

# BACKGROUND PAPER— IWI CHAIRS FORUM

## Summary of Paper

This paper has been prepared for the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Professor James Anaya (the Special Rapporteur).

The paper provides an overview of the Iwi Chairs Forum and the work of the Iwi Chairs working groups.

The Iwi Chairs Forum has been operating since 2005 as a vehicle for kotahitanga (unity and collective action) amongst Iwi and hapū. The Forum emerged in response to calls from Iwi and hapū across the country to work together on matters of common interest. The Forum is not an incorporated body and does not have a formal constitution, however, over time, certain practices have become customary, such as; holding regular national Chairs hui on an approximately quarterly basis, forming working groups as required on matters of strategic importance to engage directly with government and supporting nationwide hui to discuss those issues. The Forum is important and timely, and is arguably making significant contributions to inter-Iwi kotahitanga and the continued improvement of the recognition of the Treaty partnership by government.

This paper is structured as follows:

- Iwi Chairs Forum—Genesis, Vision and Overview of Work;
- Kaupapa Working Group— Freshwater;
- Kaupapa Working Group— Climate Change;
- Kaupapa Working Group— Foreshore and Seabed;
- Kaupapa Working Group— Public Private Partnerships;
- Kaupapa Working Group— Whānau Ora; and
- Appendix One—further reference materials.



## INTRODUCTION

The Iwi Chairs Forum is a platform for sharing knowledge and information between the tangata whenua of Aotearoa. All iwi chairpersons have an open invitation to participate in and contribute to this group which shares the vision of Kotahitanga.

In 2005 the first Iwi Chairs Forum hui was convened at Takahanga Marae in Kaikōura. Since that time the forum has been meeting regularly to discuss and enable Māori aspirations in the spheres of cultural, social, economic, environmental and political development.

Collectively the Iwi Chairs Forum represents more than 400,000 Māori, over 2/3s of the Māori population.

Kotahitanga lies at the heart of the forum's aspirations by enhancing the ability of iwi to work together where we have commonalities and share our experiences for the benefit of those who wish to participate. The Iwi Chairs Forum believes that striving towards kotahitanga will help towards building and strengthening a healthy Māori economy and ultimately enrich and elevate the culture and the lives of our people.

The vision of the Iwi Chairs Forum is;

**That through unity, sharing and working together we will honour our past and create a better future for whānau, hapū and iwi.**

Our vision statement is guided by the whakataukī: "He waka kōtuia kāhore e tukutukua ngā mimira. A canoe that is interlaced will not become separated at the bow. In unity there is strength." In the highly developed craft of building ocean going waka the bow section was laced to the centre hull. The waka provides a metaphor for tangata whenua, in that a people interlaced will not be separated and through that unity we find strength.

The work of the Iwi Chairs Forum over the last five years has been in two main areas;

- **National Iwi Chairs Hui**—convened to discuss strategic issues. These hui have been convened on roughly a quarterly basis to discuss strategic issues and at particular hui, to present agreed positions to Ministers. There are a number of items which have appeared regularly on the agenda, and are typically the matters that kaupapa ILG have formed in response to (i.e. climate change, freshwater, foreshore and seabed, Whānau Ora). Economic development has also featured regularly, with a particular emphasis on PPPs and inter-Iwi co-investment. These hui are reported, by

attendees, to be a valuable way of sharing information amongst Iwi, identifying strategic issues and working collaboratively toward an outcome that is in the interests of all Iwi;

- **Iwi Leaders Working Groups** – convened to engage directly with government. These groups operate in similar ways, in that the group engages directly with government, endeavours to hui with Iwi and hapū across the country, and report back to each Iwi Chairs Forum. The groups are also firmly based on the position that the engagement with government does not usurp the mana of Iwi and hapū and similarly, does not replace the direct Treaty relationship between the Crown and Iwi/hapū. The role of these groups is to endeavour to improve the way in which the rights, interests and values of Iwi/hapū/whānau are recognised in policy development through direct engagement with the Crown at early stages in the policy development programme.

