO/21-22, at para 13(b), p. 19.

- strengthen mechanisms for consultation and participation;
- increase Māori representation in central and local government; and,
- secure FPIC regarding decisions and activities affecting Māori rights, including rights to land.⁶⁶

The EMRIP Advisory Note outlines issues raised during their visit to Aotearoa to support the development of a Declaration plan:⁶⁷

Many supported the view, that in their relationship with the Crown, Māori should be involved as genuine partners or co-designers of the plan and its goals. However, they often face the challenge of working within State structures, not having their worldview (te ao Māori) and traditional processes recognised, and having unequal power and resources, all of which impedes their participation. The Minister for Māori Development, Hon Nanaia Mahuta, recognises this in her view expressed to EMRIP members that something that works for Māori can work for everyone and the Māori worldview can change things for the better for all.

Māori rights to participation in kāwanatanga Karauna are consistent with te Tiriti and the Treaty principles as they have developed in New Zealand jurisprudence, as is well noted by the Waitangi Tribunal. In *Whāia te Mana Motuhake*, the Waitangi Tribunal expressed article 19 of the Declaration, relating to Indigenous peoples' consent to legislative and administrative measures affecting them, as "the Treaty principle of collaborative agreement" and, further, that:⁶⁸

The Crown's duty under this principle sits alongside the parallel rights of the Crown to govern and the guarantee that Māori should enjoy substantially autonomous self-government in their internal affairs. It underpins the partnership principle and requires cooperation and mutual effort and enterprise.

The Tribunal continued:⁶⁹

Articles 18 and 19 of UNDRIP are important in understanding the principle of partnership, as we have just explained, but they also speak to the need for the Crown to actively protect Māori interests by engaging through the appropriate Māori representatives, and to use and allow time for Māori decision-making processes to occur. Consultation is key to this and the Crown should in certain circumstances strive to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.

⁶⁶ CESCR (2018), at para 9(d)-(e). CERD (2017) at para 14, p. 18-23; UN Human Rights Committee (HRC), (2016), *Concluding Observations on the sixth periodic report of New Zealand*. CCPR/C/NZL/CO/6, at para 45-48.

⁶⁷ *Expert Mechanism on the Rights of Indigenous Peoples "Country Engagement Mission (8-13 April 2019) New Zealand, Advisory Note"* (14 July 2019), at para 19-20.

⁶⁸ Waitangi Tribunal, *Whāia te Mana Motuhake – Report on the Māori Development Act Claim*, Wai 2417 (2015), p. 41-42.

⁶⁹ *Ibid.*, p. 43.

In its recent *Hauora* Report the Tribunal noted that the Crown's duty to partner with Māori is heightened when disparities in outcomes exist.⁷⁰ In *Ko Aotearoa Tēnei* the Tribunal endorsed a partnership that empowers Māori to be involved in policy decision-making including through the provision of logistics and support.⁷¹

There are many examples of existing Māori participation in the kāwanatanga Karauna sphere. The Māori electoral seats, for example, are an important existing constitutional mechanism to ensure a Māori voice in political decision-making that is mandated to represent and accountable to the Māori electorate, and ensure a minimum level of such representation.⁷² Other examples include the ongoing engagement of Ministers and the Iwi Chairs Forum on issues of mutual interest (which involves reporting on progress at quarterly hui), and individual policy work programmes in which officials and Māori representatives jointly have developed policy options through innovative co-design processes.⁷³

THE ROADMAP TO DECLARATION COMPLIANCE

The remainder of this section outlines the key areas where we see opportunities to improve Māori participation in kāwanatanga Karauna, in line with our Vision 2040.

There are many governmental and non-governmental initiatives and priorities that can be built upon to achieve Vision 2040. For example, some Treaty settlements are reframing the Crown-Māori relationship, and providing for Māori voices in governance and management over certain areas.⁷⁴ Outside of the Treaty settlement framework there are agreements based on equality

⁷⁰ Waitangi Tribunal, *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*, (Wai 2575, 2019), 27-28.

⁷¹ Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262 (2011).

⁷² UN human rights bodies have commented positively on the existence of the Māori electoral seats and affirmed their utility in upholding the human rights of Māori. Equally, in 2016 the UN Human Rights Committee recommended that the New Zealand Government "should take all appropriate measures to enhance Māori ... representation in government positions at all levels" to address their stated concerns about "persistently low representation". UN Human Rights Committee, (2016), *Concluding Observations: New Zealand*, CCPR/C/NZL/CO/6, at para 47-48.

⁷³ For example, see discussion of the 'Next Steps for Fresh Water' co-design process described in the Waitangi Tribunal's Stage Two Report on Wai 2358. Waitangi Tribunal, (2019), *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims*, Wai 2358, p. 296.

⁷⁴ The June 2013 Tūhoe Deed of Settlement included Crown acknowledgement and support of the mana motuhake o Ngai Tūhoe. The specific redress in the Deed is geared towards Māori decision-making and governance over key areas and the provision for this to increase over time. For example, Te Urewera was recognised as a separate legal identity with a governance structure that over time went on to have more Tūhoe than Crown representatives on it (6-3). There was also specific redress entitled "Mana Motuhake redress" that related to improved relationships between Tūhoe and the Crown and the delivery of government and iwi services to Tūhoe communities. This included a "Service Management Plan" that specifically recognises that the parties (including the Crown) will support and undertake to contribute to the goal of Tūhoe managing their own affairs to the maximum autonomy possible in the circumstances.

between Treaty partners such as the 2018 “Manatu Whakaetanga: Tiriti Relationship Agreement” signed by Te Kāhui Mātauranga⁷⁵ and Toi Ohomai Institute of Technology Council.⁷⁶

As incremental step-changes are achieved in the kāwanatanga and rangatiratanga spheres - as Māori institutions are strengthened, as opportunities/mechanisms for exercising self-determination are broadened and developed, and as Māori decide they wish it - then certain governance functions (e.g. education, health, social services, etc.) may shift from the kāwanatanga to the joint sphere, and/or ultimately to the rangatiratanga sphere. This shifting nature of governance responsibilities and authority may also impact on the requirements of participation in the kāwanatanga sphere. More specifically: the greater the authority vesting in the rangatiratanga sphere, potentially the lesser the need for Māori consent/control in the kāwanatanga sphere.

THE CONSTITUTIONAL ADVISORY PANEL RECOMMENDED IMPROVING MĀORI REPRESENTATION

While noting the diversity of views on the subject, the Constitutional Advisory Panel's 2013 report supported the retention and improvement of Māori representation in both central and local government. Recognising the constitutional significance of Māori representation, the panel advised that the current arrangements for the representation of Māori in Parliament should remain while the constitutional conversation continues. They further recommended that the government:

- investigate how Māori representation in Parliament might be improved;
 - investigate how local government processes and decision-making can better reflect the interests and views of tangata whenua, and whether the processes can be made more consistent and effective; and
 - when conducting the investigation into representation in both Parliament and local government has regard to a range of options including Māori political structures and local and international models.
-

ENTRENCH THE MĀORI SEATS / EXPLORE OTHER STRUCTURAL OPTIONS

Entrenching the Māori Parliamentary seats would provide strengthened protection, bringing them into line with the position of general electorate seats. A further or alternative option would be to

⁷⁵ Te Kāhui Mātauranga is an independent organisation whose structure includes a Strategic Leadership Group representing seven iwi cluster rohe (Tauranga Moana, Rotorua, Whakatane, East Coast, Murupara, Tokoroa and Taupō/Turangi), representatives of iwi across the iwi clusters, and hau kainga representatives. The parties chose to describe their Tiriti-derived relationship as a “mana ōrite Tiriti Relationship” to acknowledge that one of the most critical parts of Te Tiriti is the enduring relationship. The central operating principle of “mana ōrite” means that the parties are equal, and their respective views will be heard, considered and afforded equal influence. This influence operates at multiple levels including governance, management and operations.

⁷⁶ Toi Ohomai is the Council for a Crown tertiary education institution.

provide additional procedural protections to ensure that only Māori have the right to determine the fate of the Māori seats.

Various further options could be explored through a Declaration plan, including the creation of a senate or upper house in Parliament that could scrutinise legislation for compliance with te Tiriti and/or the Declaration. Various models for the composition of such a body could include a partnership model (with 50/50 rangatiratanga and kāwanatanga representation).

STRENGTHEN MĀORI REPRESENTATION IN LOCAL GOVERNMENT

Changes to the Local Government Act 2002 and Local Electoral Act 2001 could provide fairer processes to recognise the tangata whenua status of Māori through the creation of Māori Wards to ensure Māori representation on local councils.

The 2009 Royal Commission on Auckland Governance, for example, recommended that one Council seat be reserved for a mana whenua representative, and a further two seats for representatives of Māori generally (both mana whenua and taura here).⁷⁷ Although the proposals were not taken up, they provide options that a Declaration plan could revisit and explore.

STRENGTHEN LEGAL RECOGNITION OF TE TIRITI

The current legal position of te Tiriti in New Zealand law is that it is not enforceable by the courts, unless it has been incorporated into legislation. Treaty principles have been incorporated into some statutes, albeit selectively, and with varying degrees of strength.⁷⁸ As the EMRIP has identified, the Treaty principles are different from the obligations agreed in te Tiriti with respect to rangatiratanga Māori, for example.⁷⁹ This means that the Crown is legally free to breach te Tiriti o Waitangi unless Parliament, a part of the Crown, decides to the contrary. Legislation could enhance implementation by and accountability of the Crown with regard to its Tiriti obligations (although, formally, could not require Parliament's compliance).

Further options to strengthen legal recognition of te Tiriti include:

- ensure consistent inclusion of strong Tiriti clauses in individual legislation;
- broad entrenchment of te Tiriti, such that legislation and all Crown policy and regulation must be consistent with it;
- drawing on interpretative tools and accountability mechanisms in the Bill of Rights Act 1990, direct the courts to interpret legislation consistently with te Tiriti, and to make declarations of

⁷⁷ Royal Commission on Auckland Governance, (2009), *Volume 1: Report*, p. 489. Retrieved from: <http://www.mahurangi.org.nz/wp/wp-content/uploads/2017/04/Royal-Commission-on-Auckland-Governance-Report.pdf>.

⁷⁸ See the Waitangi Tribunal's discussion of Treaty clauses in its report *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (2019).

⁷⁹ EMRIP (2019), *Country Engagement Mission (8-13 April 2019) New Zealand, Advisory Note*, at para 25.

- inconsistency where that is not possible (which might trigger a parliamentary process for consideration); and
- create special protections for Tiriti clauses, (e.g. they can only be changed by support of Parliament).⁸⁰

The first step in this process might be to undertake a thorough review of legislative Treaty incorporation and scope these options as part of the Crown's regulatory stewardship responsibilities. One way to receive independent advice on this would be through a directed Law Commission reference.

TREATY OBLIGATIONS TO APPLY TO BODIES EXERCISING CROWN DELEGATED AUTHORITY

A priority action for the Crown is to undertake legislative change to clarify that Tiriti obligations extend to all associated Crown entities exercising delegated authority, including local government. This change will help address some of the considerable barriers that constrain Māori self-determination over land and environmental matters.

STRENGTHEN CROWN TIRITI ACCOUNTABILITY MECHANISMS

An associated action would be to explore mechanisms to strengthen Crown accountability for its Tiriti obligations. The Waitangi Tribunal is currently the main mechanism for this, and its powers are restricted to finding Crown breaches of te Tiriti and providing recommendations to the Crown (except in limited circumstances).

Options to strengthen these mechanisms include:

- strengthen the Waitangi Tribunal's powers (including considering binding rather than recommendatory decisions; the power to assess policies against te Tiriti; and the provision of additional human and financial resources);
- appoint a Tiriti/Indigenous Rights Commissioner to acts as a Tiriti ombudsman;
- establish a Tiriti/Indigenous court to pre-review legislation for Treaty consistency; and
- establish a Tiriti and/or a human rights committee to scrutinise bills for consistency with te Tiriti, the Declaration, and human rights considerations.

Measures to enhance recognition and protection of human rights generally could contribute positively to greater provision for Tiriti and Indigenous rights within government. This includes stronger protection for economic, social and cultural rights.

⁸⁰ A super-majority requires two-thirds of Parliament support.

STRENGTHEN FPIC REQUIREMENTS

As noted earlier in this section, the work of Te Arawhiti to drive improvement in engagement practices across government underscores the importance of the rights of Māori to FPIC. This work ideally should be accelerated and expanded, incorporating the strong connection between 'good engagement' and the requirement for the Crown to obtain FPIC in developing and implementing policy that affects Māori.

The Crown could also undertake a process of reform to ensure that FPIC is reflected in the Resource Management Act 1991 (RMA) and other environmental legislation to enable Māori to exercise authority over significant decisions, or at least to have the ability to counter-act decisions that would be to the detriment of their lands and resources. For example, under current Māori fisheries regulations, decisions on customary fishing rest with the Minister of Fisheries. Making these provisions easier to use in the short term, and ultimately transferring this decision-making power to iwi would both make the process speedier and more efficient, and mean that legislation/regulations are better able to reflect and respond to tikanga Māori.

We particularly endorse the recommendations the Waitangi Tribunal has made in relation to strengthening the requirement for FPIC in the RMA, including:⁸¹

- amending the RMA to state that Tiriti obligations apply to all persons exercising RMA powers and functions;
- removing barriers and providing incentives to promoting the use of transfers of power to, and joint management agreements with, iwi under sections 33 and 36B;
- amending Mana Whakahohe-a-Rohē provisions to make co-governance and co-management of freshwater bodies compulsory;
- continuing approach of co-design of policy options with a national Māori body or bodies (this should be made a regular feature of government where Māori interests are concerned);
- urgently ensuring that under-resourcing no longer prevents iwi and hapū from participating effectively in RMA processes, including freshwater management and freshwater decision-making;
- water policy to be decided by or in conjunction with the national co-governance body, with details to be arranged between te Tiriti partners;
- recognising Māori proprietary rights and economic interests through "proprietary redress";
- monitoring te Tiriti performance of local authorities; and,
- providing urgent assistance, including funding and expertise, for water infrastructure and the provision of clean, safe drinking water to marae and papakāinga.⁸²

BICULTURAL STATE SERVICE

⁸¹ Waitangi Tribunal, *The Stage 2 Report On The National Freshwater And Geothermal Resources Claims*, (Wai 2358, 2019).

