He tono nā

Te Rūnanga o NGĀI TAHU

ki

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT

e pā ana ki te

ISSUES PAPER: REVIEW OF THE PLANT VARIETY RIGHTS ACT 1987

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DISCUSSION PAPER: DISCLOSURE OF ORIGIN OF GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE IN THE PATENTS REGIME

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1. EXECUTIVE SUMMARY

1.1. Te Rūnanga o Ngāi Tahu ("**Te Rūnanga**") welcomes the opportunity to comment on the Ministry of Business, Innovation & Employment's ("**MBIE**") issues paper on the review of the Plant Variety Rights Act 1987 and the discussion paper on the disclosure of origin of genetic resources and traditional knowledge in the patents regime.

1.2. It has been a long time coming and it is great that the new government is wanting to progress these matters whilst incorporating the recommendations from the Wai 262 Ko Aotearoa Tēnei Report ("**WAI 262"**).

1.3. Overall Te Rūnanga are supportive of what is being proposed and under sections 5 & 7 we identify a set of recommendations for the MBIE to consider.

1.4. Te Rūnanga would also like to take this opportunity to applaud MBIE's intent to meaningfully engage with Māori in the front end of both reviews. It signals a greater commitment towards partnership with ngā iwi Māori katoa and Ngāi Tahu whānui and we encourage this kind of engagement to continue as these two kaupapa are progressed.

2. TE RŪNANGA O NGĀI TAHU

2.1. This response is made on behalf of Te Rūnanga.

2.2. Te Rūnanga is statutorily recognised as the representative tribal body of Ngāi Tahu whānui and was established as a body corporate on 24th April 1996 under section 6 of the Te Rūnanga o Ngāi Tahu Act 1996 ("**the Act**").

2.3. We note the following relevant provisions of our constitutional documents:

Section 3 of the Act States:

> *"This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act."*

Section 15(1) of the Act states:

> *"Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui."*

2.4. The Charter of Te Rūnanga o Ngāi Tahu constitutes Te Rūnanga as the kaitiaki of tribal interests.

2.5. Te Rūnanga respectfully requests that this response be given the status and weight due to the tribal collective, Ngāi Tahu whānui, currently comprising over 60,000 members, registered in accordance with section 8 of the Act.

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

3. THE PLANT VARIETY RIGHTS ACT 1987 REVIEW AND THE DISCLOSURE OF ORIGIN OF GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE IN THE PATENTS REGIME

3.1. With regards to both these kaupapa Te Rūnanga notes the following interests:

Treaty Relationship

- Te Rūnanga have an expectation that the Crown will honour Te Tiriti o Waitangi and the principles upon which the Treaty is founded.

Kaitiakitanga

- In keeping with the kaitiaki responsibilities of Ngāi Tahu whānui, Te Rūnanga has an interest in ensuring that there is equitable and sustainable management and protection of the tribal mātauranga that belong to us, our tūpuna and future generations, and our indigenous flora and fauna, specifically our taonga species that are nurtured by us, our tupuna and future generations.
- At all times, Te Rūnanga is guided by the tribal whakataukī:

  "mō tātou, ā, mō ngā uri ā muri ake nei" (for us and our descendants after us).

Whanaungatanga

- Te Rūnanga has a responsibility to promote and protect the wellbeing of Ngāi Tahu whānui and to ensure that the management of Ngāi Tahu assets, taonga and mātauranga and the wider management of resources supports the aspirations for economic and social development of iwi members.

3.2. The Act provides for Ngāi Tahu and the Crown to enter into an age of co-operation. An excerpt of the Act is attached as **Appendix One**, as a guide to the basis of the post-settlement relationship which underpins this response.

3.3. The Crown apology to Ngāi Tahu recognises the Treaty principles of partnership, active participation in decision-making, active protection and rangatiratanga.

3.4. With regards to the Ngāi Tahu takiwā, Section 5 of the Act statutorily defines those areas "south of the northern most boundaries described in the decision of the Māori Appellate Court", which in effect is south of Te Parinui o Whiti on the East Coast and Kahurangi Point on the West Coast of the South Island (see map attached in **Appendix Two**).

4. COMMENTS ON THE ISSUES PAPER: REVIEW OF THE PLANT VARIETY RIGHTS ACT 1987

4.1. Ngāi Tahu whānui are the kaitiaki of all indigenous flora and fauna in our takiwā. The special relationship and rights that flow from this relationship have been acknowledged in the Ngāi Tahu Claims Settlement Act ("**the Settlement Act**").[1] Te

1 Ngāi Tahu Claims Settlement Act 1998, s 288.

Rūnanga note this was briefly highlighted in the issues paper.[2]

4.2. Although the Settlement Act defines taonga species as "*the species of birds, plants, and animals described in Schedule 97 found within the Ngāi Tahu claim area*", Te Rūnanga asserts that Ngāi Tahu taonga species are not limited to this list.

