The National Māori Entity

The National Māori Entity is proposed in clauses 659-674 of the Bill.

The purpose of the National Māori Entity is to independently monitor decisions that are made in the new resource management system, in order to inform and support positive progress on Māori rights at the national, regional or local levels by assessing whether Te Tiriti o Waitangi has been given effect to. A key part of its role is to prepare monitoring reports on Te Tiriti compliance. Those reports and the responses to them must be made public, so that bodies the National Māori Entity criticises on Te Tiriti grounds can be held accountable to what they say they will do to address the criticisms.

The Crown is proposing that the National Māori Entity will be made up of 7 members who must have been nominated by iwi, hapū or Māori. The members are appointed by the Crown, for terms of up to 6 years. This makes the National Māori Entity a kāwanatanga body that is not intended to replace or displace the rangatiratanga of mana whakahaere communities at place, locally and regionally.

This primer has been produced to explain how the National Māori Entity can be improved to better protect and preserve Māori rights, interests and responsibilities in the environment ("Māori rights").

It explains why the role that the Crown has proposed for the National Māori Entity is inadequate, and it identifies the changes that should be made to give the National Māori Entity the 'teeth' that it will need to be an effective body to champion Te Tiriti compliance in the new system.

What powers will the National Māori Entity have?

The Bill proposes that the National Māori Entity should be a monitoring and reporting body only.

Where the National Māori Entity publishes a report that includes findings that are critical of a monitored body, for instance a local council, and where it makes recommendations for change, the body that has been criticised or recommended to make changes must respond to the National Māori Entity's report within the timeframe specified by the National Māori Entity and in the case of the Crown within 6 months. In doing so, the body must identify measures it intends to take in response.

Are those proposed powers sufficient?

No.

The powers proposed for the National Māori Entity do not go far enough.

First, there is a risk that because the Crown has the ability to take up to 6 months to respond to a report by the National Māori Entity a 6 month delay will become the 'default' for the Crown's response in every case. That might in some cases mean that the Crown does not effectively address harm to te taiao that the National Māori Entity has identified until it is too late. To avoid that risk, the Bill should be changed to require the Crown to respond to National Māori Entity reports 'as soon as practicable but not later than 6 months after receiving the report from the National Māori Entity'.

Second, the National Māori Entity should have the right – and responsibility – to work closely with the Minister for the Environment on the National Planning Framework ("NPF") – which sets national 'baselines' and rules that will determine what can and cannot be done regionally and locally – to ensure that the NPF gives effect to Te Tiriti. One way the National Māori Entity can help to ensure that is for the Bill to require the Minister to collaborate and attempt to agree with the National Māori Entity on what limits the NPF should set on uses of water bodies to protect and preserve the mauri of

water bodies, and to ensure that Māori communities will get equitable allocations of use rights in the new system.

To help to inform and to support positive progress in giving effect to Te Tiriti, the National Māori Entity also needs to have the power to educate people and communities about risks that they and te taiao face, and how those risks can be avoided. If it has such a power, the National Māori Entity will be able – for instance – to publish 'primers' on climate change responses it sees as necessary or appropriate in te Reo Māori and English. Similarly, it will be able to make and to show videos that explain the benefits of having – for instance – regional rules that require new water treatment plants to be built in locations that are more expensive to build at, but that will better protect tuna populations in small but culturally, socially and environmentally important gullies or streams. In these kinds of ways, the National Māori Entity will be able to help *prevent* problems arising, rather than having to be an 'ambulance at the bottom of the cliff' that is forced to respond to problems when it is too late to avoid them.

Fourth, the National Māori Entity should have tools that will help to stop breaches of Te Tiriti where they are happening, for instance by stopping illegal actions that harm the taiao before it is too late.

One enforcement tool would be to give the National Māori Entity the power – and responsibility – to bring litigation to support positive progress on Māori rights at the national, regional or local levels, where it considers that it is necessary for the National Māori Entity to bring litigation of that kind. Another enforcement tool that the National Māori Entity should have is a fund that it manages, and which Māori communities can apply to for grants to support them bringing litigation to protect or preserve tikanga or Te Tiriti rights. That fund could be modelled on the Environment Legal Assistance Fund, which the Ministry for the Environment currently manages, but instead be managed by the National Māori Entity and directed to Māori who need financial support to protect their taonga.

Is the National Māori Entity guaranteed to have the resources it needs to be effective?

No.

The Bill says nothing about how the National Māori Entity will be funded and, in particular, it contains no guarantee that it will get the funding it will need each year to be an effective actor.

That problem can be easily fixed by the Bill guaranteeing that the National Māori Entity will be funded to effectively perform its roles. That would avoid problems the Waitangi Tribunal – and claimants bringing claims in the Tribunal – have faced when the Crown chose, for its own purposes, to hold back funds necessary for the Tribunal to operate as effectively as Māori needed it to operate.

What happens if these problems are not fixed?

The National Māori Entity needs to have real 'teeth', and guaranteed resources, if it is to succeed as an effective body to champion Te Tiriti compliance in the new system.

That can be achieved by changing the Bill to give the National Māori Entity greater powers to influence the content of the NPF, to publish information both to prevent and to fix problems, and for it to assist in enforcement action to uphold Te Tiriti rights where that is necessary. With those changes, and a guarantee that the National Māori Entity will be funded each year to the level that is required for it to be effective, the National Māori Entity can play a critical Māori role that would otherwise be absent.

Will the National Māori Entity usurp the mana of mana whakahaere?

No.

The National Māori Entity operates within the kawanatanga sphere, and it will be able to complement and to support, rather than to undermine, the rangatiratanga of those mana whakahaere communities. One important way it will do that is by helping the Crown to be better as a Te Tiriti partner in the action the Crown proposes to take in the new system. It will be for mana whakahaere communities to engage with resulting Crown policies and practices as Te Tiriti partners.

Prepared by Matthew Smith and Annette Sykes, Technical Advisors to Te Tai Kaha Māori Collective (New Zealand Māori Council, Federation of Māori Authorities, and Ngā Kaiārahi o Te Mana o te Wai Māori).