⁸² *Ibid.*, p. 559-565.

A range of early steps could be undertaken to move the state sector towards biculturalism. We see this as comprising two inter-linked areas: partnership bodies at the governance level and building wider Crown capability.

PARTNERSHIP BODIES AT THE GOVERNANCE LEVEL

The Waitangi Tribunal has recommended the development of genuine partnership bodies at the governance level and the reform of law, policies or practices relating to (among others) health, education, resource management, conservation, Māori language, arts and culture, heritage, and Māori involvement in the development of New Zealand's positions on Indigenous rights. This includes recognition of, and support for traditional Māori approaches in each of these areas.⁸³

The recently announced Wai 262 work programme, *Te Pae Tawhiti*, provides a renewed opportunity to make progress on these recommendations. Steps that could be reinforced through a Declaration action plan could include:

- increase Māori appointments and representation in leadership roles in the public service, including Crown entities, commissions and Officers of Parliament, to ensure that the full spectrum of government bodies reflect a bicultural government; and
- all government working groups, advisory groups and other appointed bodies reflect partnership in both their composition and decision-making processes for their appointment. In this regard, the structure and creation of *Te Mātāwai* offers a useful model to draw on. The co-management bodies established in relation to *Te Awa Tupua* and *Te Urewera* are also positive models.

BUILDING WIDER CROWN CAPABILITY

According to *Te Arawhiti*, the Crown has considerable capability-building to do if it is to fulfil its obligations as a Tiriti partner to Māori. Significant gaps were identified, and recommendations for improvement were made in the Waitangi Tribunal's *Hauora Report*. This report has wider applicability across government, as well as in the health sector.

Current work on state sector reform is an important opportunity to embed Tiriti obligations and enhance the ability of state agencies to meet the needs of Māori. This could be further enhanced by ensuring key levers for the public service, including the Living Standards Framework and Regulatory Impact Assessment tools developed by Treasury, and systems to support and provide accountability for regulatory stewardship, which would embed te Tiriti obligations.

Priorities might include ensuring that all government bodies have the capability to engage effectively with Māori and that tikanga, reo and mātauranga Māori are properly valued and

⁸³ *Ibid.*, p. 205-206 and p. 227-228.

understood within the kāwanatanga sphere. It would be important to ensure all government agencies include both upskilling current public servants and enhancing recruitment and retention of Māori public servants.

The sections below on strengthening human rights, enhancing the legislation guidelines and improving delivery of services also relate to the capability of the Crown.

LEGISLATION GUIDELINES

Legislation Guidelines (adopted by the Legislation Design and Advisory Committee) are the government's key point of reference for assessing whether draft legislation conforms to legal and constitutional principles. Ensuring this references and reflects both te Tiriti and the Declaration, and includes not only 'consultation' but also participatory rights and FPIC could be an action identified through the Declaration plan.⁸⁴

DELIVERY OF SERVICES

There are numerous current examples of ways that iwi, hapū and Māori organisations deliver government services, such as health services. Such arrangements can provide culturally appropriate, community-based services managed and delivered by Māori organisations, through contractual arrangements with state agencies.

Making reference to the Alaskan model of Indigenous health services, the recent Waitangi Tribunal *Hauora Report* notes that "the demand for structures and services that are 'by Māori, for Māori' across all sectors of social service design and delivery is a current and future reality that successive governments of the day will face. That demand will not diminish; it will only increase in the years to come".⁸⁵ We consider that inspiration for how to best deliver services jointly in New Zealand could be taken from overseas jurisdictions such as in tribal governance in the USA, where the Department of Indian Affairs funds tribal nations to deliver services to their people.

Domestically, the recently announced work programme to deliver a whole-of-government response to Wai 262, Te Pae Tawhiti, offers an opportunity for government and Māori to work in

⁸⁴ Legislation Design and Advisory Committee, (2018), *Legislation Guidelines: 2018 edition*. Retrieved from: <http://www.idac.org.nz/guidelines/legislation-guidelines-2018-edition/>

⁸⁵ The Tribunal further commented:

The recommendations sought in this respect reflect the evidence we heard for recognition of tino rangatiratanga and mana motuhake in the design, delivery, resourcing and control of Māori primary health.

... The Tribunal has made clear in its previous reports that co-governance, particularly in social service design and delivery, is an essential part not only of upholding the Treaty relationship, but also essential to the improvement of Māori socio-economic status. The Crown should be making policy decisions with a view to fulfilling this Treaty obligation under the principle of partnership, and to recognise tino rangatiratanga.

Waitangi Tribunal, (2019), *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*, Wai 2575, p. 165.

partnership on an area of mutual interest. This work programme could provide opportunities to explore innovative ways of working in partnership.

Similarly, while we acknowledge that Court processes administer justice rather than deliver a 'service', both the Rangatahi and Matariki Courts offer examples to build on for better Māori participation in the kāwanatanga Karauna sphere.⁸⁶

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⁸⁶ Ngā Kooti Rangatahi operate in the same way as the Youth Court but are held on marae and follow tikanga processes, allowing greater involvement for whānau Māori, while the Matariki Court, based in Kaikohe, can hear information about an adult offender's cultural background and how whānau can assist in the prevention of further offending. The offender's iwi, hapū and whānau can also be involved in developing a rehabilitation programme. 'Rangatahi Courts and Pasifika Courts', accessed online at <https://youthcourt.govt.nz>; 'Matariki Court', accessed online at <http://www.districtcourts.govt.nz> on 25 October 2019.

KĀWANATANGA: POTENTIAL ACTIONS - EXAMPLE - INDICATIVE OPTIONS ONLY

2019-2020

GREATER OPPORTUNITIES FOR MĀORI TO PARTNER WITH THE CROWN ARE IDENTIFIED THROUGH THE DEVELOPMENT OF A DECLARATION ACTION PLAN. THE PUBLIC SERVICE BECOMES MORE BICULTURAL. THE GROUNDWORK FOR GREATER RECOGNITION OF TE TIRITI IN THE KĀWANATANGA SPHERE IS LAID.

	Rangatiratanga sphere	Partnership (relational) sphere	Kāwanatanga sphere
Current status and potential opportunities	<ul style="list-style-type: none"> Māori participation in the kāwanatanga sphere is ad hoc, and not always consistent with the provision of FPIC Some tikanga is incorporated into legislation 	<ul style="list-style-type: none"> A Crown-appointed working group is established to provide advice on the form and content of a Declaration action plan. Engagement on the plan with Māori is expected from 2020 A whole-of-government approach to dealing with the issues regarding taonga and mātauranga raised in Wai 262 has been initiated with engagement taking place to mid-2020 The Waitangi Tribunal's kaupapa inquiry programme identifies ways in which the Crown could improve on its kāwanatanga responsibilities and strengthen te Tiriti Relationship agreements made as part of Treaty settlements Increased opportunities for partnership between Māori and the Crown e.g. via the establishment of an interim rūpū (and subsequently an enduring form rūpū) for the Joint Venture to eliminate Family and Sexual Violence; Maihi Māori, Maihi Karauna strategies for te reo Māori revitalisation Māori contract with the Crown to deliver several government services 	<ul style="list-style-type: none"> Cabinet portfolio of Māori-Crown relations has been established with a dedicated agency to support it (Te Arawhiti). Te Arawhiti has been engaged in work on several fronts to build a more bicultural public service e.g. developing engagement guidance, te Tiriti guidance and delivering training The government has committed to a wellbeing approach, e.g. through the Child and Youth Wellbeing Strategy and via the Living Standards Framework State sector reform that, among other things, centres Crown Tiriti obligations and relationships with Māori, has been initiated Department of Prime Minister and Cabinet Policy Project launched with te Tiriti identified as one of the public service foundations, and policy is required to provide a Tiriti / te ao Māori analysis Agencies have ongoing regulatory stewardship responsibilities for the legislation they administer Local bodies exercise local and regional decision-making powers, and participation of Māori in these processes is varied
Work to be established	<ul style="list-style-type: none"> Māori decide whether and how they wish to participate in the kāwanatanga sphere and on what matters Māori determine whether and how tikanga might appropriately be included in legislation 	<ul style="list-style-type: none"> Identify other opportunities arising in Treaty settlements to practically build relationships to advance shared goals Identify ways in which delivery of services can better reflect rangatiratanga, e.g. through co-governance and/or co-design Continue to develop, and take measures to ensure the interpretation of te Tiriti and relevant legislation is consistent with the rights in the Declaration, in particular article 37 (to have treaties honoured) Establish measures to ensure that new legislation conforms to the rights in the Declaration and te Tiriti and makes explicit reference to Declaration and Tiriti 	<ul style="list-style-type: none"> Pass new State Sector legislation with clear Tiriti responsibilities and obligations for public servants, which will require different ways of working Continue to build public sector capability Amend the Living Standards Framework to recognise the role of te Tiriti and the importance of self-determination to enhancing wellbeing Ensure the Legislation Guidelines reference and reflect te Tiriti and the Declaration Require agencies to ensure their ongoing regulatory stewardship work aligns with new Tiriti responsibilities under the State sector legislation, e.g. as legislation, policies and strategies come up for review they are

		<p>rights</p> <ul style="list-style-type: none"> Identify ways in which FPIC could be strengthened, e.g. in fishing regulations, in the RMA and other environmental legislation Scope amendments to the Electoral Act to provide protections for Māori seats/the Māori Electoral Option Scope amendments to the Local Electoral Act to provide better mechanisms for Māori representation at the local level, and for enhanced capability within local government (similar to current State Sector reform) Scope the feasibility of establishing a convention setting out Crown agreement to shared decision-making where partnership bodies are established 	<p>reviewed for Tiriti/Declaration consistency</p> <ul style="list-style-type: none"> Identify and implement changes to other levers to improve Crown processes, e.g. Regulatory Impact Assessments, Cabinet guidance Scope ways in which to strengthen legal recognition of te Tiriti, e.g. by consistent use of stronger Tiriti clauses and/or by putting te Tiriti itself into legislation (possibly via a Law Commission reference) Scope enhancing the role of the Waitangi Tribunal, e.g. by binding rather than recommendatory decisions; the power to assess policies against te Tiriti; and the provision of additional human and financial resources Build on the recommendations in each of the Waitangi Tribunal's kaupapa inquiries to improve Crown practice Scope and establish funding of Māori participation in kaupapa inquiries Scope ways to strengthen te Tiriti and provide for Crown accountability, e.g. with reference to BORA interpretive tools and accountability mechanisms, a Māori-Crown relations select committee and/or a human rights select committee
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TO 2025

MĀORI AND THE CROWN PARTNER OR TAKE THE LEAD ON AGREED GOALS AND IN AGREED AREAS. THE PUBLIC SERVICE CONTINUES TO BECOME MORE BICULTURAL. WAYS IN WHICH TO STRENGTHEN TE TIRITI IN THE KĀWANATANGA SPHERE ARE IDENTIFIED.

	Rangatiratanga sphere	Partnership (relational) sphere	Kāwanatanga sphere
<p>Further actions for enhancing participation and strengthening te Tiriti</p>	<ul style="list-style-type: none"> Māori decide whether and how they wish to participate in the kāwanatanga sphere and on what matters Māori determine whether and how tikanga might appropriately be included in legislation 	<ul style="list-style-type: none"> Continue to build on opportunities arising in Treaty settlements to practically build relationships to advance shared goals Implement ways in which delivery of services can be co-governed and/or co-designed Implement ways to strengthen FPIC, e.g. in fishing regulations, in the RMA and other environmental legislation Amend the Electoral Act to protect Māori seats Amend the Local Electoral Act to provide better mechanisms for Māori representation at the local level, and for enhanced capability within local government Establish a convention setting out Crown agreement to shared decision-making where partnership bodies are established Monitor and review how greater legislative protection for te Tiriti is working, and whether it needs further 	<ul style="list-style-type: none"> Continue to build public sector capability, including the provision of training on revised materials and processes that reflect Te Tiriti obligations Monitor how the revised Living Standards Framework is implemented Monitor how agencies are using the revised Legislation Guidelines Implement means of strengthening legal recognition of te Tiriti, e.g. by consistent use of stronger te Tiriti clauses and/or by putting te Tiriti itself into legislation (possibly via a Law Commission reference) Provide the Waitangi Tribunal with enhanced powers Continue to build on the recommendations in each of the Waitangi Tribunal's kaupapa inquiries to improve Crown practice Continue to fund Māori participation in kaupapa inquiries

		<ul style="list-style-type: none"> protection Monitor new State Sector legislation to see how well the te Tiriti obligations are working, including in agencies' regulatory stewardship work. 	<ul style="list-style-type: none"> Implement ways to strengthen te Tiriti and provide for Crown accountability
TO 2030			
MĀORI AND THE CROWN CONTINUE TO PARTNER OR TAKE THE LEAD ON AGREED GOALS AND IN AGREED AREAS. THE PUBLIC SERVICE CONTINUES TO BECOME MORE BICULTURAL. WAYS IN WHICH TO STRENGTHEN TE TIRITI IN THE KĀWANATANGA SPHERE ARE IMPLEMENTED.			
	Rangatiratanga sphere	Partnership (relational) sphere	Kāwanatanga sphere
Further actions for enhancing participation and strengthening te Tiriti	<ul style="list-style-type: none"> Māori decide whether and how they wish to participate in the kāwanatanga sphere and on what matters Māori determine whether and how tikanga might appropriately be included in legislation 	<ul style="list-style-type: none"> Continue to strengthen relationships to advance shared goals Continue to roll out delivery of services with co-governance and/or co-design Continue to strengthen processes for FPIC Review State Sector legislation to ensure it is working well to ensure public service is meeting its te Tiriti obligations Monitor means of strengthening legal recognition of te Tiriti to ensure it is working well Monitor the work of a Waitangi Tribunal with enhanced powers 	<ul style="list-style-type: none"> Continue to build public sector capability Review all relevant regulatory levers, frameworks and processes designed to ensure te Tiriti obligations are met are working well Continue to build on the recommendations in each of the Waitangi Tribunal's kaupapa inquiries to improve Crown practice Continue to fund Māori participation in kaupapa inquiries
TO 2035			
MĀORI AND THE CROWN CONTINUE PARTNER OR TAKE THE LEAD ON AGREED GOALS. THE PUBLIC SERVICE CONTINUES TO BECOME MORE BICULTURAL. TE TIRITI HAS A STRONG, CONSISTENT ROLE IN REGULATING THE KĀWANATANGA SPHERE.			
	Rangatiratanga sphere	Partnership (relational) sphere	Kāwanatanga sphere
Further actions for enhancing participation and strengthening te Tiriti	<ul style="list-style-type: none"> Māori decide whether and how they wish to participate in the kāwanatanga sphere and on what matters Māori determine whether and how tikanga might appropriately be included in legislation 	<ul style="list-style-type: none"> Continue to strengthen relationships to advance shared goals Continue to roll out delivery of services with co-governance and/or co-design Continue to strengthen processes for FPIC Continue to monitor and review various mechanisms to strengthen te Tiriti in the kāwanatanga sphere 	<ul style="list-style-type: none"> Continue to build public sector capability Implement recommendations from review processes for various te Tiriti mechanisms and processes established

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2040

MĀORI AND THE CROWN WORK HARMONIOUSLY AND IN AGREED WAYS ON SHARED MATTERS. THE PUBLIC SERVICE IS BICULTURAL. TE TIRITI IS EMBEDDED IN THE KĀWANATANGA SPHERE.