4.3. This raises the importance of defining what are 'taonga species' in relation to the Plant Variety Right Act. It is acknowledged that this will not be a simple conversation but is one that needs to be had if we are to create an improved regime moving forward.

4.4. The Tribunal found that The Treaty of Waitangi guarantees tino rangatiratanga over taonga species (or mātauranga Māori relating to taonga species) and that Māori have a special relationship - a kaitiaki relationship with these taonga species.

4.5. Tino rangatiratanga justifies a level of control by kaitiaki, which depends on the nature and context of the kaitiaki relationship. Te Rūnanga recommend that this is kept at the forefront when considering amendments to the Plant Variety Rights Act.

4.6. Māori interests as Treaty partners are a valid and important interest that needs to be recognised in a mana enhancing way. Having the opportunity to object to the grant later on (post grant) is not good enough and already places Māori on the backfoot, putting the onus on them to object to the status quo. Therefore, Te Rūnanga supports a continuing discussion around how consideration of the Māori interest can be manifested into the Act.

4.7. To recognise and protect the kaitiaki relationship between Māori and taonga species, Te Rūnanga support the recommendations articulated by the Tribunal, specifically:

a. That the Commissioner of Plant Variety Rights ("**the Commissioner**") be empowered to refuse a Plant Variety Right ("**PVR"**) that would affect the kaitiaki relationship;

b. That the Commissioner be supported by a Māori Advisory Committee in his/her consideration of the kaitiaki interest;

c. To clarify the level of human input into the development of a plant variety for the purposes of PVR protection; and

d. To enable the Commissioner to refuse a proposed name for a plant variety if its use would be likely to offend a significant section of the community, including Māori.

4.6 These recommendations make the Plants Variety Act consistent with the protections provided for in other intellectual property regimes.

Concern for the Kaitiaki Relationship

4.7 PVR's grant private rights against commercial exploitation of propagating material to successful applicants who have developed new plant varieties. As kaitiaki, Te

2 Issues Paper: Review of the Plant Variety Rights Act 1987.

Rūnanga desires to maintain and strengthen the kaitiaki relationship with our mātauranga Māori and taonga species. Ngāi Tahu's kaitiaki interests and rights with our taonga species are highlighted in the Settlement Act.

4.8 Te Rūnanga want to make sure that any new regime ensures that the relevant rights and interests established under the Settlement Act are protected and that there is a requirement for applicants to work closely with Ngāi Tahu whānui if developing new plant varieties within our takiwā.

4.9 To this end, Te Rūnanga recommends the consideration of a requirement to actively seek the relevant kaitiaki for the plant variety in their rohe and an assessment of actions taken is integrated into the assessment of providing the grant.

4.10 Te Rūnanga note that Wai 262 highlighted many examples of good practice in this area that are already occurring. It is important to note that Māori relationships were not limiting business or innovation, in fact quite the opposite. They were enhancing and developing them for the benefit of all involved.

Register

4.11 Te Rūnanga supports the establishment of a register that allows kaitiaki the opportunity to record their interests in respect of particular species within or sourced from their rohe. This will help prospective developers identify who the kaitiaki are within their rohe and hopefully prompt them to engage with kaitiaki so that they can undertake their activities in a respectful way.

Māori names

4.12 Te Rūnanga recommends the PVR system include the Māori names of Plants if they exist, along with the scientific names. This could help for the purposes of research and interlink with the register to support the establishment of a relationship between the applicant and kaitiaki.

The Māori Advisory Committee

4.13 The Tribunal recommended that the Commissioner is supported by the same Māori Advisory Committee ("**the Committee**") that advises the Patents Commissioner in assessing an application and evaluating the competing interests. Te Rūnanga supports this recommendation and would like to see any application that involves taonga species being passed on to the Committee to consider.

4.12 In order to recognise and protect the kaitiaki relationship, Te Rūnanga supports the Tribunal's recommendation to empower the Commissioner to refuse a PVR, on the advice of the Committee, if it would affect the kaitiaki relationship with taonga species.