Since 2005, the Iwi Chairs Forum has, objectively, achieved the following;

- Confirmed objective: kotahitanga to enhance the ability of Iwi to work together where we have commonalities and share our experiences for the benefit of those who wish to participate with the objective that striving towards kotahitanga will contribute to strengthening and enriching the cultural, social, economic, environmental and political development of our people;
- Formation of kaupapa groups to engage directly with government on strategic issues including; climate change, freshwater, foreshore and seabed, Whānau Ora;
- Development of an Iwi Chairs website to serve as a central hub for information about strategic issues and the Forum itself;
- Communications network, largely through email, to exchange information with Iwi katoa.

From a more subject perspective, it appears that the Forum has enabled stronger and more proactive relationships with the Crown, the most significant benefit of which has been opening the policy development process so that the rights, interests and values of Iwi and hapū are considered at senior Ministerial levels earlier in the process. This has enabled greater scrutiny of policy earlier, with a structured way of scrutinising the work of government, contributing to the nature and direction of policy development and as far as is possible, improving the outcome of policy development for whānau, hapū and Iwi.

## **KAUPAPA WORKING GROUP—FRESHWATER**

The former Labour government instigated the Sustainable Water Programme of Action to reform the management and allocation of freshwater. The programme of work successfully identified broad ranging issues and completed wide research on potential mechanisms to address the various issues. However, the programme moved slowly and did not produce tangible outcomes or a clear programme for reform. Toward the end of its term, the government did however create three instruments under the RMA, which are still progressing through the consultative process, including:

- Proposed National Policy Statement for Freshwater Management;
- National Environment Standard for Measurement of Water Takes; and
- National Environment Standard on Ecological Flows and Water Levels.

The new government instigated a new direction for the freshwater reform early in its term and indicated that establishing a fairer and more efficient water management system is a priority. The process for achieving this will be through or in parallel to the government's resource management reforms. The work programme is known as New Start for Freshwater and has a number of substantial work programmes across the full spread of water quality, allocation, governance and related areas.

Iwi Chairs, Sir Tumu Te Heuheu, Mark Soloman, Tukoroirangi Morgan, Sir Archie Taiaroa and Toby Curtis first engaged in discussions surrounding freshwater with the Prime Minister of the Labour Government in May 2007 as the Labour Government was embarking on the Sustainable Water Programme of Action. The incoming government renewed the commitment to continue engaging with Iwi Leaders on the New Start for Freshwater programme and to support technician level work with Crown officials. Iwi Leaders sought engagement because providing for Iwi rights and interests and the tikanga, values and principles underpinning the relationship that Iwi have with freshwater is a fundamental issue.

Iwi Leaders have been engaging with the Crown since May 2007. That engagement is based on the principle, stated by Iwi leaders and confirmed by the Hon Dr Michael Cullen, that "The Treaty of Waitangi underpins our relationship with the Crown and is the basis for our engagement on all issues over water". The engagement is also based on the express position that the Iwi Leaders do not purport to represent all Iwi/Māori, and that the leaders are conscious of not usurping the mana of Iwi and hapū.

The engagement is occurring at both between Iwi Leaders and Ministers, and at the technicians level between Crown officials and Iwi advisors. The objectives of the engagement are to:

- Enhance decision-making through greater involvement of Iwi at national and regional levels
- Ensure Iwi freshwater views inform and influence the government's freshwater work
- Ensure Iwi cultural and economic aspirations are factored into freshwater decision-making at all levels
- Ensure that property rights akin to ownership are not created in any new freshwater regime

The Iwi Leaders have been careful not to enter into any discussions with the Government over the ownership of Water, and have also been very clear that engagement is not a substitute for meaningful discussions directly with respective Iwi/Hapu and the Crown. The Iwi Leaders have also expressly stated that engagement on policy development is part of the Treaty partnership, but that the engagement in no way spans discussions of a 'national settlement'.

The Iwi Leaders have provided regular reports on progress to forums such as the Pukawa Accord and also the regular Iwi Chairpersons' Meetings. Regional hui have also been held throughout the Mōtu and provided an opportunity for Iwi Leaders to update iwi and hapū.