	Rangatiratanga sphere	Partnership (relational) sphere	Kāwanatanga sphere
	<ul style="list-style-type: none">• Māori decide whether and how they wish to participate in the kāwanatanga sphere and are able to participate freely in matters which affect them• Tikanga is incorporated into legislation to the extent agreed by Māori	<ul style="list-style-type: none">• Māori-Crown relationships are harmonious and mutually beneficial• Māori co-govern and/or co-design delivery of services• Māori participation in all matters that affect them to seek their free, prior and informed consent is 'business as usual'• Te Tiriti has strong legal recognition and protection• Institutions to ensure te Tiriti accountability are firmly established	<ul style="list-style-type: none">• The public sector is bicultural• Māori are providing for Māori

Released under the Official Information Act

THEME THREE: LAND, TERRITORIES, RESOURCES

Te Tiriti o Waitangi	Declaration
<p><i>Article 2 (Māori):</i></p> <p>Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangitira ki nga hapū - ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa ...</p> <p><i>Article 2 (English):</i></p> <p>Her Majesty the Queen of England confirms and guarantees ... the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession ...</p> <p><i>Article 2 (Sir Hugh Kawharu translation of the Māori text):</i></p> <p>The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures ...</p>	<p><i>The central pillars of the Declarations articles in lands, territories and resources are.⁸⁷</i></p> <ul style="list-style-type: none"> • <i>the right to maintain and strengthen the distinctive spiritual relationship indigenous peoples have with lands, territories, waters, coastal seas and other resources and to uphold this for future generations.⁸⁸</i> • <i>the right to lands, territories and resources traditionally owned, occupied or used;⁸⁹</i> • <i>the right to develop lands, territories and resources they possess;⁹⁰</i> • <i>the state obligation to provide legal recognition and protection of these rights with due respect to custom;⁹¹</i> • <i>the right to redress where lands, territories or resources have been confiscated from Indigenous peoples without their free, prior and informed consent.⁹² Redress should be in the form of restitution.⁹³</i>

⁸⁷ These rights are broadly connected to other rights including self-determination, participation in decision-making, culture, free, prior and informed consent and the right to traditional medicines.

⁸⁸ Article 25.

⁸⁹ Article 26.

⁹⁰ Article 26(2).

⁹¹ Article 26(3).

⁹² Article 28(1).

⁹³ Article 28(2).

VISION 2040

- A nation will know and appreciate iwi tribal boundaries, where the practice of mana whakahaere is evident.
- There will be an enlarged iwi/hapū/whānau estate, supported by significantly increased return of Crown lands and waters, including takutai moana, to Māori ownership (in addition to Treaty of Waitangi settlements).
- Law, policy and processes will support flourishing iwi territories, including where iwi/hapū/whānau can positively contribute towards the control, access to, and management of, all lands and resources within their rohe in accordance with tikanga and mātauranga Māori.
- There will be greater relinquishment of Crown assumed exclusive kāwanatanga authority over land, resources and taonga.
- Law, policy, processes and entities will support a successful bicultural joint sphere of governance and management of resources, taonga and Crown lands.

WHY IS THIS IMPORTANT FOR AOTEAROA?

Like the Declaration, te Tiriti and the Treaty recognise the importance of continuing Māori ownership of and authority over their lands and resources.

Article 2 of te Tiriti guarantees Māori tino rangatiratanga and authority over their "taonga" and Article 2 of the Treaty guarantees to Māori the full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties.

Similarly, the "heart and soul"⁹⁴ of the Declaration also speaks to Indigenous peoples' rights in respect of lands, territories and resources. Specifically, it addresses the continuing injustices of the colonial confiscation and assumptions of governance, ownership and management over these lands, territories and resources.

Since its establishment, the Waitangi Tribunal has consistently recommended the return of lands and resources to Māori, and additional mechanisms available to the Crown to honour te Tiriti. The Courts' jurisprudence recognises the common law doctrine of native title that similarly supports Māori continuing ownership, and/or rights in relation, of their lands and resources.⁹⁵

APPLICATION TO AOTEAROA

⁹⁴ Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 UN Doc E/CN.4/1996/84 (4 January 1996).

⁹⁵ *Attorney-General v Ngati Apa* [2003] NZCA 117, [2003] 3 NZLR 643.

Existing legislation provides some recognition of Māori rights and values with respect to lands, territories and resources. Te Ture Whenua Māori Act 1993 respects the significant importance of retention and utilisation of Māori land by Māori for Māori benefit. Most land-related legislation, for example the Conservation Act 1987 and the RMA, recognises the principles of the Treaty of Waitangi in some form, and reference the relationship Māori have with lands and resources, even if these provisions do not go nearly far enough to protect Māori rights to their lands, territories and resources.

A snapshot sample of some of the Government activities that can be built upon to achieve Declaration and te Tiriti consistency include:

- innovative Treaty of Waitangi settlements, including Te Urewera Act 2014⁹⁶ and the co-management of the country's longest river, the Waikato River;⁹⁷
- recognition of continuing customary ownership/governance/management of the Titi Islands and pounamu;⁹⁸
- the establishment in 2018 of Kāhui Wai Māori to advise Government on freshwater reform;
- recognition that an expected intermediate outcome of the "*Conservation and Environmental Science Roadmap*" is 'stronger integration of mātauranga Māori in environmental management, and greater recognition of a partnership with Māori';⁹⁹
- the announcement in August 2019 to progress reviews of the Conservation General Policy and General Policy for National Parks to better reflect the Crown's responsibility to give effect to principles of the Treaty of Waitangi in all aspects of administering public conservation lands and waters;¹⁰⁰
- Cabinet commitment to acting consistently with the Treaty principles in the establishment of the Interim Climate Change Committee;¹⁰¹
- ongoing reform of Te Ture Whenua Māori Act 1993 to better enable whānau development through whenua; and
- the recent announcement of a whole-of-government response to the issues raised in the Wai 262 claim and Ko Aotearoa Tēnei.

⁹⁶ This removed Te Urewera from the National Parks Act 1980 and established Te Urewera as a legal entity in its own right, managed by a board comprised of Tūhoe and Crown-appointed persons.

⁹⁷ See the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010.

⁹⁸ See, for example, Ngai Tahu (Pounamu Vesting) Act 1997; Titi (Muttonbird) Islands Regulations 1878; and *Reihana v Rakiura Titi Committee* [2016] NZHC 2048, [2016] NZAR 1491 at [5]-[16].

⁹⁹ Ministry for the Environment and Department of Conservation *Conservation and Environment Science Roadmap* (Wellington: Ministry for the Environment and Department of Conservation, 2017).

¹⁰⁰ Minister Hon Sage, press release 'Partial review of Conservation and National Parks policies to give better effect to treaty principles' 6 August 2019 <https://www.beehive.govt.nz/release/partial-review-conservation-and-national-parks-policies-give-better-effect-treaty>.

¹⁰¹ Cabinet Paper 'Interim Climate Change Committee Terms of Reference and Appointment' Office of the Minister for Climate Change, <https://www.mfe.govt.nz/sites/default/files/media/Legislation/Cabinet%20paper/interim-climate-change-committee-tor.pdf>. See updated Terms of References and associated paperwork: <https://www.iccc.mfe.govt.nz/who-we-are/terms-of-reference/>.

ROADMAP: KEY STEPS TO GET THERE

The long-term Declaration-consistent vision and overarching outcomes at 2040 are articulated at the start of this section. Our approach is to set out a roadmap of interim/intermediate actions that can be taken towards reaching these objectives. We note these are a preliminary selection of ideas that need to be further developed and built upon.

IMPLEMENTATION OF EXISTING WORK

There is a depth of material, knowledge and recommendations in relation to lands, resources and territories in existence that would move Aotearoa towards a more Declaration consistent state. We urge the next stage of work to comprehensively bring together this knowledge, and for the government to implement the visions, suggestions and recommendations in these various pieces or work.

Examples of this existing initiatives that might inform the Declaration plan include, but are not limited to:

- iwi plans, such as "The Waikato-Tainui Environmental Plan, Tai Tumu, Tai Pari, Tai Ao";¹⁰²
- Waitangi Tribunal reports and recommendations, such as *Stage 2 Report on the National Freshwater and Geothermal Resources Claims*¹⁰³ and the *Wai 262 Report*,¹⁰⁴
- submission documents, such as the Ngai Tai ki Tāmaki submission to the Supreme Court in *Ngai Tai v Ministry of Conservation*,¹⁰⁵
- working party reports, such as the Kāhui Wai Māori *Te Mana o te Wai Report*,¹⁰⁶
- New Zealand Law Commission reports, such as *Review of the Property (Relationships) Act Report 143 (2019)*,¹⁰⁷ and
- government reports, such as *Environment Aotearoa 2019*.¹⁰⁸

¹⁰² <https://www.waikatotainui.com/services/taiao/tai-tumu-tai-pari/>.

¹⁰³ This includes recommendations around recognition of Māori proprietary rights in water and reform of the RMA 1991. Waitangi Tribunal, *The Stage 2 Report On The National Freshwater And Geothermal Resources Claims*, (Wai 2358, 2019), at 559-564.

¹⁰⁴ Waitangi Tribunal *Ko Aotearoa Tēnei* (Wai 262, 2011) which includes recommendations to reform of the RMA 1991.

¹⁰⁵ Submissions were around their right to exercise manaakitanga over Motutapu and Rangitoto Islands - see *Ngai Tai v Ministry of Conservation* [2018] NZSC 122.

¹⁰⁶ (Sep 2019) that seeks comprehensive and holistic reform for how we care for freshwater. See: <https://www.mfe.govt.nz/publications/fresh-water/te-mana-o-te-wai-health-of-our-wai-health-of-our-nation-kahui-wai-maori>.

¹⁰⁷ This report seeks that any new law is inclusive of a property division that recognises tikanga Māori. See https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20-%20PRA%20Review%20Project%20-%20Final%20Report%20R143_0.pdf.

¹⁰⁸ Ministry for the Environment *Environment Aotearoa 2019* that seeks greater use of mātauranga Māori understanding of ecosystems and a well-functioning reporting system that supports the Māori voice especially the concerns of kaitiaki and nature. <https://www.mfe.govt.nz/environment-aotearoa-2019>.

We endorse the creation of a robust system to respond swiftly to reports and recommendations (particularly those from the Waitangi Tribunal and working groups that have te Tiriti and Declaration related terms of reference).

CLIMATE CHANGE

We have elevated climate change to its own heading because it is one of the greatest challenges facing humanity. The effects of climate change will be felt keenly by Māori. For example, much Māori land is low lying and coastal. Numerous Māori land and marae will be vulnerable to sea level rise and climate related extreme weather events, such as flooding.

We understand that climate change is a key focus of the current government, therefore there is momentum and opportunity to build on existing actions. A Tiriti and Declaration consistent vision would be for the Māori voice and mātauranga Māori to be centralised in seeking solutions to climate change.

Ideas of immediate action that can be taken include:

- ensuring Māori are adequately represented on a Climate Commission;
- scoping and analysing data on the disproportionate effects of climate change on Māori;
- ensuring the Zero Carbon Act (and any other climate change legislation) is Tiriti and Declaration compliant (potentially through an independent review); and
- prioritising working with Māori to identify sites of significance at risk and develop plans to help protect the ongoing utilisation of these sites.

ROHE: TERRITORIES

Some immediate and interim options for thriving rohe include:

MANA WHAKAHAERE: MANAGEMENT/GOVERNANCE

- Adequately recognising and resourcing the role of kaitiaki.¹⁰⁹
- Delegating government powers across the resource management and conservation spectrum to Māori (RMA, conservation, fisheries etc.¹¹⁰).
- Increasing the statutory weighting of iwi/hapū strategic plans.

¹⁰⁹ This must be systemic and include: Department of Conservation, Ministry for the Environment and Local Government.

¹¹⁰ See above under chapter: Māori participation in kāwanatanga Karauna

DEVELOPMENT

- Supporting iwi and hapū to develop goals, plans and long-term visions in relation to their lands, territories and resources (could be an extension of “Whānau Ora”).
- Prioritising policy and processes that ensure iwi/hapū/whānau can easily access their culturally significant lands, and sites on their own land or on Crown lands (e.g., no Māori freehold land should be landlocked by 2040).¹¹¹

MĀORI VISIBILITY

- Supporting visual representation of Māori and iwi in geographic space, e.g. markers of tribal boundaries/nations.
- Supporting the reclamation of Māori geographical names and creating a Māori-led geographical initiative, centrally funded, that encourages the public to know when passing through significant tribal areas with the use of signage and pou.

