

# TPPA FACTS

## Fact Sheet #3: Te Tiriti O Waitangi (The Treaty Of Waitangi)

Māori interests span the environment, knowledge and culture, foreign investment, genetic resources, sustainable use of natural resources, indigenous rights, health, jobs, education – all issues that arise under the TPPA. In this factsheet we look at the impacts the TPPA will have on Māori rights and te tiriti o Waitangi.

### WHAT MĀORI GET:

- ⇒ The TPPA, like every free trade agreement New Zealand has signed up to since the Singapore FTA in 2000, features a Treaty of Waitangi exception the government says gives total protection.
- ⇒ The government claims Māori stand to benefit from the 'tariff savings' of \$259 million by 2030 because of their significant presence in natural resource sectors.

### WHAT MĀORI GIVE UP:

- ⇒ The Treaty exception is limited in scope and relies on the goodwill of the government to protect Māori rights, which repeated Waitangi Tribunal reports show it has failed to do.
- ⇒ The TPPA's economic development model is not a Māori model and doesn't address the economic realities of Māori workers, whanau, businesses, regions and iwi. The TPPA locks Aotearoa into values that are not Māori values.

### FOUR WAYS THE GOVERNMENT DID NOT PROPERLY CONSULT OR CONSIDER MĀORI ON TPPA



**'With each instrument that it signs up to, the Crown has less freedom in how it can provide for and protect Māori, their tino rangatiratanga, and their interests in such diverse areas as culture, economic development and the environment.'**

(Waitangi Tribunal, WAI-262, 2012)

The TPPA restricts the sovereignty of New Zealand governments and has the potential to chill their future decisions, including those relating to Māori under te Tiriti o Waitangi, He Wakaputanga o te Rangatiratanga (Declaration of Independence), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and as a matter of public policy and social justice.

Because the TPPA has the potential to impact on hapu and iwi and their resources, it requires informed consent, or at the least a robust bona fide engagement so Māori views are fully incorporated into decision making. This has not happened.

There was no credible attempt to engage with Māori as the Crown's Treaty Partner before or during the TPPA negotiations.

The only Māori that were listed as 'stakeholders' to be consulted was the Federation of Māori Authority (FOMA).

The government 'National Interest Analysis' that looked at pros & cons of the TPPA said it would have no impact on rights under the Treaty of Waitangi.

TPPA leaves the rights and interests of Māori vulnerable to foreign states and corporations who have no obligations under the Treaty of Waitangi.

These factsheets were crowdfunded by members of:

**ActionStation**  
people powered change

# TPPA FACTS

## **Rights of Māori relating to Intellectual Property (IP), biodiversity, and environmental law and policy, guaranteed through te Tiriti o Waitangi and the UNDRIP, could be significantly affected by the TPPA.**

The IP chapter strengthens the rights of holders of state-recognized intellectual property rights, a form of intellectual property that has generally not protected mātauranga Māori and the rights of kaitiaki and has, in many cases, undermined those rights.

Despite the Treaty of Waitangi exception, the provisions in the IP chapter will make it more difficult for Māori to achieve changes to New Zealand IP law that are necessary to protect rights and obligations of kaitiaki in relation to mātauranga Māori.

Commercialisation of the mātauranga associated with genetic and biological resources, and of the resources themselves, can compromise the kaitiaki relationship and put the Crown in breach of Treaty principles.

## **USEFUL DEFINITIONS:**

Mātauranga Māori can be defined as 'the knowledge, comprehension, or understanding of everything visible and invisible existing in the universe', and is often used synonymously with wisdom. In the contemporary world, the definition is usually extended to include present-day, historic, local, and traditional knowledge; systems of knowledge transfer and storage; and the goals, aspirations and issues from an indigenous perspective. A kaitiaki is a guardian. This can be a person or group that cares for an area such as a lake or forest. They are given that role by the local tribe.

## **Māori rights and the barriers the TPPA place on genuine progress**

The UN special rapporteur on the rights of indigenous peoples singled out investment chapters of agreements like the TPPA and investor-state dispute settlement as a risk to indigenous rights and a constraint on their ability to gain remedies.

The TPPA leaves the rights and interests of Māori vulnerable to foreign states and corporations who have no obligations under te Tiriti or the UN Declaration on the Rights of Indigenous Peoples, and who will have a legal right to pursue their interests through private international mechanisms. This may further undermine the willingness of governments to implement Waitangi Tribunal recommendations for fear of legal action from overseas investors.

The Treaty exception is limited in scope and relies on the good will of the government to protect Māori rights, which repeated Waitangi Tribunal reports show it has failed to do.

## **The Crown's failure to consult Māori**

There has been no credible attempt to engage with Māori as the Crown's Treaty Partner in the TPPA. Ngati Kahungunu was consulted about intellectual property issues relating to Wai 262 early on, but that stopped in 2010. An Official Information Act request revealed the only Māori on MFAT's list of 'stakeholders' was the Federation of Māori Authorities (FOMA). A handful of other individuals and groups were listed as having been consulted, almost all because they attended the stakeholder events when negotiations were held in New Zealand, or because they sought out meetings. The Waitangi Tribunal has granted urgency to hearing a claim that the process and content of the TPPA breach the Treaty of Waitangi.