## **KAUPAPA WORKING GROUP—CLIMATE CHANGE**

New Zealand sought to implement a national system to give effect to the Kyoto Protocol through the Emissions Trading Scheme (ETS). However, this has not been a simple undertaking as:

- The former government enacted an ETS at the end of its term, which was contentious because it was rushed through and created retrospective obligations (people became liable from January 2009, but the legislation was not passed until September 2009). There were also strong opinions that the balance between different sectors was inequitable;
- The current government enacted a new ETS in November 2010. This ETS is also contentious because it was seen to be rushed as well and there were similarly, strong concerns about whether the balance between different sectors was equitable and more so, capable of delivering reduced carbon emissions;
- New Zealand's carbon emissions have not reduced from 1990 levels, rather, they have continued to increase; and

- The global framework is uncertain. The Kyoto Protocol created obligations for the period between 2008- 2012 (known as the first commitment period), however, the nature and extent of state obligations after 2012 are still being negotiated within a contested international environment that is seeing a philosophical and practical tussle between developed and developing nations. It was hoped that the Copenhagen conference of the parties would provide some direction, but it largely did not.

Climate change has the prospect of affecting Iwi and Māori to potentially the same extent as colonization, and in disturbingly similar ways. As global warming occurs, the landscape will change and our relationship and interactions with our territories will necessarily change with flow on effects on the revitalization and retention of mātauranga Māori. For example, consider the flow on effects of the two readily foreseeable scenarios;

- Global warming will lead to the salination of rivers, which will affect the fish species and wider ecology of water ways – this will impact on our customary practices pertaining to awa in manifold ways; or
- Carbon pricing and oil reserves may impact on the ability of our people to travel from their place of residence to marae, wāhi tapu and/or mahinga kai.

The Iwi Leaders Group on Climate Change was established in October 2007 to support Iwi, hapū and Māori land owners to participate in the policy development preceding the two ETS's, engage with the Crown on the shaping of the schemes, and, more recently, support participation in New Zealand's delegations to the international negotiations. The Iwi Leaders Group on Climate Change has worked on the following:

- *Iwi and Māori Understanding of the ETS* – the ILG has convened a number of regional and national hui since 2007 to discuss the ETS at policy and legislative stages.
- *Advocacy with the Crown* – the ILG has engaged with the policy and legislative processes, including presenting submissions on both Bills and meeting with Ministers to discuss providing for the rights and expectations of Iwi and hapū. In respect of the current scheme, the ILG also worked collaboratively with the Māori Party;
- *Support for Iwi and Māori with Specific Interests* – the ILG has also supported Iwi and Māori land owners with specific interests under the scheme to have their unique situation addressed by the Crown. This included the five Iwi who were uniquely affected by the scheme eroding the value of Settlement assets arising from the Crown knowing at the time forestry assets were transferred that the scheme was imminent but not disclosing the impact of it on the value of their assets.

The ILG has sought to uphold the following principles as paramount considerations in any response to climate change:

- Kaitiakitanga – as a principle embedded in our traditions that is fundamental to our approaches to human interactions with the environment;
- Intergenerationalism – recognising that Iwi have inextricable links to our ancestral lands and view responses to climate change within an intergenerational framework that considers the implications of change as at 100 years into the future and according to the legacy we will leave future generations.
- Iwi economic interests – recognising that Iwi and Māori span concurrently across most if not all the key sectors of the economy, with particular concentration in the primary sector including major interests in forestry, agriculture, fishing, and increasingly in the energy sector. Noting that many Iwi and Māori assets have been artificially locked into underdevelopment, we place priority on equitable economic outcomes from responses to climate change that do not disadvantage the situation of Iwi and Māori assets and development aspirations.
- Equitable outcomes – being wedded to protecting the situation of our vulnerable whānau, who are disproportionately represented in all measurable social indices and therefore particularly exposed to the transfer of costs as a result of responses to climate change.

The tangible outcomes that the ILG sought included:

- Whānau – to reduce the costs experienced by whānau;
- Forestry – to find and secure ways for Iwi and Māori to not be locked into forestry so as to preserve the development choice our people have a right to;
- Agriculture – to find and secure ways for Iwi and Māori agriculture to not be disproportionately impacted on by the scheme;
- Fisheries – to secure allocation for the fisheries sector that was of benefit to Iwi and Māori;
- Research – to get commitments to research targeted and response to Iwi and Māori interests;
- Wider policy context – to drive for more comprehensive policy change that supports environmental sustainability; and
- Specific accommodation for Iwi and Māori organizations in a unique situation.