WHENUA: LANDS

Some immediate and interim options for thriving whenua include:

MANA WHAKAHAERE: MANAGEMENT/GOVERNANCE

- Formal acknowledgement that Māori maintain legitimate rights and interests in respect of all Crown lands.
- Legislatively direct local government to actively seek opportunities to enter into RMA 1991 section 33 transfers and section 36B joint management agreements for lands and resources.
- Reform law to prioritise tikanga Māori in the care and use of Māori lands.
- Exclude Māori freehold land from the Public Works Act 1981, where acquisition is without owners' permission.
- Transition of Māori land regulation and adjudication to Māori jurisdiction and a tikanga-based model, e.g. Māori Land Court reformed and decisions more informed by tikanga.

DEVELOPMENT OF LAND AND PEOPLE

- Exempt Māori freehold land from rates (in a similar manner, other lands such as conservation estate and Universities are exempt).

¹¹¹ Access agreements should be integral in local and regional planning and the resource consent process.

- Provide funds for the development of underutilised Māori land (e.g. further direct PGF funding).
- Implement recent direction from the Supreme Court regarding extending a preference to iwi/hapū in relation to concessions.¹¹²
- Provide mutual opportunities for the Crown and Māori to learn from each other in relation to governance and management of land and resources (e.g. this could include cadetships, and partnering with DOC and Councils).

WHAKAHOKI I TE WHENUA: RETURN OF LAND

Examples of steps that can be taken to facilitate the return of land to Māori where possible (beyond Treaty settlements) include:

- Creation of new land title for remaining conservation lands that recognises the inherent Māori historical and continuing connection to these lands.
- Implement policy/legislation that land-banked Crown lands be returned to relevant iwi.
- Amend the Public Finance Act 1989 to avoid the impact that the return of Crown land has on the Crown "books".
- Implement mechanisms and resource the transfer back to Māori of cultural heritage sites of significance (e.g. use Public Works, a "right of first refusal" (RFR) or memorial on title process).
- Review existing RFR mechanisms and practices and the Public Works Act 1981.¹¹³

TAONGA: RESOURCES

"Resources" include (by way of example): flora; fauna; aquatic life; minerals and petroleum; rivers; water; and air. It also includes associated values such as biodiversity. Across all resources we support Māori having influence. There is spectrum of approaches including:

- proprietary ownership;
- setting the vision/rules/policies/methods;
- being the decision-maker;
- being a joint decision-maker;
- requiring FPIC; and

¹¹² *Ngai Tai v Ministry of Conservation* [2018] NZSC 122, held that; that in some cases the Treaty principle of 'active protection' requires decision-makers to consider extending a preference to iwi/hapū and as well as the social and economic benefit this could yield.

¹¹³ Including addressing the following issues that undermine the good faith behind RFR agreements: long-term leases to third parties as a "sale" by another name; and Crown land administered by or transferred to local authorities. Also consider expanding RFR principle to new land acquired by the Crown from third parties. Review the Public Works Act with a particular focus on:

- The Crown acquiring land to give back to Māori for national interest purposes.
- Ensuring efficient mechanisms for the return of public works land to Māori at reduced rates.
- The return of all lands gifted by Māori not being used for the purpose of the original gift.

- a position being taken into account.

Where there are existing reports that make Tiriti and Declaration-consistent recommendations on resources, we support implementation of these recommendations. Where there is a gap, we support the Government receiving independent advice on how to implement te Tiriti and the Declaration in relation to the particular resource (that should then be acted on).

Examples of further specific actions (drawing on existing work and reports) include:

MANA WHAKAHAERE: MANAGEMENT/GOVERNANCE

- Amending law and policy to give effect to Te Mana o te Wai as detailed in the Kāhui Wai Report.¹¹⁴
- Creating a Te Mana o te Wai Commission with Māori co-governance.¹¹⁵
- Implementing legislation that provides that FPIC of the relevant iwi is required in relation to any seabed, exploratory drilling/mining.¹¹⁶
- Building upon "innovative" Treaty settlements (e.g. Whānganui River) including investigating options for delivering greater co-governance and co-management outside Treaty settlements.
- Ensuring the national biodiversity strategy (currently being redeveloped) takes steps to reconcile te Ao Māori and Pākehā approaches to conservation management, including by addressing Māori concerns and the impact of loss of biodiversity on whakapapa, culture, mātauranga and traditional activities.¹¹⁷

DEVELOPMENT

- Māori receive royalties for the use of particular natural resources such as water, petroleum and minerals.
- Māori being involved in trade negotiations to protect resources and associated mātauranga Māori.¹¹⁸

¹¹⁴ See <https://www.mfe.govt.nz/publications/fresh-water/te-mana-o-te-wai-health-of-our-wai-health-of-our-nation-kāhui-wai-māori>.

¹¹⁵ See Kāhui Wai Māori 2019 report <https://www.mfe.govt.nz/publications/fresh-water/te-mana-o-te-wai-health-of-our-wai-health-of-our-nation-kāhui-wai-māori> and Waitangi Tribunal Stage 2 Report on the National Freshwater and Geothermal Resources Claims (Wai 2358, 2019).

¹¹⁶ This is not unprecedented. E.g. Ngā Rohe Moana o ngā Hapū o Ngāti Porou Act 2019; see also: <https://www.govt.nz/treaty-settlement-documents/te-whanau-a-apanui/>.

¹¹⁷ Note the existing New Zealand Biodiversity Strategy is linked to the United Nations Convention on Biological Diversity and expires in 2020. A key recommendation in Chapter 1 of *Ko Aotearoa Tēnei* (Wai 262) sought legislative reform to reconcile te Ao Māori and Pākehā approaches to conservation management.

¹¹⁸ E.g. with respect to mānuka honey.

LANDS, TERRITORIES & RESOURCES: POTENTIAL ACTIONS - EXAMPLE - INDICATIVE OPTIONS ONLY

	Immediate Actions (2020-2022)	Mid-point Actions (2023-2035)	Vision (By 2040)
Climate Change	<ul style="list-style-type: none"> Climate change impacts: Scope and analyse data on disproportionate effects of climate change on Māori Zero Carbon Act: Ensure Tiriti and Declaration compliance, potentially through independent review Climate Commission: Ensure adequate Māori representation 	<ul style="list-style-type: none"> At-risk Māori sites: prioritise resources for Māori to identify Māori lands and sites of significance (urupā, wāhi tapu, marae) at risk with mitigation and adaptation plans developed and well-resourced 	<p>Iwi rohe/takiwā, lands, territories and resources</p> <ul style="list-style-type: none"> A nation will know and appreciate iwi tribal boundaries, where the practice of mana whakahaere is evident
Territories	<ul style="list-style-type: none"> Development of Iwi/hapū strategic plans: iwi and hapū are well supported to further develop goals, plans and long-term visions in relation to their lands, territories and resources - in terms of accessing funding this could be an extension of Whānau Ora 	<ul style="list-style-type: none"> Iwi/hapū strategic plans: now have new enhanced statutory weighting and effect in law Increased Māori authority: significantly increased transfer of government powers to iwi/hapū across resource management spectrum (RMA, conservation, fisheries etc.) Visibility: resources available for Māori-led representation in territories Kaitiaki responsibilities: strengthen kaitiaki roles and responsibilities in law to care for territories Access: prioritising policy and processes that ensure iwi/hapū/whānau can easily access their culturally significant lands and sites on their own land or on Crown lands 	<ul style="list-style-type: none"> There will be an enlarged iwi/hapū/whānau estate, supported by significantly increased return of Crown lands and waters, including takutai moana, to Māori ownership (in addition to Treaty of Waitangi settlements) Law, policy and processes will support flourishing iwi territories, including where iwi/hapū/whānau can positively contribute towards the control of, access to, and management of all lands and resources within their rohe in accordance with tikanga and mātauranga Māori
Lands	<p>Public conservation lands:</p> <ul style="list-style-type: none"> Undertake partial review with Māori leadership of Conservation General Policy and General Policy for National Parks to better reflect section 4 of the Conservation Act 1987 Investigate options for delivering greater co-governance and co-management, independent of Treaty settlements, including for hapū Advance discussions on Ngā Aitanga ā Nuku agreements, an approach (since 2016) that enables iwi/hapū/whānau to make decisions over access to cultural materials <p>Other suggestions:</p> <ul style="list-style-type: none"> Public Works Act: review with a particular focus on returning of all Crown lands gifted by Māori not being used for the purpose of the original gift 	<p>Crown land:</p> <ul style="list-style-type: none"> Implement policy/legislation to return appropriate public conservation land to iwi/hapū Amend relevant legislation to remove the financial impediments stopping the return of Crown land to Māori <p>Conservation land:</p> <ul style="list-style-type: none"> Develop a new form of kaitiaki land title for public conservation lands Entrench joint decision-making with respect to all lands and waters <p>Other suggestions:</p> <ul style="list-style-type: none"> RMA: reforms made that are consistent with Māori and Waitangi Tribunal recommendations Whenua acquisition plan: establish a fund for the acquisition of private land of significance for Māori from 	<p>Crown lands, territories and resources</p> <ul style="list-style-type: none"> There will be greater relinquishment of Crown assumed exclusive kāwanatanga authority over land, resources and taonga Law, policy, processes and entities will support a successful bicultural joint sphere of governance and management of resources, taonga and Crown lands

	Immediate Actions (2020-2022)	Mid-point Actions (2023-2035)	Vision (By 2040)
	<ul style="list-style-type: none"> RMA: Māori voice is prioritised in the review, consistent with Waitangi Tribunal recommendations Rating: policy review with the aim to standardise rating practices across New Zealand, including looking at options to put a moratorium on rating of all Māori land 	<p>willing sellers</p>	
Resources	<ul style="list-style-type: none"> Freshwater: implement freshwater policy reform to give effect to te Mana o te Wai NZ Biodiversity Strategy and National Policy Statement - Indigenous Biodiversity: ensure Māori concerns are heard and actioned Marine Protected Areas reform: further explore options to make it easier for customary tools/tikanga to be used as part of a suite of marine protection tools and in decision-making 	<ul style="list-style-type: none"> Rights: recognise and resolve iwi/hapū customary title and rights in resources including water and minerals by 2025 to iwi/hapū satisfaction, including the implications in practice of this recognition Commission: create a Mana o te Wai Commission with Māori co-governance Bioprospecting: regime in place that protects mātauranga and provides for benefit sharing Trade: increased Māori decision-making in trade negotiations to protect resources and associated mātauranga Māori 	

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THEME FOUR: RIGHT TO CULTURE/NGĀ TAONGA



Te Tiriti o Waitangi	Declaration ¹¹⁹
<p><i>Article 2 (Māori):</i></p> <p>Ko te Kuini o Ingarani ka wakarite ka wakaee ki nga Rangatira ki nga hapū - ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa ...</p> <p><i>Article 2 (English):</i></p> <p>Her Majesty the Queen of England confirms and guarantees ... the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession ...</p> <p><i>Article 2 (Sir Hugh Kawharu translation of the Māori text):</i></p> <p>The Queen of England agrees to protect the chiefs, the subtribes and all the people of</p>	<p><i>Article 11:</i></p> <p>Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures..</p> <p><i>Article 13:</i></p> <p>Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions ...</p> <p><i>Article 31:</i></p> <p>Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures... They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional</p>

¹¹⁹ Numerous articles of the Declaration deal with rights to culture. Other articles include rights: not to be subjected to assimilation and destruction of culture (art. 8); to prevention of, and redress for, forced assimilation, dispossession of their lands, territories and resources (art. 8); to belong to an Indigenous community or nation in accordance with Indigenous peoples' traditions and customs (art. 9); to practise and revitalise Indigenous peoples' cultural traditions and customs (art. 11); to teach their cultural and religious traditions and to repatriation of their human remains (art. 12); to revitalise, use, develop and transmit to future generations their histories, languages and oral traditions, philosophies, writing systems and literatures (art. 13); to control their own education systems and institutions providing education in their own languages (arts. 14 and 15); to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions (art. 31); to determine their own identity and membership; and to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices, juridical systems or customs (art. 34).

New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures ...

knowledge, and traditional cultural expressions.

In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

VISION 2040

- Iwi, hapū and whānau will be exercising authority over all aspects of their culture, including the ability to control, protect and develop their cultural and natural heritage – ngā taonga tuku iho.
- Te reo Māori will be flourishing, its use will be widespread, and its integrity will be protected – te reo kia tika, te reo kia rere, te reo kia Māori.
- All Māori will have the opportunity to access, practise and develop their culture and reo, connect with their whakapapa, and be confident in their Indigenous identity.
- All New Zealanders will embrace and respect Māori culture as an integral part of national identity, and this will also be reflected in a bicultural, mātauranga-informed state service/kāwanatanga Karauna.

WHY IS THIS IMPORTANT FOR AOTEAROA?

Aotearoa is the home of Māori culture, and it is a unique and valuable part of New Zealand's national identity. The Waitangi Tribunal said:

(I)t is necessary to protect Māori culture and identity because that is how we protect New Zealand culture and identity... New Zealand's law should make room for the relationships between kaitiaki and their taonga works and mātauranga Māori to flourish as a matter of national interest. If those relationships are strong, then Māori culture and identity are strong; and if Māori culture and identity are strong, then New Zealand culture and identity are strong. It is time for New Zealand law to reflect that fact.¹²⁰

Culture is central to identity and to individual and collective wellbeing. As well as the Declaration, New Zealand has obligations to protect the right to culture under the New Zealand Bill of Rights Act 1990,¹²¹ and under several international human rights instruments.¹²² Rights to culture are

¹²⁰ Waitangi Tribunal, *Ko Aotearoa Tēnei* (Wai 262, 2011), at 56.

¹²¹ S 20: "a person belonging to an ethnic... minority in New Zealand shall not be denied the right... to enjoy the culture... of that minority."

¹²² This includes the International Covenant on Civil and Political Rights. Article 27 states that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language"; and the Convention on the Rights of the Child article 15 urges States to take steps to ensure the realization of the right to cultural life for everyone, including steps necessary for the conservation of culture. The Committee on the Elimination of Racial Discrimination (in its General recommendation No. 23 (1997) on Indigenous peoples) has urged states to "recognize and respect Indigenous

fundamental human rights and are also integral to the realisation of a range of other rights in the Declaration, such as self-determination, rights to lands, territories and resources and FPIC.¹²³

Many of New Zealand's efforts to recognise and protect Māori cultural rights are world-leading, for example, Māori language revitalisation efforts, and support for Te Matatini - our biannual national kapa haka competition.¹²⁴ Existing initiatives are a good basis on which to develop greater rangatiratanga Māori over culture.

