

Giving effect to the Waitangi Tribunal's Wai 262 recommendations – 20 years on.



The Wai 262 claim was a Waitangi Tribunal claim lodged in 1991. It was called the 'Wai 262' claim as it was the 262nd claim lodged in the Waitangi Tribunal. It was also known as the 'flora and fauna' claim.

The claim was one of the largest and most complex in the Waitangi Tribunal's history. It was the Waitangi Tribunal's first 'whole-of-government' inquiry – examining the policy areas of more than 20 government departments and agencies.

The claim was a 'contemporary' claim. It focused mainly on the Crown's existing laws, policies and practices instead of the Crown's historical actions. The claim related to:

te tino rangatiratanga o te Iwi Māori in respect of indigenous flora and fauna me ō rātou taonga katoa (and all their treasures) including but not limited to mātauranga, whakairo, wāhi tapu, biodiversity, genetics, Māori symbols and designs and their use and development and associated indigenous cultural and customary heritage rights in relation to such taonga.

For the claimants, 'taonga' encompassed all of the elements of a tribal group's estate, 'material and non-material, tangible and intangible'. They argued that tino rangatiratanga incorporated:

- a. Decision-making authority over the conservation, control of, and proprietary interests in natural resources including indigenous flora and fauna me ō rātou taonga katoa
- b. The right to determine indigenous cultural and customary heritage rights in the knowledge and use of indigenous flora and fauna me ō rātou taonga katoa
- c. The right to participate in, benefit from, and make decisions about the application of existing and future technological advances as they relate to the breeding, genetic manipulation and other processes relevant to the use of indigenous flora and fauna
- d. The right to control and make decisions about the propagation, development, transport, study or sale of indigenous flora and fauna
- e. The right to protect, enhance and transmit the cultural, medicinal and spiritual knowledge and concepts found in the life cycles of indigenous flora and fauna
- f. A right to environmental well-being dependent upon the nurturing and wise use of indigenous flora and fauna
- g. The right to participate in, benefit from and make decisions about the application, development, uses and sale of me ō rātou taonga katoa
- h. The right to protect, enhance and transmit the cultural and spiritual knowledge and concepts found in me ō rātou taonga katoa.

In 2011 the Tribunal released its report entitled 'Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity', known as the 'Wai 262 report'. The Tribunal recommended changes to the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international instruments.

The Government has decided to develop a whole-of-government approach to consider the issues raised by claimants and the Waitangi Tribunal in the Wai 262 inquiry.

Last week, the Hon. Nanaia Mahuta mapped out the Government's potential Wai262 work programme to the Iwi Chairs Forum in Heretaunga. She advised that the Government will begin with targeted engagement with various Māori technical experts, Māori advisory boards and national Māori bodies. These conversations are expected to shape how the government approaches this work.