Under the first scheme, the ILG secured the following commitments from government;

- That government would pursue offsetting in the international negotiations – off-setting is a way of preserving development choice in respect of forestry. Off-setting means that deforestation liabilities do not have to be paid if replanting occurs on a an alternative site (currently, the international community will only recognise planting if

it happens on the same site). And, if secure internationally would implement it in the domestic framework;

- The creation of a trust to manage, on trust, the carbon credits allocated to forestry lands that will be transferred at a future date in Treaty Settlements.

Under the current scheme, working closely with the Māori Party, the following outcomes were achieved:

- Treaty clause –inserted into the legislation to provide for guaranteed Iwi and Māori participation in future reviews of the scheme;
- Commitment to progressing a Crown- Iwi afforestation partnership. This partnership would see the Crown and Iwi investing in the regeneration and planting of trees on Crown land so as to accrue carbon credits. It is intended to be a double dividend investment that delivers both economic and environmental outcomes, the latter through increasing national biodiversity. The partnership also has the potential to provide for zero cost land use change for forestry owners if it is structured in a particular way.
- Commitment to research targeted and responsive to Māori agricultural needs to support the reduction of carbon emissions and uptake of complimentary/enabling technology;
- Fisheries sector allocation of carbon credits to quota owners so as to provide maximum benefit to Iwi asset holders;
- Commitment to continued membership in the state delegation to international negotiations;
- Commitment to ongoing engagement with Iwi and hapū; and
- Specific accommodation of five Iwi uniquely affected by the scheme to an amount commensurate with their loss.

The Iwi Leaders Group is currently working with the Crown on the implementation of the scheme.

## **KAUPAPA WORKING GROUP—FORESHORE AND SEABED**

The Foreshore and Seabed Act 2004 (the Act) is one of the most significant pieces of legislation in recent history, for both Māori and New Zealand. It extinguished the rights of Iwi and hapū to the foreshore and seabed, in a way that was all too reminiscent of colonial confiscations that breached the Treaty of Waitangi and the human rights of Māori. It also catalysed momentous political change; both a dark period of high racial tensions and a positive unification of Iwi and Māori through the hīkoi, formation of the Māori Party and advocacy with the United Nations.

The Māori Party secured the commitment of the government to review the Act in their confidence and supply agreement. The review was completed in 2009 by a Ministerial Review Panel made up of; Justice Eddie Durie, Professor Richard Boast and Hana O'Regan. The Panel released a compelling and comprehensive report recommending that the Act be repealed and setting out some principles and options that could be considered in developing the replacement framework to the Act.

The Prime Minister announced in November 2009 that the government would repeal the Act providing that a suitable replacement regime could be developed. The Bill to replacement the Act is now being drafted, and it is expected that the replacement legislation will be passed into law in December 2010.

The Iwi Leaders Working Group was formed at the Hopuhopu Iwi Chairs Forum on 20<sup>th</sup> August 2009. On the 26<sup>th</sup> August, Iwi Leaders requested the following commitments from the government:

- Confirm that the Treaty of Waitangi underpins the relationship between Iwi and the Crown and is the basis for all engagement concerning the foreshore and seabed;
- Acknowledge that the key principle underlying the government's response to the Ministerial Panel Review Report is recognising and giving effect to the mana of iwi and hapū over the foreshore and seabed;
- Structured and principled governance engagement between Iwi Leaders and Ministers;
- Agreement as to reasonable access to information and resources to support collaborative engagement with the Crown and consensus building amongst iwi and hapū. .

Since that time, there has been regular engagement between the Crown and Iwi Leaders to work together on a replacement framework capable of giving effect to the rights and expectations of Iwi and hapū.

Cabinet has now taken comprehensive decisions on the content of the replacement framework, and a Bill is currently being drafted. It is anticipated that the Bill will go to Select Committee in August and that the government will seek to have it passed into law by the end of 2010.

There appear to be a number of perspectives amongst Iwi and hapū as to how well, the replacement framework improves upon the 2004 Act.

## KAUPAPA WORKING GROUP—PUBLIC PRIVATE PARTNERSHIPS

The Māori economy is at a point of transition. The progressive capital injections from Treaty Settlements and the development initiatives of a range of Māori incorporations are converging to create a diverse Māori economy with enormous potential for growth. Over the last 15 years, research into Māori economic development has tended to concentrate on obstacles to development and producing best practice guides. These efforts have been valuable and fitting for the period. Now however, it is timely for Iwi and Māori to increasingly move our focus to soliciting and acting on real world opportunities.