TE TURE MŌ TE REO MĀORI 2016

Te Ture mō te Reo Māori, the Māori Language Act (2016) recognises the inherent mana of te reo as the Indigenous language of Aotearoa, that it is the foundation of Māori identity and culture, as well as being important to all people of Aotearoa. The model has two current language strategies: Maihi Karauna (the Government strategy)¹²⁵ and Maihi Māori, led by Te Mātāwai representing iwi and Māori.¹²⁶ The structure has the potential to be applied as a partnership model in other areas.

The Maihi Karauna sets out the Government's key role as being to create the conditions for te reo Māori to thrive as a living language. Goals under the strategy include that by 2040, New Zealanders value te reo Māori as a key element of national identity, and that 1 million or more New Zealanders will have the ability to speak Māori at least at a basic level. It aims to ensure that by 2040, 150,000 Māori (aged 15 and over) will use te reo as much as English.

The Maihi Māori aims to support whānau to re-establish and maintain te reo Māori as a first language, and to increase the community contexts where immersion in te reo takes place. The strategy envisions that by 2040, 1 million people will be using Māori language in community immersion domains and 25% of Māori children (aged 0-7) will have te reo as their first language.

An important cultural right, which is vital to the way that Aotearoa moves into the future and provides for Māori to be truly recognised as Tiriti partners, is how mātauranga Māori, Māori traditional knowledge, and Māori intellectual property rights are recognised and provided for. This particular issue will be addressed via Te Pae Tawhiti, and was also the basis of the Mataatua Declaration.

distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation"; and to "ensure that Indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

¹²³ EMRIP, (2012), *Role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples: Study of the Expert Mechanism on the Rights of Indigenous Peoples*, A/HRC/21/53, para 20. Retrieved from: <https://undocs.org/A/HRC/21/53>.

¹²⁴ Other examples of positive efforts include: statutory recognition of Te Awa Tupua and Te Urewera, and creation of management bodies whose functions include giving effect to cultural values and concepts; and the incorporation of tikanga Māori in youth justice processes and specialist courts.

¹²⁵ Te Puni Kōkiri, (2019), *Maihi Karauna: The Crown's Strategy for Māori Language Revitalisation 2019-2023*. Accessible at: <https://www.tpk.govt.nz/docs/tpk-maihi-karauna-en-2018-v2.pdf>.

¹²⁶ Te Mātāwai, (2016), *Maihi Māori 2017-2040*. Accessible at: <https://www.tematawai.Māori.nz/maihi-Māori-english>

MATAATUA DECLARATION

The Mataatua Declaration on the Cultural and Intellectual Property Rights of Indigenous Peoples (1993)¹²⁷ affirms that Indigenous peoples have the right to self-determination and in exercising that right must be recognised as the exclusive owners of their cultural and intellectual property.

The Mataatua Declaration acknowledges the shared experience Indigenous peoples have of exploitation of their cultural and intellectual property. It affirms that Indigenous knowledge is beneficial to all humanity, and notes that Indigenous peoples are willing to share this knowledge, provided their fundamental rights to define and control this knowledge are protected. It states that the first beneficiaries of Indigenous knowledge and cultural heritage must be the direct descendants of that heritage, and recommends that States cooperate with Indigenous peoples to develop a cultural and intellectual property regime that adequately protects these rights.

Cultural rights are also closely related to the enjoyment of rights to health. That is, strong cultural affiliations can be positive and act as, for example, "protection factors against the high risk of suicide in Indigenous communities".¹²⁸ This relationship has been frequently highlighted in a range of recent reports noting that many current systems do not adequately reflect Māori culture, and as a result are not meeting Māori needs or making gains in addressing inequities. For example, the Independent Panel on Family Justice Reforms highlighted the importance of Māori culture to the wellbeing of Māori children, whānau and communities.¹²⁹ The Panel made a range of recommendations to enhance recognition of te ao Māori, including: statutory recognition of te Tiriti, building capability and increasing Māori representation, and support for kaupapa Māori services and approaches.

GOING FORWARD: CULTURAL RIGHTS IN A DECLARATION PLAN

Current and existing initiatives provide a firm foundation for further work to progressively achieve Declaration consistency in relation to Indigenous peoples' rights to culture by 2040. This includes the *Te Pae Tawhiti* work programme and the vision and outcomes set out in the *Maihi Māori* and *Maihi Karauna*.¹³⁰

¹²⁷ https://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/mataatua.pdf

¹²⁸ EMRIP, (2012), above n 121, at para 84

¹²⁹ See *Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms*, (2019), at p 24. Accessible at: <https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf>

¹³⁰ The Declaration plan should refer also to the recommendations of the various UN human rights bodies which in recent years have urged New Zealand to increase efforts to promote and protect te reo Māori, and strengthen its inclusion in school curriculums and throughout the country. These UN recommendations have highlighted the need for investment in and increasing the availability of qualified reo teachers. *Children's Rights Committee (2016)* – para 19; *Racial Discrimination Committee (2017)* – para 35-36; *Economic, Social and Cultural Rights Committee (2018)* – para 48-49

TE PAE TAWHITI

Te Pae Tawhiti whole-of-government work programme to progress the Wai 262 recommendations provides a significant opportunity to systematically strengthen and protect Māori cultural rights.¹³¹

As te Pae Tawhiti work programme gets underway, a Declaration plan could include some interim actions and targets that reflect this interconnection, and which could support and track progress of key areas of work.

Moving forward, a holistic and coordinated approach to te Tiriti and the Declaration should be developed. As part of this coordinated approach, we suggest that all relevant work programmes are linked up under the ‘umbrella’ of the Declaration plan. Doing so could not only assist with coordination of both areas of work, but also help to ensure Declaration consistency across all work relevant to Māori, and in particular that adequate focus is given to advancing rangatiratanga.

Treaty settlements have also been a key vehicle for providing iwi and hapū greater access to and control of their taonga, through increased and expanded forms of cultural redress. An example is the recognition of the authorship of the haka Ka-Mate and its significance to Ngāti Toa.¹³² Cultural redress provisions demonstrate there is nothing to fear from supporting mātauranga Māori and according kaitiaki interests appropriate recognition. However, reliance on Treaty settlements as “the principal vehicle for protecting mātauranga Māori and taonga leads to inevitable inconsistencies”, and potentially “random or iniquitous” outcomes.¹³³ The Declaration plan provides an opportunity to approach these issues in a more proactive and coordinated way.

The Declaration plan offers a timely opportunity to continue in earnest the nation-building exercise urged by the Wai 262 Tribunal, which noted that “[h]istory and the future both demand that we make the leap to acceptance of Māori culture and identity as a founding pillar of our national project”.¹³⁴

There is particular scope for a Declaration plan to identify practical and meaningful recognition of Māori authority over taonga and mātauranga Māori. *Ko Aotearoa Tēnei* examined questions about who (if anyone) owns or controls Māori culture and identity.¹³⁵ It concluded that:

Sometimes, the Crown exercises that control; sometimes, it is others such as commercial interests or property owners; only very rarely is it kaitiaki. In short, there is little room in current New Zealand law and policy for mātauranga Māori and for the relationships upon which it is founded.¹³⁶

¹³¹ <https://www.tpk.govt.nz/en/a-matou-kaupapa/wai-262-te-pae-tawhiti>

¹³² Such redress also includes joint management of rivers, lakes and land; rights of cultural harvest on conservation land; accords over the care of cultural objects; and restoration of traditional place names. See Waitangi Tribunal (2011), *Ko Aotearoa Tēnei – Te Taumata Tuatahi*, at p 246.

¹³³ Waitangi Tribunal (2011), *Ko Aotearoa Tēnei – Te Taumata Tuatahi*, at p 247.

¹³⁴ Waitangi Tribunal (2011), *Ko Aotearoa Tēnei – Te Taumata Tuatahi*, at p 247.

¹³⁵ Waitangi Tribunal (2011), *Ko Aotearoa Tēnei – Te Taumata Tuatahi*, at p 247.

¹³⁶ Waitangi Tribunal (2011), *Ko Aotearoa Tēnei – Te Taumata Tuatahi*, at p 247.

ROADMAP TO DECLARATION REALISATION

The long-term Declaration-consistent vision and overarching outcomes at 2040 are articulated at the start of this section. Our approach is to set out a roadmap of interim/intermediate actions that can be taken towards reaching these objectives. As per other themes, we note these are a preliminary selection of ideas that may be further developed and built upon.

MĀORI AUTHORITY TO CONTROL, PROTECT AND DEVELOP CULTURE

A key objective of a Declaration plan is to provide a pathway to a 2040 vision where Māori are able to exercise authority over all aspects of their culture, including the ability to control, protect and develop their cultural and natural heritage – ngā taonga tuku iho. Staggered steps towards that vision might include capacity-building and resourcing to support greater Māori decision-making and governance over cultural matters; and the progressive transfer of decision-making authority from the Crown to Māori.

Ideas of interim and immediate action that can be taken include:

- Drawing on existing models, create partnership/co-management governance bodies in relation to cultural rights and issues.¹³⁷
- Securing bi-partisan agreement that Māori are to be primary decision-makers regarding cultural matters.
- Incorporating the notion of Māori FRIC with respect to taonga tuku iho.
- Implementing Wai 262 recommendations, including strengthening intellectual property laws and developing new standards for the protection of mātauranga Māori.¹³⁸
- Expanding, refining and bettering resource processes to support the return of taonga, including from private ownership and public institutions.¹³⁹
- Reform heritage laws to ensure Māori heritage and wāhi tapu are protected from development, and to strengthen recognition of mana whenua authority.¹⁴⁰

¹³⁷ For example, "Te Ture mō te Reo Māori", The Waikato River, Te Urewera and the Wai 262 recommendation for an electoral college to identify representatives of the Māori partner to sit on governance bodies could also be explored.

¹³⁸ Ngā Taonga Tuku Iho Conference Organising Committee, Communiqué 4 March 2019, *Māori Cultural and Intellectual Property Rights: Our Past, Our Future, Our Legacy*. Accessible at: <https://drive.google.com/file/d/15mAXQpV4-dhtHMie15R1Ze3CW9fcToZi/view?usp=sharing>

¹³⁹ Expand on Te Papa's Karanga Aotearoa programme.

¹⁴⁰ Heritage New Zealand regulates physical interference by modification or destruction of archaeological sites under the Heritage New Zealand Pouhere Taonga Act 2014. Local authorities regulate land use through the use of local planning instruments, including any other form of interference with archaeological sites. Heritage NZ can also have a role in local authority processes under the RMA as a Heritage Protection Authority, including by way of the New Zealand Heritage List and/or by way of the use of Heritage Orders under the RMA.

WAIKATO EXPRESSWAY

The development of the Waikato Expressway by New Zealand Transport Agency, is an example of engagement and strong relationships with iwi leading to finding alternative options (re-routing roads) to manage and protect cultural heritage and historical sites, (e.g. Rangiriri battle sites, Taupiri Maunga).¹⁴¹ Such examples, however, are reliant on the relationships between iwi and Crown agency/local government body, proactive engagement by the developer and also dependent on iwi having the capacity to engage.

TE REO MĀORI

To ensure te reo Māori is flourishing and the goals in the Maihi Māori and Maihi Karauna are achieved, steps in a Declaration action plan should give priority to enabling Māori to learn, speak and access te reo.

Ideas of interim and immediate action that can be taken include:

- investing in te reo Māori teachers with a view to making it a compulsory curriculum subject in primary education;
- adopting measures to incentivise and encourage Māori reo speakers into the teaching profession;
- enacting interim steps to enable fluent speakers of te reo to work with schools and teachers;
- adequately resourcing te reo Māori education (bilingual, immersion, and kaupapa Māori options);
- providing sustained resourcing of iwi, hapū and marae to provide Māori language education and to develop their own systems; and
- ensuring that allocation of resources prioritises Māori access to learning te reo and that Māori authority is retained.

The review of Te Ture mō te Reo Māori 2016, due to take place in 2019 provides an opportunity to strengthen the practical recognition of te reo Māori as an official language. This is an opportunity to build on legislation in accordance with te Tiriti and the Declaration. For example, by increasing the contexts in which te reo may be spoken as of right – extending this from legal proceedings to other government and administrative settings. Settings could be progressively expanded across the kāwanatanga sphere, until a fully bilingual government is achieved by 2040.

¹⁴¹ <https://www.beehive.govt.nz/release/new-highway-and-battle-rangiriri-commemoration-site-opened> ; https://ipanz.org.nz/Article?Action=View&Article_id=150149

A MĀTAURANGA-INFORMED AOTEAROA AND BICULTURAL KĀWANATANGA

Potential actions that contribute to the goal of a mātauranga-informed Aotearoa and bicultural kāwanatanga are discussed elsewhere in this report, especially under the chapter: participation in kāwanatanga Karauna.

Additional ideas of interim and immediate action that can be taken, in a number of different areas relating to culture, include:

- supporting museums to be fully bicultural (include building the low numbers of Māori curators);
- building on the compulsory teaching of history announcement to ensure the curriculum reflects the diversity of Māori history, and is developed with iwi and hapū;
- ensuring that place names reflect our Indigenous heritage and that offensive or inaccurate names are appropriately addressed;¹⁴²
- increasing the number of Māori governors, te reo and Māori cultural content in all publicly funded media;¹⁴³
- monitoring the implications of new technologies (such as artificial intelligence and digitisation of taonga) and take measures to appropriately protect taonga;
- ensuring all aspects of New Zealand citizenship recognises and reflects te Tiriti, tikanga and Māori systems of belonging;¹⁴⁴ and
- ensuring that mātauranga Māori is equally valued and resourced as Western science.¹⁴⁵

¹⁴² Place names play an important role in our collective sense of history, identity and belonging. Many current place names reflect our colonial history, while pre-existing Māori place names have been ignored or overridden. Some names reference violent aspects of our history and continue to hold painful associations. Treaty settlements are a measure to address this and could be dealt with more widely, and through a coordinated approach. Actions may also include steps to ensure that the processes of the Geographic Board fully reflect partnership and provide for greater Māori decision-making. Drawing on international (e.g. Wales) and local (e.g. Wairoa, Ōtaki, Rotorua) examples, increasing take-up of bilingual towns and cities could contribute to these efforts, and to creating a bilingual, bicultural environment.

