Submission: Transforming the resource management system: issues and options paper

Authors: Ngā Rangahautira

Date: 3 February 2020
1. INTRODUCTION

1.1 This submission is made for and on behalf of Ngā Rangahautira, also known as the Māori Law Students Association of Victoria University of Wellington.

1.2 Ngā Rangahautira has a membership of approximately 75 Māori students studying towards a Bachelor of Laws at Victoria University of Wellington.

1.3 Ngā Rangahautira encourages its members to form educated opinions on contemporary Māori issues, makes submissions on a range of proposed legislation, and organises regular hui which provide opportunities for Māori students to discuss and debate legal issues relevant to Māori.

1.4 When making submissions on law reform, Ngā Rangahautira attempts to provide a unified voice for its members, and seeks to highlight areas of concern, and suggest further reform options where appropriate. Ngā Rangahautira does not seek to usurp the authorities and responsibilities of whānau, hapū and iwi.

CONTACT PERSONS REGARDING THIS SUBMISSION

Ngā Rangahautira
Faculty of Law
Victoria University of Wellington
Government Buildings
55 Lambton Quay
Wellington 6011

Email: ngarangahautira1986@gmail.com
2. **SUMMARY**

2.1 In this submission, Ngā Rangahautira expresses its opinion on the issues and options paper (the paper) regarding the review of the resource management system.

2.2 We primarily focus on four of the issues as laid out in the paper:

2.2.1 Issue 2: Purpose and principles of the Resource Management Act 1991 (RMA, the Act);

2.2.2 Issue 3: Recognising Te Tiriti o Waitangi /the Treaty of Waitangi and te ao Māori;

2.2.3 Issue 7: Policy and planning framework; and

2.2.4 Issue 11: System monitoring and oversight.


3.1 Option (h) of Issue 2 suggests recognising Te Mana o te Wai, or its underlying principles in Part 2.

3.2 The adoption of Te Mana o te Wai is consistent with the recommendation of the freshwater Tribunal report suggesting its inclusion in section 6 as a matter of national importance that must be recognised and provided for by decision makers under the Act.¹

3.3 We believe that this would be a positive addition to the RMA, demonstrating that Te Mana o te Wai truly does sit at the core of the RMA and its processes. It would also be beneficial to clearly define it within the Act.

3.4 Referring to question 7 of the paper, we believe the answer to be a yes. Recognising Te Mana o te Wai is a strong first step in the right direction to allow Part 2 of the Act to better reflect te ao Māori.

4. **ISSUE 3: Recognising Te Tiriti o Waitangi /the Treaty of Waitangi and te ao Māori**

4.1 The paper duly notes the Waitangi Tribunal’s disappointment concerning the fact that “the RMA has almost completely failed to deliver partnership outcomes in the ordinary course of business when the mechanisms to do so have long existed.”²

4.2 The paper lays out seven possible options for reform:

4.2.1 Strengthen the reference to the Treaty in s8 (a);

4.2.2 Remove barriers to the uptake of opportunities for joint management arrangements in s36B and transfer of powers in s33 (b);

---

¹ Waitangi Tribunal *Stage 2 Report on the National Freshwater and Geothermal Resources Claim* (Wai 2358, 2019) at 559

² Waitangi Tribunal *Ko Aotearoa Tēnei: A report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011)
4.2.3 Make provision for new approaches and partnership arrangements in the management of resources, drawing on the experience of Treaty settlements (c);

4.2.4 Clarify meaning of iwi authorities and hapū (d);

4.2.5 Provide funding mechanisms to support Māori participation (e);

4.2.6 Provide for regular auditing of council performance in meeting Treaty requirements (f); and

4.2.7 Provide for other bodies to promote issues of significance to Māori and develop capability and capacity, building on the examples of the Independent Māori Statutory Board in Auckland, and the Environmental Protection Authority’s (EPA) statutory Māori advisory committee, Ngā Kaihautū Tikanga Taiao (g).

4.3 In our opinion, options (a), (b) and (e) have the opportunity to make a material difference in the current freshwater management system. All of these options will be explored further.

4.4 In regard to option (a): strengthening the reference to section 8 of the RMA will combat the current issue that the principles of Te Tiriti are often balanced out during the process when pitched against the section 6 and 7 considerations. This strengthening should also include the Tribunal’s recommendation that the provision clarify that duties imposed on the Crown by virtue of the principles of Te Tiriti are imposed on all those persons exercising powers and functions under the Act.

4.5 In regard to option (b): removing the procedural and practical barriers of sections 33 and 36B has been a key recommendation at all consultation phases with Māori. We are yet to see the impact that reasonable access to these mechanisms could have for Māori participation in the freshwater management context.