4.13 The lack of explicit consideration of the kaitiaki interest in the PVR Act could result in the grant of PVRs that negatively affect the relationship between kaitiaki and taonga species. If the aim is to ensure protection of Māori rights and interests in regard to taonga species, this will need to be provided for in the Act. If there is no explicit

consideration in the Act, then realistically applicants will not understand or appreciate why it's important to meaningfully engage with kaitiaki. This type of behavioural change needs to be driven by legislative amendment. Te Rūnanga would like to continue the discussion on what those safeguards would eventually look like.

4.14 Te Rūnanga recommends that the mandate of the committee, both in the patents and plant varieties regime should be broader, as envisioned by the Tribunals Wai 262 recommendations. The Committee should have more of an investigative, proactive role. The need for this is highlighted by the lack of applications being referred to the Committee now. If these measures are not put into place, there is a high chance it may be left inactive in the plant varieties space as well. The review should consider possible options to mitigate this from happening, like mandatory disclosure of taonga species and consideration of actions taken to engage with the relevant kaitiaki.

4.15 Te Rūnanga also supports the Tribunal's recommendation for the Committee to publish guidelines and codes of conduct for those working in research and development to help engage with kaitiaki.

Meeting Comprehensive and Progressive Agreement for Trans-Pacific Partnership Obligations

4.16 Te Rūnanga understands that under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("**CPTPP**"), which the government has signalled its intention to ratify, New Zealand will need to eventually accede to the International Convention on the Protection of New Varieties of Plants 1991 ("**UPOV 91**") or create a standalone regime. The issues paper notes that in implementing either option the Crown can adopt measures it deems necessary "to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi." The error in this sentence has been reiterated throughout Wai 262 and this paper. It is not just the indigenous plant species itself that requires protection but the whakapapa of that species and the kaitiaki relationship as well. This obligation from the Crown under the Treaty of Waitangi stems from the guarantee of Tino Rangatiratanga.

4.17 Te Rūnanga notes UPOV 91 allows parties to restrict the free exercise of the PVR if this is in the public interest. This is a post grant option to appropriately restrict the exercise of the right in light of competing interests. The issue is, in terms of Māori interests this should be identified pre-grant. The advantage is already with the PVR grantee at that point and the onus is on Māori to prove the right should be restricted in some way. Wai 262 reiterated that no particular parties' rights should trump the other, but rather undertake a balancing exercise of all competing interests to ensure the granted right is fair and just.

Offensive names

4.18 Te Rūnanga supports the Tribunal endorsed proposal in the 2005 draft bill - to empower the Commissioner to refuse a proposed name for a plant variety if its use would be likely to offend a significant section of the community, including Māori. Te

Rūnanga recommends that the Commissioner be empowered to do this on the advice of the Committee. The Committee need to be involved, as the Commissioner may not have the requisite knowledge to understand whether te reo Māori terms or symbols are offensive to Māori. Te Rūnanga acknowledge this recommendation is consistent with other Intellectual Property regimes – trademarks.

4.19 Te Rūnanga acknowledge that a name may be offensive to Māori not solely because of the name itself but also because of how the term was acquired and the way in which it is used. If there is no genuine engagement with Māori in the process of trying to get the PVR, it reduces the integrity of the body and the name they are using. This lack in process may also degrade the mana of the name and those who carried it.

5. RECOMMENDATIONS RELATING TO THE ISSUES PAPER: REVIEW OF THE PLANT VARIETY RIGHTS ACT 1987

5.1 Te Rūnanga recommends that:

- In collaboration between ngā iwi katoa and the government, an appropriate definition for 'taonga species' is developed to assist with creating a more robust regime under the Plant Variety Act;
- The outcomes from this review provide protections for the kaitiaki relationship in the following ways (but are not limited to):
    - Creating a register for kaitiaki to record their interest in taonga species;
    - Notifying kaitiaki when a plant variety application is made concerning their taonga species;
    - A requirement to engage with kaitiaki; and
    - An assessment and consideration of how the plant variety right affects the kaitiaki relationship in the process of considering the application;
        - This assessment should include if and how the applicant has engaged with kaitiaki.
- The PVR Commissioner is empowered to refuse a PVR application if it would affect the kaitiaki relationship;
- The Committee has a wider mandate to proactively investigate PVR applications if necessary;
- Further discussion around potential options to ensure the Committee is utilised;
- Despite which regime is pursued, in order to honour our international obligations, the New Zealand Government honours the Treaty of Waitangi first and foremost and this is reflected in our domestic regime;

- The Commissioner be empowered to refuse a proposed name for a plant variety that would be likely to offend a significant section of the community, including Māori; and
- The Māori names be included in the PVR system.

