

Item 4: Study and advice on free, prior and informed consent (FPIC)

Tēnā koe Mr/Madam Chair

New Zealand's statement of support for the Declaration acknowledges the distinct and special status that Māori have as the indigenous people of New Zealand. New Zealand is committed to upholding the rights affirmed by the Declaration, and to engaging further with aspirational elements of the Declaration in accordance with New Zealand's evolving domestic legal and constitutional frameworks and wider circumstances, including the Treaty of Waitangi and its principles, and domestic circumstances more generally.

In the context of these existing frameworks, the best way to realise the aspirations of the Declaration, including those that relate to free, prior and informed consent, will be ongoing dialogue with iwi, hapū, whānau and wider Māori communities.

New Zealand's support for the Declaration is in keeping with our strong commitment to human rights, and indigenous rights in particular, as demonstrated by the fundamental importance of the Treaty in New Zealand's constitutional framework. The concept of tino rangatiratanga (in article 2 of the Treaty) may be translated as "self-determination", which is protected by several articles of the Declaration, primarily articles 3 and 4. Treaty principles establishing the importance of Māori being involved in the decisions that affect their communities, interests and territories may be seen as being reflected in self-determination and the concept of free, prior and informed consent engaged by specific articles of the Declaration.

The principles of the Treaty of Waitangi require that the Crown acts in good faith when making decisions that affect Māori interests. The Crown also has a duty to actively protect Māori interests – what this duty requires will depend on the nature of the Māori interest engaged and the reason that interest may need to be protected.

I wish to emphasise that these obligations require the Crown to take reasonable steps to make informed decisions on matters that affect Māori interests.

Māori have an interest in all policy and legislative matters as the Crown's Treaty Partner, but the extent and the nature of the Māori interests engaged in any particular matter will vary. The Crown in exercising its kāwanatanga or governance role must weigh a range of sometimes competing interests. The Crown must properly understand the nature of the Māori right or interest engaged in order to be able to balance that interest with any wider or competing rights or interests, and to make informed decisions that are reasonable in the circumstances.

As identified by the Expert Mechanism, the Declaration recognises that indigenous peoples have the right to self-determine their political, social, economic and cultural priorities. Often the responsibility to make informed decisions will, therefore, be best met through early engagement, and participation and/or consultation. Engagement with Māori thus takes a number of forms reflecting the nature of the matters of concern, and the scale and extent of Māori interest involved.

New Zealand has developed, and will continue to develop, its own distinct processes and institutions that afford opportunities to Māori for such involvement in decision-making processes that affect their rights, interests and aspirations. These range from requirements to consult with Māori recognised in statutory frameworks to more general public law obligations on decision-makers to take the Treaty principles into account as relevant considerations.

We look forward to continuing our national dialogue on the Declaration and identifying priorities for enhancing our commitment to indigenous peoples' rights in line with the common objectives of the Declaration and Treaty of Waitangi. Further, New Zealand welcomes the EMRIP study and advice on the topic of free, prior and informed consent, and will consider it carefully.

No reira, tēnā koutou, tēnā koutou, tēnā koutou katoa.

Te Puni Kōkiri

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