



HŌNGONGOI/JULY 2021

Ngā Take Māori o Te Ao Ture: Māori Legal Update Matariki Edition

Nei rā te mihi matakuikui ki a koutou katoa, ā, ngā mihi o te tau hou Māori!

Ka puta mai a Matariki ki runga, hei tohu kia huihui tātou ki te whakanui i te tau hou. Ko te wā o Matariki, he wā whakamaumahara, he wā whakahirahira i te taha o ō tātou whānau. Nā reira, me nohotahi ki tēnei wā motuhake.

Mahara mai ki te pānui tuatoru o Simpson Grierson. In this issue, we take a look at some of the key recent developments in te ao ture, including a focus on RMA reform: NBA exposure draft, Three Waters reform, the Climate Change Commission's final advice, and a review of Aotearoa's adoption laws.

Ngā Ārohi o Te Ao Ture: Our Observations of Te Ao Ture

RMA Reform: What do the proposed changes mean for Māori?

The Government recently released its exposure draft of the National and Built Environment Act (NBA), which is one of three Acts set to replace the RMA (read more [here](#)).

As currently drafted, the NBA will require decision-makers to "give effect to" Te Tiriti principles, and provide greater recognition of te ao Māori (including mātauranga Māori). It is a significant and, according to the Waitangi Tribunal and others, a long-overdue shift from the RMA, which merely requires decision-makers to "take into account" Te Tiriti principles.

Currently, there is little guidance for decision-makers on how to give effect to Te Tiriti. While a National Policy Statement to guide decision-makers on how to give effect

to the principles of Te Tiriti, has been recommended in the Report of the Resource Management Review Panel ([Randerson Report](#)), the Government has signalled that it will instead provide direction and guidance in the legislation itself on how to implement the requirement to "give effect to" Te Tiriti principles. "Giving effect" to Te Tiriti would not however create a priority right - or "veto" - for Māori interests.

New purpose - Te Oranga o te Taiao

The purpose of the NBA, includes enabling *Te Oranga o te Taiao*, to be upheld. The purpose of *Te Oranga o te Taiao* aims to protect and enhance the natural environment, and incorporates:

- the health of the natural environment;
- the intrinsic relationship between iwi and hapū and te taiao;
- the interconnectedness of the natural environment; and
- the essential relationship between the health of the natural environment and its capacity to sustain all life.

Importantly, *Te Oranga o te Taiao* is not being advanced as a standalone proposition within the purpose of the NBA. As with *Te Mana o te Taiao* (a purpose recommended by the Randerson Report), it is intended to be connected to, and

supported within, other NBA provisions that provide for the better alignment of the resource management system to Te Tiriti o Waitangi and te ao Māori (read more [here](#)). Nevertheless, there will be debate as to what *Te Oranga o te Taiao* will actually mean in practice.

Promoting Environmental Outcomes is another key feature of the NBA. Of specific interest to Māori, all statutory plans will be required to promote:

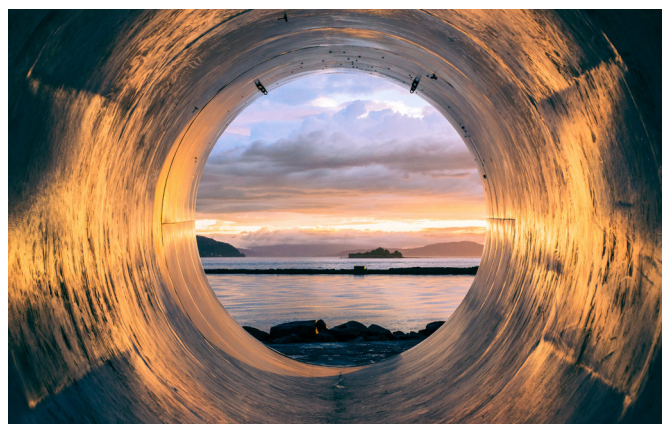
- the relationships iwi and hapū have, including tikanga and tradition, with ancestral lands, water, sites, wāhi tapu and other taonga is restored and protected;
- the mana and mauri of the natural environment are protected and restored; and
- protection of “cultural landscapes”, which are sustained and proportionate to cultural values.

The draft NBA also provides a placeholder for Implementation Principles. Notably for Māori, these would require decision makers to:

- recognise and provide for the application, in relation to te taiao, of kawa, tikanga (including kaitiakitanga), and mātauranga Māori;
- promote appropriate mechanisms for effective participation by iwi and hapū in processes undertaken under the NBA; and
- recognise and provide for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of te taiao.

