

## KEY FACTS: TPPA and te Tiriti

- '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 fetters 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.
- The TPPA conflicts with Māori rights and Crown obligations under te Tiriti and the UNDRIP. The Crown's prior commitment to indigenous peoples' right to self-government and political autonomy and their right to the recognition, observance and enforcement of treaties should have informed the negotiation of the TPPA.
- 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.
- Despite the Wai 262 report saying the Crown's then policies and practices did not comply with the Treaty, and too often came after decisions were made, there was no credible attempt to engage with Māori as the Crown's Treaty Partner before or during the TPPA negotiations.
- Several chapters guarantee foreign states and their commercial interests the right to participate in New Zealand's domestic decisions, while Māori as tangata whenua have no similar guarantees.
- 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. Yet the importance of conservation and biological diversity in the TPPA is framed by an objective of facilitating use of biological and genetic resources.
- The Environment chapter provides general commitments to environmental protection, specific detail on a small number of environmental issues, and some procedural mechanisms for cooperation between parties. But there is nothing that reflects Waitangi Tribunal recommendations to strengthen Māori participation in environmental decision-making, planning and management, including under the Resource Management Act.
- 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 UNDRIP, 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 Tribunal recommendations for fear of legal action.
- 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 government has made far-fetched claims regarding the economic gains to New Zealand, and to Māori because of their significant presence in natural resource sectors of the economy. Those figures are not supported by evidence and ignore the tangible and intangible costs of the TPPA to Māori.
- The TPPA's economic model is based on trade liberalisation, monopoly rights to own exploit intellectual property, and privileged rights for foreign investors, and will not serve a future Māori economic development agenda that is built around core Māori values, commitment to environmental sustainability, and tino rangatiratanga.
- The Waitangi Tribunal will hold an urgent hearing in March 2016 on a claim that the TPPA is inconsistent with te Tiriti, focusing on the Crown's processes and whether the Treaty of Waitangi exception fully protects Māori using 3 studies: fracking, affordable medicines, and water. The Crown has refused to defer further action on the TPPA until the claim is resolved.

*Drawn from the expert, peer-reviewed research paper by Carwyn Jones, Claire Charters, Andrew Erueti and Jane Kelsey at <https://tpplegal.files.wordpress.com/2015/12/tpp-te-tiriti.pdf>*