One of the most powerful opportunities will surely be in the form of commercial partnering amongst Iwi and Māori organizations. The desirability and potential of commercial partnering has been frequently discussed amongst Iwi and Māori Leaders over the last 5 years, as an increasing number of entities reach a point where the benefits of economies of scale and like minded partners become more tangible.

There are also significant opportunities for Iwi and hapū to commercially partner with the Crown at this time through Public-Private Partnerships and other arrangements for a number of reasons including:

- *Government commitment to public-private partnerships/infrastructure development* – public –private partnerships (PPPs) are a way of commercially partnering with the Crown that are used extensively overseas, but only just emerging in Aotearoa New Zealand. PPPs typically involve some form of infrastructure, and New Zealand urgently needs investment in infrastructure to maintain and enhance our economic development as a nation. Iwi and hapū are attractive commercial partners for the Crown because of our intergenerational investment outlook, the guaranteed retention of New Zealand ownership and conservative approach to commercial endeavours.
- *Growing drive and capability amongst Iwi and hapū to co-invest* – Iwi and hapū have been discussing their commitment to partnering commercially for a number of years, and there is also now a growing capability to give effect to these commitments. It has taken time for Iwi and hapū to obtain the capital to support co-investment, build foundations within Iwi asset entities to support larger and collaborative investments and to review their portfolio balance with a view to moving outside of the traditional focus of primary sector investment. Over the past two decades there have been some compelling examples of inter-Iwi co-investment, and at this time, there seems to be a renewed drive to build on the kotahitanga amongst Iwi and hapū;
- *Treaty relationship* – co-investment with the Crown is also founded in the concept that a relationship between the Crown and Iwi as co-investors in national infrastructure is the next step in the Treaty of Waitangi partnership. In a post-settlement environment, a new

framework for considering our nation's development is also intrinsically tied to the ongoing success of Iwi.

The work in this area has been progressed under Minister Sharples' Taskforce on Māori Economic Development. The Taskforce has a number of portfolios spanning; the primary sector; access to capital, labour force development and training, small and medium enterprise development and support; Māori branding opportunities, infrastructure investment, kaupapa Māori models of commercialism and co-investment amongst Iwi and with the Crown. The Taskforce members are: June McCabe, Daphne Luke, Rob McLeod, Ngahiwi Tomoana, Bentham Ohia and Mark Solomon. Mark Solomon is leading the work stream on co-investment amongst Iwi and with the Crown.

The Iwi Chairs Forum has been providing direction to the type of work that is needed to facilitate commercial co-investment amongst Iwi/hapū and with the Crown, and there are efforts to ensure that these opportunities are open to all Iwi/hapū irrespective of size of commercial asset base through innovative deal structuring arrangements. An Iwi Leaders Work Group has also been engaging with the Crown to signal the areas of interest to Iwi Māori and the conditions for successful co-investment.

### **KAUPAPA WORKING GROUP—WHĀNAU ORA**

In 2009, Minister Turia established the Taskforce on Whānau-centred Initiatives. The purpose of the Taskforce is to shift policy across government. Currently all service delivery is based on responding to individual need by providers with a specific/narrow role. Whānau Ora sees a shift from an individualistic focus in the delivery of services to one where the whānau needs are centrally placed. The models also seeks to integrate the work done across government and by numerous providers, and will apply across: community and social development, Māori development, health, education, justice, and housing. The model also suggests that funding for Whānau Ora objectives should be unbundled from specific government departments and transferred to a Whānau Ora fund.

An Iwi Leaders Working Group was formed in early 2010 to engage with the Crown to achieve the following visions for the contributions of Iwi to realizing Whānau Ora:

- Joint Treaty partner approach to defining Whānau Ora outcomes and supporting the rollout of Whānau Ora;
- Iwi led implementation of Whānau Ora in their respective tribal areas; and
- Whānau Ora pilots.

## **APPENDIX ONE—FURTHER REFERENCE MATERIALS**

Iwi Chairs Forum: [www.iwichairs.maori.nz](http://www.iwichairs.maori.nz)

This website has background information on the Iwi Chairs Forum and also background papers on the matters discussed at recent hui.