¹⁴³ This builds on current work that recognises the need to revitalise te reo Māori and build greater understanding of the role of tikanga and Māori culture in public media. *Role of Public Media Funding Commission: Recommendations of the Ministerial Advisory Group* (June 2018).

¹⁴⁴ This includes requirements such as "sufficient knowledge of the responsibilities and privileges attaching to New Zealand citizenship"; assessment and granting of applications; and oaths and ceremonies.

¹⁴⁵ Many government resources are consistently calling for more mātauranga Māori inspired research. For example, the Environment Aotearoa 2019 report seeks greater use of mātauranga Māori understanding of ecosystems and a well-functioning reporting system that supports the Māori voice.

CULTURE: POTENTIAL ACTIONS - EXAMPLE - INDICATIVE OPTIONS ONLY

The potential actions below are indicative examples provided as a basis for further discussion and development.

	Immediate Actions (2020- 2022)	Mid-point Actions (2023-2035)	Vision (By 2040)
Māori authority to control, protect and develop culture	<p>Te Pae Tawhiti</p> <ul style="list-style-type: none"> Initiate process to strengthen intellectual property laws and develop new standards for the protection of mātauranga Māori The Crown and Māori develop partnership models/joint governance bodies in relation to cultural rights and issues Expand, refine and better resource processes to support the return of cultural objects from private ownership Initiate review of relevant heritage legislation to ensure Māori heritage and wāhi tapu are protected from development, and to strengthen recognition of mana whenua authority 	<ul style="list-style-type: none"> Parliament adopts, through bipartisan agreement, a practice of endorsing decisions made by Māori over their cultural rights 	<p>Iwi, hapū and whānau will be exercising authority over all aspects of their culture, including the ability to control, protect and develop their cultural and natural heritage - ngā taonga tuku iho</p>
Te reo Māori, culture and identity	<p>Te Pae Tawhiti – Maihi Māori – Maihi Karauna</p> <ul style="list-style-type: none"> Strengthen support for kaupapa Māori education Increase investment in teacher training, and incentives for te reo teachers Through the review of Te Ture mō te Reo Māori, progressively extend the contexts in which people have the right to speak Māori (i.e. beyond legal proceedings, s7 -. Through 	<ul style="list-style-type: none"> Te reo Māori is made a compulsory curriculum subject in primary education The right to speak Māori is progressively extended across government agencies, including in justice, education, and health settings 	<ul style="list-style-type: none"> Te reo Māori will be flourishing, its use will be widespread, and its quality and integrity will be protected - kia tika, kia rere, kia Māori All Māori will have the opportunity to access, practise and develop their culture and reo, connect with their whakapapa, and be confident in their indigenous identity

Te ao Māori embraced and respected
A mātauranga- informed Aotearoa and bicultural kāwanatanga

Te Pae Tawhiti – Maihi Māori – Maihi Karauna

- Collate and implement existing expert recommendations, especially those which are Māori-led
- Train and educate the public sector about the Declaration, Te Tiriti, reo, tikanga and delivery of culturally appropriate services; and develop related accountability mechanisms, (e.g. KPIs, reporting tied to government funding)
- Develop partnership/joint governance bodies across government agencies
- Increase funding for mātauranga Māori research
- Ensure New Zealand's history curriculum reflects diversity of Māori history, and are developed with iwi and hapū

- Progressively bring all legislation, policy and initiatives in line with te Tiriti and the Declaration
- Monitor the implications of new technologies (such as artificial intelligence and digitisation of taonga) and take appropriate protective measures

- All New Zealanders will embrace and respect Māori as an integral part of national identity, and this will also be reflected in a bicultural, mātauranga-informed state service/kāwanatanga Karauna

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THEME FIVE: EQUITY AND FAIRNESS

Te Tiriti o Waitangi	Declaration
<p><i>Article 1 (Māori):</i></p> <p>Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kāwanatanga katoa o ratou wenua.</p> <p><i>Article 1 (English):</i></p> <p>The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.</p> <p><i>Article 1 (Sir Hugh Kawharu translation of the Māori text):</i></p> <p>The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government¹⁴⁶ over their land.</p>	<p><i>Articles 1 and 2:</i></p> <p>Indigenous peoples are to have equal enjoyment of all rights including both indigenous rights and all human rights and freedoms.</p> <p><i>Articles 14(2), 21(1) and 24:</i></p> <p>Indigenous peoples have the right to the improvement of their economic and social conditions, access to education and social and health services and the enjoyment of the highest attainable standard of physical and mental health.</p> <p><i>Article 15(2):</i></p> <p>Measures are to be implemented to combat prejudice and eliminate discrimination.</p> <p><i>Articles 14(2), 22 and 44:</i></p> <p>Strong protections for particular groups: women; elders; youth; children and persons with disabilities.</p>

146 'Government': 'kāwanatanga'. Sir Hugh's view was that "there could be no possibility of the Māori signatories having any understanding of government in the sense of 'sovereignty': i.e., any understanding on the basis of experience or cultural precedent."

Article 3 (Māori):

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kāwanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata Māori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

Article 3 (English):

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Article 3 (Sir Hugh Kawharu translation of the Māori text):

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

Article 46(2):

Indigenous peoples' rights are only limited by other citizens' rights when strictly necessary. There must be just and compelling reasons for any limitation.

VISION 2040

- Aotearoa will be a nation where Māori will be thriving and prosperous in all aspects of life including across generations.
- There will be equity between peoples, which means that rangatiratanga and Māori authority is recognised and respected.
- There will be genuine partnership bodies in the relational sphere.
- All Māori will enjoy equity in opportunity and outcomes.
- New Zealand's understanding of well-being will incorporate a holistic te Ao Māori and mātauranga Māori perspective.¹⁴⁷

¹⁴⁷ This extends beyond people to include te mauri o te taiao (the environment).

WHY IS THIS IMPORTANT TO AOTEAROA?

Both the Declaration and te Tiriti reflect the idea of equity. We understand "equity" to mean equality in substance. This does not necessarily mean treating everyone the same. In its *Hauora Report*, the Waitangi Tribunal stated:¹⁴⁸

"A policy or a service that establishes equal standards of treatment or care across the whole population may still result in inequitable outcomes for Māori. This could be the case, for instance, if other barriers (such as cost, geography, or racism) prevent Māori from accessing services, treatment, or care. The Treaty principles of equity and active protection therefore require the Crown to treat Māori differently in an attempt to get equitable results. This may require additional resources, proportionate to address inequities that exist."

"Equity" has been recognised by the Waitangi Tribunal as a principle of te Tiriti.¹⁴⁹ It relates to Article 3, where Māori are guaranteed all the rights and privileges of British subjects. It also links to the principle of active protection, requiring the Crown to act to reduce inequalities, regardless of the cause of disparity.¹⁵⁰

In its *Hauora Report* the Tribunal recognised that where there are persistent inequities, the Crown may have heightened Treaty obligations.¹⁵¹ The deeper the need, the more urgent and substantial a targeted response should be.

Equity in both the Declaration and te Tiriti includes equality at the individual level (in that all individuals should enjoy equitable opportunities and outcomes), as well as equality between peoples (in the rangatiratanga and authority sense).

There can be tension between collective rights (including Indigenous peoples' rights), and individual rights and interests. It is important that collective rights do not automatically give way to individual rights and non-Indigenous interests. A Māori perspective is relevant to the exercise of weighing these rights and interests.

We also suggest that as Māori public power and rangatiratanga increases, human rights accountabilities are more likely to apply.

In the context of Indigenous rights, the concept of "special measures" has its limitations. In 2007, the CERD Committee noted that measures directed towards Māori should not be framed as "special measures" because they are only justified for as long as is necessary to attain equality for disadvantaged groups.¹⁵² In contrast, Indigenous peoples' rights are permanent and are thus required for reasons beyond simply achieving parity between citizens.

¹⁴⁸ *Hauora report*, above n 15, at 34-35.

¹⁴⁹ Waitangi Tribunal *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims* (Wai 785, Vol 1, 2008) at 5.

¹⁵⁰ Waitangi Tribunal *Te Urewera* (Wai 894, Vol VIII, 2017) at 3773.

¹⁵¹ *Hauora Report*, above n 15, at 29, 32, 37, 67 and 164.

¹⁵² Concluding Observations: New Zealand UN Doc A/62/18 (1 October 2007) at para 448.

APPLICATION TO AOTEAROA

The DWG stresses the importance of taking a strengths-based, rather than deficit-model approach to equity. Nonetheless, because of colonisation and a system that has been designed to undermine Māori, Māori are overrepresented in negative statistics in all key socio-economic indicators. This includes unemployment;¹⁵³ income;¹⁵⁴ health;¹⁵⁵ housing;¹⁵⁶ education;¹⁵⁷ and criminal justice.¹⁵⁸

THE IMPACT OF COLONISATION ON CURRENT INEQUITY

As well as the major loss of land, language and culture during the 1800s government policies during the mid-late twentieth century. In the post-World War II era, government policies meant Māori migrated to the cities, and were often isolated because of the “pepper-potting” strategy of the government that aimed to assimilate Māori. Many Māori children were taken into state care, where they were separated from their whānau and culture, and suffered systemic abuse. Māori were punished in schools for speaking their own language. The economic turmoil and neo-liberal restructuring of the 1980s and 1990s saw the rise of unemployment, particularly in the sectors in which many Māori worked. This historical context and legacy of colonisation must place greater responsibility and urgency on the government to action Declaration consistency.

The concept of equity can apply to many different areas. We focus on three specific case studies of importance to Māori to show inequity: health, housing, and criminal justice.

HEALTH¹⁵⁹

The Māori idea of wellbeing is holistic, and extends beyond physical health to include: tinana (physical), wairua (spiritual), whānau (family) and hinengaro (mental).¹⁶⁰ The health system in Aotearoa does not reflect the Māori model of well-being, and Māori continue to have the poorest

¹⁵³ 10.4 percent of Māori are unemployed, compared with 4 percent of non-Māori.

¹⁵⁴ The median individual net worth of Māori is \$29,000, compared with \$138,000 for Pākehā (note that collective assets such as Māori land and trusts are not well captured in this statistic); Māori earn \$2.6 billion per year less than they would if they earned the average income; 30 percent of Māori receive income support, compared with 14 percent of non-Māori.

¹⁵⁵ The gap in life expectancy at birth between Māori and non-Māori is 7.3 years for males and 6.8 years for females.

¹⁵⁶ 37 percent of Māori live in an owner-occupied home, compared with 52 percent of the total population; around 40 percent of Auckland's homeless are Māori.

¹⁵⁷ 45 percent of Māori complete school, compared with 64 percent of non-Māori; 13 percent of Māori hold a bachelors or higher qualification, compared with 38 percent of the total population.

¹⁵⁸ Māori account for 52 per cent of prisoners, despite being only 16 per cent of the total population.

¹⁵⁹ See Human Rights Commission *A fair go for all? Rite tahi tātou katoa? Addressing Structural Discrimination in Public Services* (July 2012).

¹⁶⁰ See Sir Mason Durie *Whaiora: Māori Health Development* (Oxford University Press, 1994).

health of any group in Aotearoa.¹⁶¹ Māori have little autonomy and rangatiratanga in relation to the health sector.

In 2019, the Waitangi Tribunal found that the Crown had breached the principles of the Treaty of Waitangi by failing to design and administer the current primary health care system to actively address persistent Māori health inequities, and by failing to give effect to tino rangatiratanga in te Tiriti (autonomy, self-determination, sovereignty, self-government).¹⁶²

There has been an attempt in the Whānau Ora initiative to establish a more Māori and whānau-centred way of delivering social and health services. Iwi and other Māori organisations are also innovating and adopting tribal and mātauranga Māori informed ways of delivering health care.¹⁶³ There is opportunity and room to support and further build on this progress.

HOUSING

Māori have an extended concept of “housing” that includes communal living and community:¹⁶⁴

“The concept of kāinga is central to Māori identity, society and culture – it refers to something more than a home, village or community and must be understood alongside other concepts, such as ahi kā (home fire symbolising the right to occupy the land), ūkaipō (the home that sustains us), mana whenua (the intrinsic spirit of the land and associated rights that govern human interaction with it), kaitiakitanga and whakapapa.”

Māori are disproportionately represented in negative housing statistics. Māori have low home ownership rates,¹⁶⁵ are more likely to live in overcrowded homes,¹⁶⁶ are more likely to be

¹⁶¹ Some indicators include: avoidable mortality rates for Māori are almost two-and-a-half times those for non-Māori; the sudden unexplained death of infants rate for Māori is nearly five times as high as that for non-Māori; Māori are 1.7 times more likely to die from cancer than non-Māori; Māori are over four times more likely to die from diabetes mellitus than non-Māori, renal failure is more than eight and a half times higher for Māori than non-Māori and lower limb amputation is more than four and a half times higher; Māori are more than two times as likely to die from cardiovascular disease than non-Māori; Māori are over five times as likely to die from rheumatic heart disease than non-Māori; Māori are over twice as likely to die from intentional self-harm than non-Māori; Māori males are twice as likely as non-Māori males to report a high or very high probability of having an anxiety or depressive disorder; between the ages of 0-64 years old, Māori are around one-and-a-half times more likely to be disabled than non-Māori. See Ministry of Health *Tatau Kahukura Māori Health Chart Book 2015* (3rd ed) and the Hauora Report at 23-24.

¹⁶² *Hauora report*, above n 15.

¹⁶³ For example, Tūhoe Hauora <http://www.tuhoehauora.org.nz/index.php/our-purpose/> and Hokianga Hauora http://www.hokiangahealth.org.nz/HHET2017/base2.php?page=HHET_Philosophy.

¹⁶⁴ Te Matapihi he Tirohanga mō te Iwi Trust “Submission to the Environment Committee on the Kāinga Ora-Homes and Communities Bill 2019” at 1.

¹⁶⁵ In 2013, the homeownership rate for Māori adults was 28 percent, compared with 57 percent for Pākehā. See Alan Johnson, Philippa Howden-Chapman and Shamubeel Eaqub *A Stocktake of New Zealand's Housing* (Ministry of Business and Innovation, February 2018) at 5 and 14.

