

Governance Systems for Access to and Use of Indigenous Traditional Knowledge and Culture: a New Zealand Perspective.

A/Prof Susan Corbett
School of Accounting and Commercial Law
susan.corbett@vuw.ac.nz

Outline

1. National governance systems for traditional knowledge and culture – the complexities.

2. New Zealand governance systems- proposed and existing:
 - (i) Recommendations in the 2011 WAI 262 Report
 - (ii) Compliance with the Protected Objects Act 1975
 - (iii) Submissions on the Proposed National Policy Statement on Indigenous Biodiversity.

3. Recommendations.

The importance of good governance

“The **benefit-sharing mechanism** can sustain and function smoothly only through **capacity building initiatives** and **good governance structures.**”

R Jhoshi & J Chelliah *“Sharing the benefits of commercialisation of traditional knowledge: what are the key success factors?”*

Developing national governance systems for ITK – some of the complexities

1. Philosophical differences
2. Power imbalances
3. Economic imbalances, (affecting e.g. access to legal advice)
4. Lack of understanding and/or acceptance of western laws (e.g. intellectual property rights)
5. Lack of homogeneity - different perspectives and views within indigenous communities

Recommendations in the 2011 WAI 262 Report into Claims Concerning NZ Law & policy Affecting Māori Culture & Identity

Calls for a commission (employing an objection-based system) to oversee the

careful balancing of three interests in traditional indigenous knowledge and culture:

1. **Kaitiaki** (guardian) communities and individuals
2. **IP owners** (existing and future)
3. **Community interests** in development and₅beneficial uses

WAI 262 Report- a measured response

- Give weight to kaitiaki interests in **“appropriate circumstances”**
- Taonga (treasure) species- entitled to a **“reasonable”** degree of protection- suggest expanded use of existing **Pataka Komiti**

Pātaka Komiti (an example)

“This sub-committee of Kāti Huirapa Rūnaka meets approximately every two months to discuss environmental issues, including resource consent applications, fresh water quality, government policy, DoC and ORC plans, flora and fauna study permit requests, access, pounamu resource use, as well as many other topics that impact on the wellbeing of Ngāi Tahu Māori in our rohe.”

WAI 262 - Governance Recommendations

1. **Māori advisory committees** - patents and trade marks ✓✓
2. Deny PVR denominations **offensive** to a significant section of community (including Māori) X
3. Voluntary **kaitiaki register** in taonga species or mātauranga Māori X
4. Remove **“discovered” PVs** from PVR protection X
5. Mandatory **disclosure** of contributing mātauranga Māori or taonga species to patent application X

Protected Objects Act 1975

Purposes include:

- To **regulate** export of & require return of unlawfully exported **protected NZ objects**;
- To establish & record **ownership of ngā taonga tūturu**
- To control the **sale of ngā taonga tūturu** within New Zealand

“taonga tūturu”

an object that

(a) Relates to Māori culture, history or society; **and**

(b) was or appears to have been

i. Manufactured or modified in NZ by Māori; **or**

ii. Brought into NZ by Māori; **or**

iii. Used by Māori; **and**

(c) Is more than 50 years old.

the **Protected Objects Act 1975**- Māori Issues- a flawed governance scheme

“Takes a Eurocentric/monocultural approach:-

- compliance forms for registration as collectors of Taonga Tūturu are solely in English
- No acknowledgement of Māori tribal organisations, trusts, or committees (who are expected to register as “collectors”)
- But- the concept of “collector” is alien to Māori

Example: APPLICATION FOR REGISTRATION AS A COLLECTOR OF TAONGA TŪTURU

Section 14(4) of the Protected Objects Act 1975

1. I/We *(full name – this name will appear on the certificate)*

of *(physical address)*

hereby apply under section 14 of the Protected Objects Act for registration as a collector of taonga tūturū.

the Protected Objects Act 1975 – Māori issues (continued)

- provides the **Crown is prima facie owner** of all discovered taonga
- **Procedure for determining ownership** of discovered taonga is lengthy & poorly resourced
 - public notices (in English) in newspapers - responses within 60 days - if 2 or more claims - goes to Māori Land Court.
- **No formal procedure for custody /care** of discovered taonga while ownership is determined.

Submissions on Policy 7 of the **Proposed National Policy Statement on Indigenous Biodiversity**

To recognise and provide for the role of tangata whenua as kaitiaki, when developing and implementing regional policy statements and regional and district plans local authorities **shall provide for:**

- a. tangata whenua values and interests to be incorporated in to the **management of biodiversity**
- b. consultation with tangata whenua** regarding the means of protecting and enhancing areas and habitats identified in accordance with Policy 4 that have particular significance to tangata whenua

POLICY 7 (continued)

... local authorities **shall provide for:**

c. **active involvement of tangata whenua in the protection of cultural values** associated with indigenous biological diversity

d. **customary use** of indigenous biodiversity according to tikanga.

Submission- Raukawa Trust.

For Raukawa it is important to note that the concept of **kaitiakitanga** relates to the **management of resources** and this includes their **use** and **not just their protection**.

Effectively it refers to sustainable management and using resources in such a way and at such a rate as to ensure they are not diminished. This is an important distinction as recognising and providing for the role of tangata whenua as kaitiaki includes recognising and providing for our **use** of resources.

Submission from Hamilton City Council

Policy 7 should be redrafted to allow for the **balancing of the points** listed within the policy in relation to issues such as **landowner rights, economic and environmental considerations,** in each given situation.

Suggest the words **'shall provide for** 'be replaced by **'give particular regard to,'** in order to enable such balancing to occur.

Man O War **Farm**- submission

Policy 7 raises a number of questions and uncertainties as to how the policy would be interpreted, administered or applied e.g.

(a) How would **Tangata Whenua values and interests** be identified?

(b) How **Tangata Whenua** is to be **identified** for the purposes of consultation?

(c) How **cultural values** associated with indigenous biological diversity are to be established or defined?

(d) What **customary use of indigenous biodiversity** according to Tikanga might comprise or involve?

Public v Private land (Policy 7(d))

“Will local authorities be tasked with resolving access issues between local iwi and landowners?”

“**customary use on public land** can be more readily accommodated than that pertaining to **private property**.”

Private landowners concerned that “Policy 7 would require them to provide for Māori access to privately owned land”

Non-Māori landowners- submissions

- This policy recognises the connection that tangata whenua have with the land. I would like it to be recognised that families that have been farming in an area for many generations also have a special and strong connection to their land and deserve to be treated in the same way as tangata whenua
- Policy does not acknowledge that **non-Māori also act as Kaitiaki over their land.**

Monitoring of the NPS

- Many submitters propose **regional/district level monitoring with national funding**;
- should **avoid costly monitoring/compliance** requirements;
- a **national database** to ensure effective and consistent monitoring;
- **Remove likely inconsistencies and overlaps** with other policies and legislation, including the NZ Coastal Policy statement, other NPSs and the NZ Emissions Trading Scheme.

To conclude:- some tentative recommendations for Governance of ITK

1. Careful balance and acknowledgement of all interests;
2. Consider and manage the relationship between ownership and guardianship;
3. Expand scope of existing governance bodies where suitable;
4. Documentation to be bi-lingual or multi-lingual;
5. Minimise costs of monitoring and compliance;
6. Provide a range of sanctions.