6. COMMENTS ON THE DISCUSSION PAPER: DISCLOSURE OF ORIGIN OF GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE IN THE PATENTS REGIME

6.1 Te Rūnanga is happy to see this discussion paper on the disclosure of origin in the patents regime, despite it being almost seven years after the Waitangi Tribunal recommended this change. This paper shows a willingness from the current Government to meaningfully consider and enact the Wai 262 recommendations and provide better protection against the exploitation of mātauranga Māori.

Te Rūnanga supports Disclosure

6.2 Te Rūnanga supports the requirement for patent applicants to disclose the origin of any genetic and traditional knowledge used in their inventions. We agree that it would:

a. Increase available information on the use of genetic resources and traditional knowledge through New Zealand's patent regime; and

b. Support quality patent examination.

6.3 We note this requirement is consistent with the Wai 262 recommendations and discussions around disclosure requirements at an international level.

Improved referral to the Patents Māori Advisory Committee

6.4 Te Rūnanga agree that a disclosure requirement would help to ensure relevant applications are put before the Patents Māori Advisory Committee ("**the Committee**") thereby protecting Māori and Ngāi Tahu interests.

6.5 Te Rūnanga note the Committee have not been utilised the way it was intended to be in the past. No patent applications have been referred to the Committee in this manner. This is particularly concerning when the Committee is the only body with sufficient capability to facilitate recognition and protection of the relationship kaitiaki have with mātauranga Māori and taonga species when they are used in inventions.

6.6 With a disclosure of origin requirement, it would be easier to identify an application that draws on traditional knowledge and/or mātauranga Māori, and ensure it gets referred to the Committee.

6.7 Te Rūnanga acknowledge being able to identify this at the front end of the process is easier and cheaper for kaitiaki rather than post-grant. To that end, Te Rūnanga would like to highlight the importance of considering the Māori interest in not only patents but

across the wider intellectual property regime at the front end of the application process.

6.8 The current disclosure requirement is voluntary in nature, leaving it to the Intellectual Property Office of New Zealand ("**IPONZ**") to recognise the relevance of the application to the Patent Committee. The discussion paper highlighted that IPONZ members are not necessarily trained in tikanga Māori and so may not recognise the existence of the Māori interest in a particular patent application. This is concerning for Ngāi Tahu and we recommend that despite any enactment of a disclosure requirement, that IPONZ take it upon themselves to undertake tikanga Māori education and actively recruit members that have knowledge in this area. The onus of facilitating recognition and protection of the kaitiaki relationship should not fall solely on the Committee but the whole of IPONZ.

International disclosure requirement

6.9 Te Rūnanga supports the introduction of an international disclosure requirement. This could incentivise international researchers to consult and share benefits with ngā iwi Māori and hapū including Ngāi Tahu. As indicated in the discussion paper, this is particularly important where Māori have not permitted access to the traditional knowledge and/or mātauranga Māori or genetic resources and the benefits from the commercialisation of those inventions by international researchers could and should be shared with them. Te Rūnanga believes an international disclosure requirement could reasonably be the first step in facilitating a positive relationship between both parties.

6.10 An outstanding concern for Te Rūnanga is the lack of a domestic regime that establishes Access and Benefit Sharing ("**ABS"**) agreements between patentees and indigenous peoples, iwi and hapū. Te Rūnanga recognises that a disclosure requirement is the first step in the right direction and recommend this be pursued further.

Options

6.11 The discussion paper provided three options for a possible disclosure of origin requirement. These options range from disclosure of the country of origin of genetic resources and/or traditional knowledge if known, through to compulsory disclosure of evidence of compliance with ABS laws of the country of origin of genetic resources and/or traditional knowledge.

Preferred Option

6.12 After analysing the options, Te Rūnanga supports option two as the most appropriate. In the view of Te Rūnanga, it provides for medium mandatory disclosure. Applicants will be required to disclose the country of origin and in terms of traditional knowledge, applicants will be required to disclose the specific indigenous people who supplied the traditional knowledge. If this information is not known the applicant must make a declaration to that effect.

6.13 Te Rūnanga would support, in addition to this, notification to the relevant indigenous group i.e. if someone listed mātauranga Māori within the Ngāi Tahu takiwā, Te Rūnanga would expect a notification from IPONZ alerting Te Rūnanga and/or the appropriate Papatipu Rūnanga about the Patent application.