¹⁶⁶ 20 percent of Māori live in crowded households, compared with 4 percent of Pākehā. See Johnson et al., *ibid.*, at 44.

homeless,¹⁶⁷ and face significant barriers to home ownership (including low incomes, access to finance, prohibitive planning rules, and shared land ownership).

The Waitangi Tribunal has a housing claim before it that is currently in the preliminary stages.¹⁶⁸ Many of the claimants allege Crown failure to ensure an adequate standard of housing for Māori, or to deliver state services, programmes and support enabling Māori to access adequate housing.

Positive movement in housing includes the creation of a Māori-led plan in 2018 to improve housing outcomes for Māori in Auckland. The Kāinga Strategic Action Plan uses te Tiriti o Waitangi and partnership between Māori and the Crown as its framework and the concept of kāinga as its guiding principle.¹⁶⁹ Iwi have also been innovative in relation to housing, with examples such as the Kāinga Tuatahi Ngāti Whātua Ōrākei papakāinga development and Te Puea marae response to vulnerable whānau seeking emergency housing.¹⁷⁰ There is a scope to build on and support these existing initiatives.

The Kāinga Ora - Homes and Communities Act 2019 has created a new Crown agency responsible for public housing and urban development. Another Bill will be introduced to set out the powers of the new Crown agency. There is opportunity for the Declaration and te Tiriti to inform this housing centred legislation.

We consider that the response to the housing crisis for Māori needs to be culturally appropriate, as well as led by Māori (and appropriately resourced by the Crown).

CRIMINAL AND FAMILY JUSTICE¹⁷¹

The atrocious Māori justice statistics are widely known and have been described as being “calamitous”¹⁷² and “a crisis”.¹⁷³ Māori are disproportionately represented in all justice measures,

¹⁶⁷ A Point-In-Time Count conducted on 17 September 2018 of homelessness in Auckland found that Māori, at 11 percent of the general Auckland population, were 43 percent of the estimated 800 people living without shelter and 40 percent of the 2,874 people living in temporary accommodation. See Housing First Auckland *Ira Mata, Ira Tangata: Auckland's Homeless Count* (May 2019) at 37.

<https://www.aucklandshomelesscount.org.nz/stories/view/culturally-appropriate-responses-needed>.

¹⁶⁸ Waitangi Tribunal *The Housing Policy and Services kaupapa inquiry* (Wai 2750).

¹⁶⁹ Independent Māori Statutory Board *Kāinga Strategic Action Plan: a plan to improve housing outcomes for Māori in Tāmaki Makaurau* (2018) (“Kāinga Strategic Action Plan”) at 3.

¹⁷⁰ See, <https://www.whairawa.ngatiwhatuorakei.com/developments> and J Lee-Morgan and R Hoskins “Kāinga tahi, kāinga rua: A kaupapa Māori response of Te Puea Memorial Marae” (2017) 30(8) *Parity: Responding to Homelessness in Aotearoa New Zealand* at 13–14.

¹⁷¹ For the purposes of this report we have focused specifically on criminal and family justice. We recognise that the concept of “justice” is broad and can include dimensions such as constitutional justice and self-determination.

¹⁷² Waitangi Tribunal *Tū Mai Te Rangī! Report on the Crown and Disproportionate Reoffending Rates* (Wai 2540, 2017) (“*Tū Mai report*”) at 14, quoting Dame Sian Elias, 2009 (then Chief Justice of the Supreme Court of New Zealand).

¹⁷³ Te Uepū Hāpai i te Ora *He Waka Roimata Transforming Our Criminal Justice System First report of Te Uepū Hāpai i te Ora* (9 June 2019) (“*He Waka Roimata report*”).

including children in state care, youth justice and imprisonment.¹⁷⁴ Particular vulnerable groups (mentioned in the Declaration) such as Māori women, youth and children are severely impacted.

MANA WĀHINE

Mana Wāhine is the recognition of the inherent authority of Māori women beside Māori men – not below them – for the good of all whānau, hapū and iwi. It recognises that colonisation has damaged the status of Māori women. It challenges the use of domestic violence and sexual violence against Māori women and children. It encourages women to exercise tino rangatiratanga over their minds and bodies. There is a Mana Wāhine claim before the Waitangi Tribunal. Little has been done to effectively address and improve this long-known state of affairs. The Crown has accepted that transformational change in this area is needed.

There has been significant thinking and work done to suggest improvements and ways forward with respect to criminal and family justice for Māori. This includes:

- the Waitangi Tribunal report *Tū Mai te Rangī*;¹⁷⁵
- the *He Waka Roimata* report¹⁷⁶ and yet to be publicly released recommendations from Te Uepū Hāpai i te Ora (an independent government-established advisory group”); and
- the *Ināia Tonu Nei Report* that came from a Māori-lead hui (summit).¹⁷⁷

In 2018, the Government set a target to reduce the prison population by 30 percent over the following 15 years, and in 2019 launched Hōkai Rangī, a long term strategy to reduce the prison population.¹⁷⁸ There were also changes made to the Oranga Tamariki Act 1989 to better recognise tikanga Māori and allow for partnerships between the Crown and Māori in relation to state care.¹⁷⁹ The Royal Commission of Inquiry into State Abuse was also established.¹⁸⁰

There is currently positive momentum to address justice issues. The challenge is to build on this momentum, and implement the transformational recommendations that have been proposed.

¹⁷⁴ Māori now comprise 16 percent of the population, but make up 52 percent of the prison population. The statistics are worse for wāhine Māori, who make up 57 percent of the female prison population, and for rangatahi Māori who make up 67 percent of the prison population under 20 years old and 68 percent of children in State care. See Department of Corrections *Hōkai Rangī: Ara Poutama Aotearoa Strategy 2019-2024* (2019) at 8.

¹⁷⁵ *Tū Mai* report above n 167.

¹⁷⁶ *He Waka Roimata* report.

¹⁷⁷ Hui Māori, (2019), *Ināia Tonu Nei*. Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/d8s653-Inaia-Tonu-Nei-Hui-Maori-English-version.pdf%20>.

¹⁷⁸ Hōkai Rangī aims to treat the person and not just the crime. It requires a greater commitment to rehabilitation and reintegration programmes, as well as access to kaupapa Māori services. The strategy requires Corrections to co-design the system with Māori and seeks to amend the Corrections Act 2004 to state the relevant Treaty obligations to Māori. See, Department of Corrections *Hōkai Rangī, Ara Poutama Aotearoa Strategy 2019-2024* (2019).

¹⁷⁹ Oranga Tamariki Act 1989, ss 2, 4 and 7AA.

¹⁸⁰ See <https://www.abuseincare.org.nz/>.

This includes linking together the siloes that contribute to these statistics (e.g. health, housing and education), and moving towards rangatiratanga where Māori have more authority over these areas.

ROADMAP: KEY STEPS TO GET THERE

We set out our preliminary collation of thematic ideas to be applied across all areas where inequity is experienced by Māori. Under each thematic idea we have given examples of steps/options that draw on existing recommendations/suggestions, supplemented by our own initial thoughts. These examples come from the three equity areas we specifically considered: health, housing and justice. We note that there is an interrelation between inequities that require system-wide solutions.

IMPLEMENTATION OF EXISTING WORK

There is a depth of material, knowledge and recommendations already in existence that would move Aotearoa towards greater Declaration consistency. We urge the next stage of work to comprehensively bring together this knowledge, and for the Government to implement the recommendations. Examples of this existing work include:

- the following Waitangi Tribunal reports:
 - *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*,¹⁸¹
 - *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*,¹⁸² and
 - *Tū Mai te Rangi!: Report on the Crown and Disproportionate Reoffending Rates*.¹⁸³
- the Ministry of Health report *Whāia Te Ao Marama 2018 to 2022: the Māori Disability Action Plan*,¹⁸⁴
- the independent Māori Statutory Board report *Kāinga Strategic Action Plan: a plan to improve housing outcomes for Māori in Tāmaki Makaurau*,¹⁸⁵
- the *He Waka Roimata: Transforming Our Criminal Justice System*, report from Te Uepū Hāpapa i te Ora (an independent government established advisory group) and the yet to be publicly released recommendations;¹⁸⁶ and
- the *Ināia Tonu Nei* report that came from a Māori-lead hui (summit).¹⁸⁷

¹⁸¹ *Hauora Report*, above n 15.

¹⁸² Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011).

¹⁸³ *Tū Mai Te Rangi Report*, above n 165.

¹⁸⁴ Ministry of Health *Whāia Te Ao Marama 2018 to 2022: the Māori Disability Action Plan* (2018).

¹⁸⁵ *Kāinga Strategic Action Plan*, above n 162.

¹⁸⁶ *He Waka Roimata report*, above n 168.

¹⁸⁷ *Ināia Tonu Nei report*, above n 172.

CO-DESIGN AND CO-GOVERNANCE

As a general principle, we support co-design and co-governance across all sectors that relate to equity. Examples include:

- in its *Hauora Report*, the Waitangi Tribunal made an interim recommendation that the Crown and the claimants work together to further assess the extent of the problems in primary health care, and co-design a set of solutions, including exploring the concept of a stand-alone Māori primary health authority;¹⁸⁸
- the *Kāinga Strategic Action Plan* recommends consideration of ways to promote partnership with iwi and hapū in strategy, policy, governance and co-governance, and housing development and services;¹⁸⁹
- establish a Mana Ōrite (equality) model of partnership with Māori at all levels of decision-making in respect of criminal justice;¹⁹⁰
- build on existing Treaty settlement agreements in the social services space (for example, the Service Management Plan agreement with Tūhoe);¹⁹¹ and
- have joint Ministers and Associate Ministers that focus on the Māori dimension of the Ministry, (e.g. Minister Kelvin Davis is an Associate Minister of Education (Māori Education)).

LEGISLATIVE CHANGE

A sample of options that require legislative change include:

- review all relevant legislation to ensure it reflects the Declaration, has strong Tiriti o Waitangi clauses, and incorporates te ao and tikanga Māori;
- include equitable outcomes for Māori as a legislative goal (for example, in section 3(1)(b) of the New Zealand Public Health and Disability Act 2000);¹⁹²
- apply papakāinga provisions to all land (not just Māori freehold land) and align planning rules to allow for culturally appropriate kāinga;¹⁹³
- review section 27 of the Sentencing Act 2002 with a view to expanding the use of cultural reports beyond sentencing, allowing judges to direct reports are provided, and increasing funding;¹⁹⁴ and
- give all prisoners the right to vote in general elections.¹⁹⁵

¹⁸⁸ *Hauora report*, above n 15, at 165.

¹⁸⁹ *Kāinga Strategic Action Plan*, above n 164, at 6.

¹⁹⁰ *Ināia Tonu Nei report*, above n 172, at 25.

¹⁹¹ *Ngāi Tūhoe Service Management Plan* (November 2012).

¹⁹² In its *Hauora Report* at 162-163, the Waitangi Tribunal recommended that the Crown's obligation to achieve equitable health outcomes for Māori be strengthened by expressly including the obligation in legislation.

¹⁹³ *Kāinga Strategic Action Plan*, above n 164, at 7.

¹⁹⁴ *Kāinga Strategic Action Plan*, above n 164, at 26.

¹⁹⁵ Note the Waitangi Tribunal has heard this issue and is currently writing a report. Waitangi Tribunal *He Aha I Pērā Ai* (Wai 2870, 2019).

USING AND MAXIMISING EXISTING LAW AND POLICY TO BE MORE EFFECTIVE

The suggestions made in this category do not require legislative change, but instead propose maximising existing law and policy (or unutilised opportunities and space within the current legislative framework) to be more effective for Māori. Many of these suggestions have resourcing implications.

A sample of options include:

- compulsory education of health professionals in te ao Māori;
- establish navigators/brokers and train skilled professionals with expertise in facilitating and supporting Māori to achieve their housing needs or aspirations;¹⁹⁶
- assist and support the creation of tailored housing and finance products that meet the needs of Māori whānau (including shared equity and progressive ownership models);¹⁹⁷
- design and build more Māori-friendly state housing;¹⁹⁸
- establish more therapeutic and specialist courts and normalise these approaches in the mainstream court process;¹⁹⁹
- reform the family court and care and protection process, including establishing a tikanga Māori focused pilot (this may require legislative change);²⁰⁰
- establish Whānau Ora navigators for the justice sector;²⁰¹
- invest in kaupapa Māori legal units within each community law centre;²⁰²
- increase the pool and use of lay advocates and their remuneration;²⁰³
- establish better targeted reintegration strategies for Māori - with the Crown as a major employer - to assist with employment, housing and other social needs; and
- address racism through education, including conscious and unconscious bias training, Māori targeted recruitment, training, school programmes and media campaigns.

RESOURCING

Specific targeted resourcing of Māori initiatives and Māori organisations is required. This needs to be done in a “mana-enhancing” way that does not create a vertical relationship that diminishes the rangatiratanga status and mana of Māori. Examples of resourcing initiatives include:

¹⁹⁶ *Kāinga Strategic Action Plan*, above n 164, at 5.

¹⁹⁷ *Ibid.*, at 5.

¹⁹⁸ *Ibid.*, at 7.

¹⁹⁹ *Ināia Tonu Nei report*, above n 172, at 27.

²⁰⁰ *Ināia Tonu Nei report*, above n 172, at 27. Note that this builds on the Puao-te-ata-tu report.

²⁰¹ *Ibid.*, at 28.

²⁰² *Ibid.*, at 28.

²⁰³ At 28.

- support Māori-focused and Māori-led service delivery across all areas involving equity issues, such as health, housing and justice. This might include funding (or increased funding) for:
 - Māori-led wellbeing initiatives;
 - Whānau Ora;
 - Papakāinga housing and associated infrastructure;
- sell or transfer state houses to iwi providers or other Māori entities;²⁰⁴
- provide more Auckland Council and Crown land for kāinga and affordable housing opportunities;²⁰⁵
- increase legal aid funding to whānau, hapū and iwi going through the family or criminal justice system;²⁰⁶
- fund, support and upskill Māori and non-governmental Māori organisations to develop capability and capacity within the justice and social sectors, and in their own communities;²⁰⁷ and
- equity in pay for Māori working in the health sector.

