



Human Rights Commission  
Te Kāhui Tika Tangata

# Submission by the New Zealand Human Rights Commission to the study of the Expert Mechanism on the Rights of Indigenous Peoples – Good practices and challenges in business and access to financial services by indigenous peoples

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## **Submission by the New Zealand Human Rights Commission to the study of the Expert Mechanism on the Rights of Indigenous Peoples – Good practices and challenges in business and access to financial services by indigenous peoples**

1. The New Zealand Human Rights Commission (“Commission”) is an independent Crown entity pursuant to the Crown Entities Act and derives its statutory mandate from the Human Rights Act 1993. The long title to the Human Rights Act states it is intended to provide better protection of human rights in New Zealand in general accordance with United Nations human rights Covenants and Conventions. The Commission is an ‘A’ status National Human Rights Institution.
2. The Commission welcomes the Expert Mechanism’s study in relation to business and access to financial services by indigenous peoples, and appreciates the opportunity to contribute.
3. This submission aims to inform the Expert Mechanism’s study by providing an overview of the Indigenous economy in New Zealand, and identifying good practice and challenges.

### **THE MĀORI ECONOMY**

4. Historically Māori, the indigenous people of Aotearoa New Zealand, engaged in economic activities between and within iwi (tribal nations), hapū (subtribes) and whānau (families). Inland tribes often traded foods with coastal tribes, and an inter-island trade between the South and North islands was important. With the arrival of Europeans, Māori were quick to establish trade with settlers as well as trading offshore. In the mid-nineteenth century Māori were key producers and suppliers of agricultural produce to new towns and settlements.
5. However, from the 1860s onwards, tribally based economies were increasingly undermined through land loss: land wars, land alienation and confiscation by government. Land was central to the Māori economy – *Te toto o te tangata he kai. Te orange o te tangata he whenua* (*The lifeblood of a person is derived from food; the livelihood of people depends on land*). The loss of land meant the loss of a key economic resource for Māori. Urbanisation following the Second World War further impacted the Māori economy.<sup>1</sup>
6. From the 1970s and ‘80s the restoration of land and assets through the Treaty of Waitangi settlement process,<sup>2</sup> saw Māori businesses begin to grow. Māori trusts and incorporations have been established to administer the proceeds of Treaty of Waitangi settlements between the Crown and iwi. These organizations work on behalf of their people - whakapapa shareholders - and reflect an indigenous business model in that they have a quadruple bottom line; social and cultural development, environmental, political and commercial. These elements are strong drivers of intergenerational sustainability.
7. The Commission notes that the indigenous business model adopted by iwi organisations aligns with the 2030 Agenda for Sustainable Development and provides a platform to realise the associated goals.

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<sup>1</sup> Basil Keane, ‘Te Māori I te ohanga – Māori in the economy – The Māori economy’, Te Ara – the Encyclopedia of New Zealand, <http://www.teara.govt.nz/en/te-maori-i-te-ohanga-maori-in-the-economy/page-1>

<sup>2</sup> In 1975 the Waitangi Tribunal was set up to look at breaches of the Treaty of Waitangi by the Crown. In 1985 it was given the mandate to look at historical claims. As a result of the tribunal’s findings a number of tribes received settlements from the government. Settlements have included the return of land, fisheries quota, forestry assets and monetary compensation.

8. Data from the 2013 Census states that over 21,000 Māori run their own business. In 2013, there were 21,700 Māori in business; of which 14,900 were sole traders (self-employed and without employees) while the remaining 6,800 were employers.<sup>3</sup> However, Māori are half as likely to be self-employed as the total population. In 2013, self-employment as a percentage of total employment for Māori was 10 per cent, compared to 19.8 per cent and 18.7 per cent for non-Māori and the total population, respectively.
9. The Māori economy is significant and growing. The value of the Māori economy is now estimated at over 40 billion dollars.<sup>4</sup> This represents around 6% of the total New Zealand asset base, and around 5.6% of New Zealand's Gross Domestic Product.<sup>5</sup>

