Māori Rights, Interests and Responsibilities Relating to the Environment

This primer has been produced to explain which holders of Māori rights, interests and responsibilities in the environment ("Māori rights holders") the Natural and Built Environment Bill recognises.

It sets out how this Bill could take us backwards in terms of the Māori rights holders recognised in law.

It is concerning that in an age where there are complex and overlapping Māori rights holders, the Bill proposes to recognise some and to ignore others. The Crown's approach of "picking winners" in this way is unnecessary, it is unhelpful and it is contrary to tikanga Māori and Te Tiriti o Waitangi.

Who are the Māori rights holders that need to be recognised?

Māori rights and responsibilities in relation to the environment exist in accordance with tikanga and state law. All relevant rights and obligations translate to the practice of whānaungatanga, mana, manaakitanga, kaitiakitanga, tapū/noa/utu and rangatiratanga.

The starting point, and primary source of all Māori rights and responsibilities, is within Te Ao Māori including mana atua, mana tangata and mana whenua, and tikanga Māori as the framework of Māori law.

In accordance with tikanga Māori and Te Tiriti the primary "rights holders" in the natural resources space are primarily hapū, with ancillary or relational rights held by ahi kā / landowners/ individuals, whānau and hapū collectives / confederations. Here is a link to a table that summarises Māori rights and responsibilities relevant to the resource management system.

What about Post-Settlement Governance Entities (PSGEs), do they hold rights?

Treaty Settlements with PSGEs are important and legally binding agreements between the Crown and Māori, negotiated through the 'Large Natural Groupings' policy the Crown has dictated. PSGEs under Treaty Settlements are given some legal rights and responsibilities, and those legal rights and responsibilities need to be transferred into the new resource management system.

However, other Māori rights holders must not be excluded, or made invisible, in the process.

PSGEs have no general mandate to represent hapū, whānau, ahi kā, landowners and marae and should not be assumed to do so unless free and prior informed consent to do that is demonstrated.

How should the new resource management system recognise all Māori rights holders?

It is not for the Crown to determine who have rights under tikanga Māori, or to "pick winners" e.g. PSGEs. It has no right to do that.

The solution lies in a resource management system that is inclusive of hapū, whānau, ahi kā, Māori landowners, marae and iwi / PSGEs, and underpinned by the Tiriti-derived principles of equity, equality, kaitiakitanga, manaakitanga, and mana Motuhake (Māori self-determination).

The principle of **mana whakahaere** supports this. It holds that the Māori rights holders who matter most for resource management are the Māori communities who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space, and resource. It is these Māori communities – who clean their polluted awa every weekend, who protest the actions of their neglectful councils, and who teach their mokopuna about what

respect and care for the whenua means – whose voices must be heard, and must be influential, for the resource management system to work properly.

Does the Bill allow all of those voices to be heard?

No.

The Bill is drafted on the basis that it is in most cases only "iwi and hapū" who have rights, and in some cases it is only iwi/PSGEs who have rights.

That is wrong as a matter of tikanga, Te Tiriti and state law, as it ignores and makes invisible rights that are held by ahi kā / landowners/ individuals, whānau and urban Māori.

The approach in the Bill is also a backwards step. Currently, section 6(e) of the RMA includes as a matter of national importance that "the relationship of **Māori** and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" must be recognised and provided for.

The Bill is a backward step in its use of the less inclusive term "iwi and hapū" in place of "Māori".

Colonialism, and damaging Crown policies and practices over the years, have created 'complexity' in terms of who are the Māori rights holders and what rights they have relative to other Māori rights holders. This 'complexity' is a reality that needs to be recognised and accommodated, not ignored in a way that diminishes the rangatiratanga of some Māori rights holders, for the Crown's own purposes.

How can these problems be fixed?

These problems can be easily fixed, in two main ways.

First, by the Bill replacing "iwi and hapū" as the main rights holder term with the more inclusive rights holder term of "Māori". This will ensure that all Māori rights holders will have their rights recognised.

Second, the underlying issue that Māori communities who have rights are ignored can be addressed by the Crown providing resources to Māori, in the exercise of their tino rangatiratanga rights, to design, create and then control and administer a national register of all Māori rights holders, broken down by sub-catchment/catchment/region. The register can be used to identify (overlapping) Māori rights holders, and to ensure that all Māori rights holders are able to participate in the new system and in a way that appropriately recognises and respects the nature of the rights that they hold.

Does the Bill recognise our rights to freshwater?

No.

The Bill contains a clause (814) that preserves Māori rights in freshwater. But it is too weak as it has been written. The assurance in clause 814(1) of no further prejudice to Māori rights in freshwater does not provide for or even protect future water rights claims. It is also undermined by clause 814(3), which says that nothing in clause 814 affects the lawfulness or validity of any action under the legislation. This appears to mean that that assurance of no further prejudice cannot have any practical effect on how the new resource management laws are interpreted and applied.

The Bill also proposes a Freshwater Working Group (clauses 689-693), which it appears will be made up of Crown and "iwi and hapū" representatives who the Crown must approve (and, potentially, may choose). But it is a toothless tiger. The Crown can ignore its report. After that report has been released, "iwi and hapū" – but not other Maori rights holders, even if they have greater rights than the iwi/PSGE

in relation to bodies of water at the catchment or sub-catchment level – can try to negotiate with the Crown to agree on a statement for how freshwater should be allocated at a regional, catchment or sub-catchment level. But the Crown has a power to veto that statement. If that power of veto is not exercised, and a freshwater allocation statement is made, its impact can be delayed for up to 5 years if the regional planning committee wants. It is quite possible that, in those 5 years, the water bodies that mana whakahaere seek to protect through the statement will tip beyond a point of no return.

The narrow focus in these proposals on iwi and hapū alone as the Māori rights holders is also an example of the Crown prioritising some Māori rights holders over others. As the Bill is written, this could also lead to iwi/PSGEs deciding who get water rights at a sub-catchment level, and choosing to allocate water rights to PSGEs rather than to the ahi kā / landowners/ individuals, whanau who live by the affected rivers and lakes and have been working so hard for so many generations to save them.

How can these problems be fixed?

These problems can again be easily fixed, in two main ways.

First, by the Bill providing for a set quantity or percentage of water rights in every region to be allocated to Māori rights holders, on a first priority basis.

Second, by the Bill providing that the Māori communities who get those rights are to be determined by all of the Māori rights holders within the region, and in accordance with tikanga based processes.

This would be simple to implement, it would address long-standing unequal access to water resources, and it would mean that Māori not the Crown choose what Māori communities get what water rights.

What happens if these problems are not fixed?

These resource management reforms present a once in a generation opportunity to fix the currently broken system. We owe it to our mokopuna, and their mokopuna, to get things right.

If the Bill "picks winners" on which Māori rights holders have rights, and which ones do not, it is likely to create tension and conflict that will hurt Māori relationships and whanaungatanga values.

The Crown has no right to do that.

Nor does the Crown have any right to dictate that iwi/PSGEs are the main Māori rights holders. That might be politically convenient for the Crown and local government, if they want an excuse not to acknowledge and engage with all Māori rights holders, but it is not justified under tikanga or Te Tiriti.

Are iwi/PSGEs better placed, and do they have a strong track record, at effectively protecting the health and wellbeing of our awa? Will the Bill, if it gives iwi/PSGEs the key rights, and revenue, to speak for and to fix polluted awa, lead to better local environmental outcomes than will be the case if the local hapū and ahi kā /landowners have those rights, and that revenue, to improve the awa?

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