MOVING TO RANGATIRATANGA MĀORI (2040)

As is also detailed in the rangatiratanga chapter, to have equity between peoples in New Zealand, a greater transformational shift to recognise and respect rangatiratanga and Māori authority is required. Some of the options suggested will require interim steps such as capacity building. Options to increase rangatiratanga in equity include:

- transfer services and jurisdiction over key areas to whānau, hapū and iwi (including health, state care and criminal justice);²⁰⁸
- create a national, Māori-controlled agency, organisation, or collective, which would have substantial oversight and control of Māori health-related spending and policy;²⁰⁹ and
- establish a Māori court system.

MONITORING AND ACCOUNTABILITY

Monitoring is important for accountability purposes, as outlined in the introduction. With specific reference to equity initiatives, options include:

- requiring measurable outcomes to be included in KPIs for leaders of relevant Crown entities;²¹⁰

²⁰⁴ *Kāinga Strategic Action Plan*, above n 162, at 7.

²⁰⁵ *Ibid.*, at 5.

²⁰⁶ *Ināia Tonu Nei report*, above n 172, 25.

²⁰⁷ *Ibid.*, at 28.

²⁰⁸ At 26 where the recommendation is made to devolve Oranga Tamariki services to whānau, hapū and iwi.

²⁰⁹ *Hauora report*, above n 15, at 10 and 164.

²¹⁰ *Kāinga Strategic Action Plan*, above n 164, at 6.

- establishing specific measures in relation to areas of equity (e.g. housing; health and justice);²¹¹ and
- having an independent Māori monitoring agency to measure progress in equity areas.

DATA SOVEREIGNTY AND DATA COLLECTION²¹²

To be able to address issues of equity, data is vital. In various areas (particularly social services), important data is can be absent, incomplete or unreliable, and the Māori or iwi dimension of data is often not captured, or is not a priority. Examples of what is needed to address this include:

- Māori being involved in the governance of data repositories;
- data for and about Māori being safeguarded and protected by Māori;
- requiring the quality and integrity of Māori data and its collection (including good disaggregation); and
- supporting Māori having their own data infrastructure and security systems.

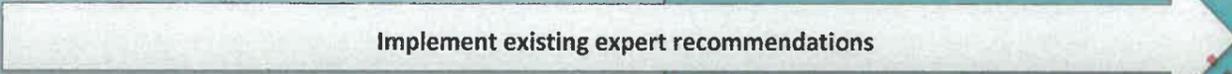
PRIORITY ACROSS ALL OPTIONS TO TAMARIKI, RANGATAHI, WĀHINE, AND TĀNGATA WHAIKAHA

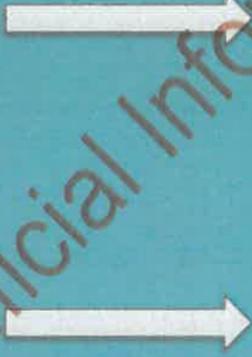
These are particular groups that are mentioned in the Declaration. Specific attention needs to be paid to inequities faced by these groups and options for addressing this.

²¹¹ Ibid.

²¹² See, Te Mana Raraunga Māori Data Sovereignty Network at www.temararaunga.maori.nz/kappa

EQUITY: POTENTIAL ACTIONS - EXAMPLE - INDICATIVE OPTIONS ONLY

	Immediate Actions (2020- 2022)	Mid-point Actions (2023-2035)	Vision (By 2040)
<p>Equity Generally</p>	<p style="text-align: center;">Implement existing expert recommendations </p> <ul style="list-style-type: none"> • Collate and begin to implement existing expert recommendations, especially those which are Māori-led • Increase support for kaupapa Māori initiatives, e.g. Whānau Ora • Māori decide whether and how they want to exercise rangatiratanga and authority to work towards equity, e.g. what services they want to take over • The Crown and Māori identify opportunities to co-design and co-govern initiatives to achieve equity, and lay the foundations for such initiatives • The Crown and Māori work in partnership to identify opportunities to devolve services • The Crown dedicates additional resources to Māori initiatives and organisations across all sectors in a "mana-enhancing" way, e.g. Whānau Ora, papakāinga housing and associated infrastructure • The Crown addresses structural racism through: <ul style="list-style-type: none"> ◦ Public education programmes across all sectors, including conscious and unconscious bias training and school programmes ◦ Māori targeted recruitment ◦ Media campaigns • The Crown creates joint Ministers and Associate Ministers that focus on the Māori dimension of the relevant Ministry • The Crown monitors progress towards achieving equity by: <ul style="list-style-type: none"> ◦ Establishing specific measures in relation to areas of equity ◦ Establishing an independent Māori monitoring agency to measure progress in equity areas 	<ul style="list-style-type: none"> • The Crown and Māori implement co-designed and co-governed initiatives to achieve equity • Progressively bring all legislation, policy and initiatives in line with te Tiriti and the Declaration. Relevant legislation should reflect te Ao Māori and tikanga, and include goals to achieve equitable outcomes for Māori <p style="text-align: center;"></p> <p style="text-align: center;"></p>	<ul style="list-style-type: none"> • A nation where Māori will be thriving and prosperous in all aspects of life including across generations • There will be equity between peoples, which means that rangatiratanga and Māori authority is recognised and respected • There will be genuine partnership bodies in the relational sphere • All Māori will enjoy equity in opportunity and outcomes • New Zealand's understanding of wellbeing will incorporate a holistic te Ao Māori and mātauranga Māori perspective

	<ul style="list-style-type: none"> ○ Include measurable outcomes in KPIs for leaders of relevant Crown entities • The Crown ensures relevant data is collected, captured and prioritised by: <ul style="list-style-type: none"> ○ Involving Māori in the governance of data repositories ○ Safeguarding and protecting data for and about Māori ○ Requiring the quality and integrity of Māori data and its collection • Supporting Māori to have their own data infrastructure and security systems. 		
Health	<ul style="list-style-type: none"> • Implement existing expert recommendations, e.g. in: <ul style="list-style-type: none"> ○ Waitangi Tribunal report Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry ○ Waitangi Tribunal report Ko Aotearoa Tēnei (Wai 262), for example the recommendations in relation to rongoā Māori ○ Whāia Te Ao Marama 2018 to 2022: the Māori Disability Action Plan • Build on and support existing Māori-led initiatives such as Whānau Ora, Tūhoe Hauora and Hokianga Hauora • Increase Māori involvement in policy/planning and the delivery of services • Include equitable outcomes for Māori as a legislative goal in s 3(1)(b) of the New Zealand Public Health and Disability Act 2000 • Require compulsory te Ao Māori education for health professionals 		<ul style="list-style-type: none"> • Māori are healthy and have culturally appropriate access to health services • Existence of a national, Māori-controlled agency, organisation or collective with oversight and control of Māori health-related spending and policy • The ability to choose and have access to Māori rongoā treatments
Housing	<ul style="list-style-type: none"> • Implement existing recommendations in Independent Māori Statutory Board Kāinga Strategic Action Plan: a plan to improve housing outcomes for Māori in Tāmaki Makaurau • Increase funding for papakāinga housing • Build on and support existing Māori-led initiatives such as the Kāinga Tuatahi Ngāti Whātua Ōrakei papakāinga development and Te Paea marae response to vulnerable whānau seeking emergency housing • Strengthen te Tiriti obligations in the Kāinga Ora-Home and Communities Act 2019 and provide for strong partnerships and equity goals in the second Bill/Act which will set out the powers of the new agency. For example, Kāinga Ora should take over and 		<ul style="list-style-type: none"> • Māori are housed well • Papakāinga housing is thriving and there is culturally appropriate housing available to Māori • Tangata whaikaha are supported to live with whānau where possible and whakapapa connections are maintained

	<p>reform Kāinga Whenua</p> <ul style="list-style-type: none"> • Amend legislation to allow for the application of papakāinga provisions to all land (not just Māori freehold land) and align planning rules to allow for culturally appropriate kāinga • Establish navigators/brokers and train skilled professionals to have expertise in facilitating and supporting Māori to achieve their housing needs • Design and build more Māori-friendly state housing • Assist and support the creation of tailored housing and finance products that meet the needs of Māori whānau, for example, shared equity/equity pool; progressive ownership models; lending entity; low income housing tax credit programme • Sell or transfer state houses to iwi providers or other Māori entities • Provide more council and Crown land for kāinga and affordable housing opportunities 		
<p>Criminal and Family Justice</p>	<ul style="list-style-type: none"> • Implement expert recommendations, including in: <ul style="list-style-type: none"> ◦ Waitangi Tribunal report Tū Mai te Rangī! ◦ He Waka Roimata report from Te Uepū Hāpai i te Ora (an independent government established advisory group), and the yet to be publicly released recommendations ◦ Ināia Tonu Nei report from Hui Māori ◦ Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms • Initiate review of the Sentencing Act 2002, Bail Act 2000, Criminal Procedure Act 2011 and all legislation relating to care and protection to ensure they reflect te Tiriti • Review s 27 of the Sentencing Act 2002 with a view to expand the use of cultural reports beyond sentencing, allow Judges to direct the provision of reports and increase funding • Give all prisoners the right to vote in general elections • Allow for a greater role of whānau and community 	<ul style="list-style-type: none"> • Establish more therapeutic and specialist courts and normalise these approaches in the mainstream court process • Transfer services from Oranga Tamariki to whānau, hapū and iwi to provide care and protection services with and for whānau in their own communities • Decarceration process 	<ul style="list-style-type: none"> • Existence of a Māori court system based on tikanga Māori • Prisons do not exist • All tamariki Māori are cared for by their whānau

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APPENDIX A: UNDRIP

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY ON 13 SEPTEMBER 2007

[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006, by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th plenary meeting 13 September 2007

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative

proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

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APPENDIX B: RELEVANT CONTEMPORANEOUS GOVERNMENTAL ACTIVITY

List of other ongoing work relevant to the development of a Declaration plan.

DIRECTLY ALIGNED EXISTING GOVERNMENT WORKSTREAMS

Workstream	Agency
Wai 262: Te Pae Tawhiti	TPK

OTHER RELEVANT GOVERNMENT WORKSTREAMS

Workstream	Agency
Te Haeta - the Treaty Settlement Portal	Te Arawhiti
Tokorima a Māui	Corrections
Government Digital Strategy	DIA
NALI Ministerial Group	DIA
Response to Supreme Court decision in <i>Ngāi Tai ki Tāmaki</i>	DOC
New Zealand Biodiversity Strategy and Action Plan	DOC
Ngā Aitanga-a-Nuku: cultural materials access agreements	DOC
Mātauranga Māori when used in decision-making	EPA

Kāhui Wai Māori	MfE
Comprehensive review of the resource management system	MfE
Essential freshwater	MfE
National Policy Statement for Indigenous Biodiversity	MfE
Proposed climate change response	MfE
Emissions Trading Scheme	MfE
He Korowai Oranga - Māori Health Strategy	MOH
Te Ao Auahatanga Hauora Māori - Māori Health Innovation Fund	MOH
Wai 2575 - Health Services and Outcomes Kaupapa Inquiry	MOH
Ka Hikitia - Managing for Success	MOE
Tau Mai Te Reo - Māori Language in Education Strategy	MOE
Te Marautanga o Aotearoa - Māori Medium partner to NZ curriculum	MOE
Mātaiako - observation and evaluation of learning taking place	MOE
Te Rāngai Kāhui Ako ā-Iwi	MOE
Tau Mai Te Reo refresh	MOE
Māori Tertiary Education Framework	MOE
He kai kei aku ringa - Crown-Māori Economic Development Strategy	MBIE

Science and Technology - Vision Mātauranga	MBIE
Copyright Act review	MBIE
Haka Ka Mate Attribution Act review	MBIE
Action Plan for New Zealand's creative sector	MBIE
Disclosure of origin requirements at WIPO	MBIE
5G policy	MBIE
Development of a resource strategy & Crown Minerals Act 1991 review	MBIE
Māori Engagement Strategy	MFAT
Overseas investor-state dispute protocol	MFAT
Trade for All	MFAT
Pacific Alliance free trade negotiations	MFAT
Oranga Tamariki: Enhancing the Wellbeing of Tamariki and Rangatahi Māori	OT
Māhi Karauna	TPK
Māori Media Sector Shift	TPK
Raranga Tahi	TPK
Māori data governance	Stats NZ

ADVISORY GROUPS

- Te Uepū Hāpai I te Ora - The Safe and Effective Justice Advisory Group

- The Independent Panel examining the 2014 Family Justice Reforms
- The Welfare Expert Advisory Group
- Te Kāhui Wai Māori
- Ministerial Advisory Group for Health
- Digital Economy Ministerial Advisory Group
- Conservation and Fisheries Ministerial Advisory Committee
- Public Media Advisory Group
- Waste Advisory Board
- Biosecurity Ministerial Advisory Committee
- NCEA review Ministerial Advisory Group
- Digital Economy and Digital Inclusion Ministerial Advisory Group
- Rooding Costs Advisory Group
- Prime Minister's Science Advisory Committee
- Royal Commission of Inquiry into the Attack on Christchurch Mosques on 15 March 2019
- Public Inquiry into the Earthquake Commission
- Inquiry into Operation Burnham
- Royal Commission of Inquiry into Historical Abuse in State Care
- Government Inquiry into the Auckland Fuel Supply Disruption
- Government Inquiry into Mental Health and Addiction
- Government Inquiry into the Appointment Process for a Deputy Police Commissioner
- Government Inquiry into Havelock North Drinking Water
- Government Inquiry into Matters Concerning the Escape of Philip John Smith/Traynor
- Government Inquiry into Whey Protein Concentrate (WPC) Contamination Incident
- Government Inquiry into allegations regarding Hon. Judith Collins and a former Director of the Serious Fraud Office (reported on 28 November 2014)
- Royal Commission of Inquiry into Building Failure Cause by the Canterbury Earthquakes
- Royal Commission on the Pike River Coal Mine tragedy
- Royal Commission on Auckland Governance
- Commission of Inquiry into Police Conduct
- Royal Commission on Genetic Modification
- Productivity Commission Inquiry into technological change and the future of work
- Productivity Commission inquiry into local government funding and financing
- Productivity Commission inquiry into regulatory institutions and practices
- Productivity Commission inquiry into better local regulation