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WAI 262 Intellectual Property Recommendations

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It has been 20 years in the making. The Waitangi Tribunal report on the claim known as "WAI 262" was released on Saturday 2 July 2011, 20 years after it was filed and more than four years after the evidence gathering closed.

The WAI 262 claimants argue that the Crown has failed to protect Māori interests in relation to indigenous flora and fauna, as well as a wide range of cultural knowledge and practices.

The report considers whether the Crown has been responsible for breaches of the Treaty of Waitangi and makes non-binding recommendations based on its findings.

The report covers some 1,000 pages and recommends reform of laws, policies or practices relating to health, education, science, intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, and the involvement of Māori in the development of New Zealand's positions on international instruments affecting indigenous rights.

The two main areas of the report dealing with intellectual property are chapters one and two.

Chapter 1 relates to intellectual property in taonga works (treasured things). The report finds that current laws do not protect against derogatory or offensive uses or taonga works, nor against unauthorised public and commercial uses of taonga works or related knowledge.

The report recommends a system allowing for objections to derogatory or offensive uses of taonga as well as objections to commercial uses or proposed commercial uses of taonga works and related knowledge that do not have their consent. The report recommends the

establishment of a commission to deal with these objections and main a register of cultural works.

The recommendations are said not to affect existing intellectual property rights and will not create new restrictions on private and non-commercial uses of taonga works.

Chapter 2 relates to intellectual property in the genetic and biological resources of taonga species. The report finds that current laws and policies do not recognise and support the concept of kaitiaki (cultural guardians) and allow others to conduct research, obtain intellectual property rights and commercialise genetic and biological resources without informing Māori or obtaining consent.

In respect of genetic and biological resources, the report recommends changes to:

- The Hazardous Substances and New Organisms (HSNO) Act;
- The laws and processes relating to patents and plant variety rights. These include the establishment of a Māori advisory committee to advise the Commissioners of Patents and Plant Variety Rights about whether inventions are derived from Māori traditional knowledge or use taonga species; establishment of a register of kaitiaki interests in taonga species; granting the Commissioner of Patents the power to refuse patents that unduly interfere with the relationships between kaitiaki and taonga; and introducing a legal requirement for patent applicants to disclose any Māori traditional knowledge used in research, and the source and the country of origin of any genetic or biological material contributing to the invention;
- Decisions about bioprospecting in areas under Department of Conservation control be made jointly by the department and Māori with an interest that area (tangata whenua).

The Government is now considering the report and the recommendations saying that it has given them “food for thought”.