6.14 Te Rūnanga would otherwise support option three, but for the absence of New Zealand's own ABS regime. Without New Zealand's own ABS regime, the benefit for Māori and Ngāi Tahu in option three is exactly the same as option two. The disclosure requirements are the same and the only difference is an assessment of ABS compliance (with foreign jurisdictions). Therefore, by introducing an "evidence of ABS compliance", option three would only benefit foreign countries and their indigenous peoples with ABS regimes, not New Zealand or kaitiaki. Therefore, Te Rūnanga strongly recommends the government makes the creation of New Zealand's own ABS regime a priority, in order to protect New Zealand development and kaitiaki interests.

Traditional Knowledge definition

6.16 Te Rūnanga supports a definition for traditional knowledge, particularly the World Intellectual Property Office ("**WIPO**") definition endorsed by the Waitangi Tribunal. The definition is quite broad and expansive so as not to unnecessarily narrow the scope of what could be covered by traditional knowledge in the future. We recommend that in considering a definition for traditional knowledge, a less prescriptive approach is taken. This may be helpful for patent applicants to understand what is encompassed by traditional knowledge, so they know whether they need to disclose the use of it in their application.

Triggers

6.17 Te Rūnanga supports a similar trigger for traditional knowledge disclosure as the one recommended by the Tribunal for mātauranga Māori disclosure. That is, disclosure is required when mātauranga Māori is:

> *"used in the course of research, including traditional knowledge that is not integral to the invention but that prompted the inventor to take the course of research that led to the relevant patent application."*

6.18 Te Rūnanga considers that this trigger is broad enough in scope to capture all potential instances where traditional knowledge could be used in an invention to trigger the disclosure requirement. Te Rūnanga again recommends that in considering any trigger a broad and expansive definition is preferred.

7. RECOMMENDATIONS RELATING TO THE DISCUSSION PAPER: DISCLOSURE OF ORIGIN OF GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE IN THE PATENTS REGIME

7.1 Te Rūnanga recommends that:

- A disclosure of origin requirement is enacted;
- IPONZ members actively pursue Māori cultural development opportunities and recognise this valid skillset in their own recruiting policies;

- An international disclosure requirement is formally recognised;
- The government looks to consider the creation of a domestic ABS regime;
- Option two is pursued ultimately supported by a domestic ABS regime;
- A notification system to relevant Māori groups is incorporated into the patent application process following disclosure;
- A broad and expansive definition is considered as a definition for traditional knowledge; and
- A broad and expansive trigger mechanism is considered as the appropriate trigger mechanism.

APPENDIX ONE: TEXT OF CROWN APOLOGY

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

Part One – Apology by the Crown to Ngāi Tahu

Section 5: Text in Māori

The text of the apology in Māori is as follows:

1. Kei te mōhio te Karauna i te tino roa o ngā tūpuna o Ngāi Tahu e totohe ana kia utu mai rātou e te Karauna—tata atu ki 150 ngā tau i puta ai tēnei pēpeha a Ngāi Tahu arā: "He mahi kai tākata, he mahi kai hoaka". Nā te whai mahara o ngā tūpuna o Ngāi Tahu ki ngā āhuatanga o ngā kawenga a te Karauna i kawea ai e Matiaha Tiramōrehu tana petihana ki a Kuini Wikitoria i te tau 1857. I tuhia e Tiramōrehu tana petihana arā: 'Koia nei te whakahau a tōu aroha i whiua e koe ki runga i ēnei kāwana... tērā kia whakakotahitia te ture, kia whakakotahitia ngā whakahau, kia ōrite ngā āhuatanga mō te kiri mā kia rite ki tō te kiri waitutu, me te whakatakoto i te aroha o tōu ngākau pai ki runga i te iwi Māori kia noho ngākau pai tonu ai rātou me te mau mahara tonu ki te mana o tōu ingoa.' Nā konei te Karauna i whakaae ai tērā, te taumaha o ngā mahi a ngā tūpuna o Ngāi Tahu, nā rēira i tū whakaiti atu ai i nāianei i mua i ā rātou mokopuna.

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

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

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

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

6. E whakapuaki atu ana te Karauna ki te iwi whānui o Ngāi Tahu i te hōhonu o te āwhitu a te Karauna mō ngā mamaetanga, mō ngā whakawhiringa i pūtake mai nō roto i ngā takakino a te Karauna i takaongetia ai a Ngāi Tahu Whānui. E whakaae ana

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

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

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

Section 6: Text in English

The text of the apology in English is as follows:

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

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

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

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

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

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

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

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

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

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

APPENDIX TWO: NGĀI TAHU TAKIWĀ