The [Parliamentary Paper](#) regards these as general principles and further work needs to be done to determine how they should apply to different decisions to be made under the NBA. However, it notes that further work is required to determine the role for iwi and Māori in the process and substance of the National Planning Framework - a central aspect of the new NBA system, providing central government direction to decision-makers. This is important in realising how the new system will give effect to the principles of Te Tiriti, and provide greater recognition of te ao Māori (including mātauranga). In addition, the draft NBA provides for a stronger strategic role for Māori in the system, via mana whenua representation on regional planning committees.

While the exposure draft incorporates a greater recognition of te ao Māori (compared with the RMA) it is difficult to assess the influence it will have on actual decision-making, without seeing the proposed legislation in its entirety. Submissions on the NBA exposure draft are open until 4 August 2021 (get in touch if you would like to make a submission, submissions can also be made [here](#)).



Three Waters Reform - opportunities for partnership with Mana Whenua

The Government’s Three Waters Reform Programme (**Programme**) is set to overhaul how water services are funded, financed and delivered in Aotearoa through the transfer of water responsibilities and powers to four new multi-regional statutory entities (see our FYI and our comprehensive report on the Programme [here](#)).

The Programme will implement a ‘partnership-based approach’, where the Government recognises that the participation and support of local government, and iwi/Māori, will be critical to the Programme’s success. As such, the Government has proposed that mana whenua representatives will be a part of the regional representative groups that will appoint the independent selection panels who will appoint and monitor the boards of the entities (see more [here](#)).

The objectives of the Programme include enabling iwi/Māori to exercise rangatiratanga over water services delivery by:

- integrating iwi/Māori rights and interests within a wider system;
- reflecting a holistic te ao Māori perspective;
- supporting clear accounts and ensuring roles, responsibilities, and accountability for a relationship with iwi/Māori; and
- improving outcomes at a local level to enable a step change improvement in delivering water services for iwi/Māori.

Those objectives are planned to be given effect through a number of measures, including:

- requiring the entities to give effect to Te Mana o te Wai;
- require the boards of the entities to have members with a te ao Māori perspective; and

- allowing mana whenua to prepare Te Mana o te Wai statements which the entities must respond to.

This Programme compliments the Government's previous water reforms, including the Taumata Arowai - the Water Services Regulator Act 2020, and the Water Services Bill, which is currently before the Health Select Committee.

We have a dedicated team with the full range of expertise and experience required to respond to the Programme.

The Climate Change Commission report - What does the Commission's roadmap mean for Māori?

The Climate Change Commission has released its final report to the Government - *Ināia tonu nei: a low emissions future for Aotearoa* - which sets out a carbon-cutting roadmap (read the report [here](#)). 'Ināia tonu nei' means 'right now' and refers to the fact we need to accelerate climate action today, not tomorrow.

The final report emphasises a stronger Crown-Māori relationship in designing a low-carbon transition, and recommends among others:

- **An equitable transition for Iwi/Māori must be recognised and actively protected in the transition to net zero:** this includes equitable access to information, resources, services and funding. Mātauranga Māori should be at the heart of climate policy development, alongside Western science.
- **Development of a strategy to advance a Māori-led approach to an equitable transition for Iwi/Māori and the Māori economy:** the strategy should focus on removing existing barriers and creating opportunities and mechanisms for Iwi/Māori to actively participate in co-decision making and co-design for actions to address climate change. Funding should also be made available to assist economically and financially disadvantaged Iwi/Māori with the transition (including relocation).
- **Collaboration with Iwi/Māori in building emissions profiles:** establishing an emission profile for Māori collectives to improve the management and monitoring of emissions - ideally developed from an iwi specific lens, in respect of takiwā and overriding social, cultural, economic and environmental objectives.

The report also highlights that central and local government will need to ensure that any policies introduced do not compound historic injustices, existing barriers or place disproportionate restrictions on Iwi/Māori. The Government has until the end of 2021 to respond to the Commission's advice, with its own set of carbon reduction plans.

Adoption laws under review

Aotearoa New Zealand's adoption laws are being reviewed after 66 years. The laws have historically centred around Eurocentric notions of adoption and family, and fail to reflect and incorporate concepts and practices within tikanga Māori. The first round of public engagement is currently underway. Importantly, the Government is seeking views on cultural aspects of adoption, including whāngai and atawhai, as current adoption laws do not legally recognise whāngai arrangements. More information on the Government's policy proposals/reforms is available [here](#).

If you are interested in hearing more on any of the developments mentioned in this update, please get in touch with one of our key contacts below.

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