4.6 In regard to option (c): in keeping with the theme of the findings of the freshwater Tribunal, the mechanisms to potentially provide for iwi and hapū to exercise tino rangatiratanga under the RMA already exist. The Mana Whakahono ā Rohe arrangements were introduced instead of encouraging the use of sections 33 and 33B. In our opinion, new approaches and partnership arrangements are not necessary until a genuine attempt has been made at utilising the current mechanisms.

4.7 In regard to option (d): the clarification of iwi and hapū will not target the issue that councils are choosing not to engage meaningfully. The Ministry for the Environment in its report on the

---

3 Waitangi Tribunal Stage 2 Report on the National Freshwater and Geothermal Resources Claim (Wai 2358, 2019) at 25
4 Waitangi Tribunal Stage 2 Report on the National Freshwater and Geothermal Resources Claim (Wai 2358, 2019) at 559
5 Waitangi Tribunal Stage 2 Report on the National Freshwater and Geothermal Resources Claim (Wai 2358, 2019) at 239
6 Waitangi Tribunal Stage 2 Report on the National Freshwater and Geothermal Resources Claim (Wai 2358, 2019) at 75
implementation of the NPS-FM 2017 identified that the issue of Māori-council engagement should be targeted by:

4.7.1 Developing and supporting formal relationship agreements between councils and tāngata whenua.

4.7.2 Working with iwi and hapū to encourage, resource and upskill under-represented iwi groups.

4.7.3 Working with iwi and hapū to further regional council and central government staff understanding of te ao Māori and develop methods to ensure tāngata whenua views are reflected more accurately in plans.

4.7.4 Work with iwi and hapū to develop and make available measures of Māori cultural values and input of mātauranga Māori

4.8 It is in our opinion that option (d) does not seem to have attempted to address any of these suggestions.

4.9 In regard to option (f): we believe that this will be a positive addition to the RMA, especially if it is included alongside provisions removing the practical and procedural barriers for Māori and local authorities to enter into arrangements under sections 33 and 33B.

4.10 In regard to option (g): we also believe that this will be a positive addition to the RMA, provided that the values of the local tangata whenua are still given priority in their own region.

5. **ISSUE 7: Policy and planning framework**

5.1 Option (j) of this issue suggests giving greater status to iwi management plans in Part 5 of the RMA.

5.2 This is an option as recommended by the Waitangi Tribunal, in which there have been repeated calls for greater legal weight to be given to Iwi Management Plans.8

5.3 Iwi management plans were supposed to be an opportunity for Māori to set out their priorities for the management of their taonga, their views and aspirations as kaitiaki, the sites and resources of significance to them, and their vision for how their values should be infused into resource management decision-making.9

5.4 We believe that this will have a positive impact on the RMA scheme as it has been noted that: 10
A major issue has been the weak impact of iwi management plans. Regional or district plans are not required to be consistent with iwi management plans. There is no requirement to consider iwi management plans when determining whether or not to grant resource consents.

6. **ISSUE 11: System monitoring and oversight.**

6.1 Option (d) of this issue suggests that an outcomes monitoring system that is culturally appropriate and recognises mātauranga Māori be developed.

6.2 This is consistent with the recommendation of the Kāhui Wai Māori.\(^{11}\) We believe that this will be a positive addition to the RMA, especially if it is included alongside provisions removing the practical and procedural barriers for Māori and local authorities to enter into arrangements under sections 33 and 33B.

6.3 We consider it possible that the 'Mauri Scale' may be used for this purpose as referred to in the Stage 2 freshwater Tribunal report. It is a table of descriptors for tangata whenua to assess and decide whether the mauri of a freshwater management unit or catchment met a national bottom line.\(^{12}\)

7. **CONCLUSION**

7.1 The Resource Management system requires further change to effectively uphold the rights and interests guaranteed to Māori under Te Tiriti o Waitangi. Gradual change has been occurring, moving towards a system that reflects the principles of partnership and reciprocity, but there is still significant work to be done. The current legislative reform poses the opportunity to make significant progress in meeting that target, but the government must be prepared to undertake the recommendations that Māori have been requesting for decades now. Te Iwi Māori is ready to participate meaningfully in resource management processes, and just need the current barriers that stand in their way to be removed.

7.2 We recommend that our opinions as laid out in this submission be noted and considered.

---

\(^{11}\) Te Kāhui Wai Māori *Te Māna o te Wai* (2019) at 8

\(^{12}\) Waitangi Tribunal *Stage 2 Report on the National Freshwater and Geothermal Resources Claim* (Wai 2358, 2019) at 334