## STRENGTHS AND GOOD PRACTICES

### *Iwi organisations – a strong and growing asset base*

10. Many iwi that have completed the process of negotiated settlements of claims against the state relating to historic breaches of the Treaty of Waitangi, now hold considerable assets. Since 1990, around 60 iwi in New Zealand have finalised Treaty settlements with the Crown. Treaty settlements are typically composed of historical accounts, an acknowledgment and apology, cultural redress and financial and commercial redress.<sup>6</sup>
11. A 2016 report highlights the growing financial strength of iwi. Based on publicly-available information, the *Iwi Investment Report 2016* reviewed the corporate structures, investment strategies and performance of iwi organisations.<sup>7</sup> The report highlights positive performance, particularly from some of the largest iwi:

*Ngāi Tahu has nearly tripled its asset base in the last decade, from \$561 million in 2006 to \$1.5 billion now but with very little debt. Rural land, investment properties, seafood and fisheries, a shareholding in NZX listed Christchurch-headquartered Ryman Healthcare, property and tourism make up its assets. Distributions to iwi beneficiaries have been steadily growing, from \$10m in 2006 to \$25m in 2016.*

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*In 2012, Ngāti Whātua Ōrākei's assets were valued at \$401m, including a settlement of \$18m. 2013 saw the value of assets increase substantially to \$593m. The increase reflected the purchase of seven surplus land parcels on the North Shore and rising property values, combined with improvements in portfolio management. Further increases in 2015 and 2016 were driven by increases in the value of its investment properties. Ngāti Whātua Ōrākei's assets are currently valued at \$939m, with net worth at \$717m.*

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<sup>3</sup> Ministry of Business, Innovation and Employment (2014), *Māori in Business*, available at: <http://www.mbie.govt.nz/info-services/employment-skills/labour-market-reports/maori-labour-market/maori-in-business>

<sup>4</sup> Te Puni Kōkiri, (2015), *Māori Economy Report 2013*, <http://www.tpk.govt.nz/documents/download/609/tpk-maorieconomyreport-2013.pdf> . See also: <http://www.mbie.govt.nz/info-services/infrastructure-growth/maori-economic-development/documents-image-library/maori-economic-fact-sheet.pdf>

<sup>5</sup> Ibid., TPK (2015), at p 26.

<sup>6</sup> <https://www.justice.govt.nz/maori-land-treaty/office-of-treaty-settlements>

<sup>7</sup> TDB Advisory Ltd, (2016), *Iwi Investment Report 2016*, available at: <http://www.tdb.co.nz/wp-content/uploads/2016/05/TDB-Iwi-Investment-Report-2016-WEB.pdf?x46045>

*Waikato-Tainui's 2016 net worth is \$940m, up 9% from 2015. Total assets are valued at \$1,225m, up 5% from 2015. As depicted, Waikato-Tainui's assets have increased by \$580m over the last six years. Waikato-Tainui received relativity payments<sup>8</sup> from the Crown in 2013, 2014 and 2015 of \$70m, \$21m and \$70m respectively. These payments have contributed to the increase in Waikato-Tainui's asset base and net worth. Numerous revaluations of assets have also played a part.*

### **Government commitment to Māori economic development**

12. Government initiatives recognise that “a thriving Māori economy will result in benefits for the wider New Zealand economy”, and a range of strategies and plans exist to monitor and enhance Māori economic development and address identified challenges.<sup>9</sup>
13. The *Māori Economic Development Strategy and Action Plan (2012-17)*, *He Kai Kei Aku Ringa*<sup>10</sup> sets out a blueprint for a productive, innovative and export-orientated Māori economy that will support better paying jobs and higher living standards. The Strategy includes 26 action points which address areas such as education and on-job training; governance of Māori assets and access to capital; and land productivity.
14. In addition, a number of regional strategies have been developed, aimed at growing the Māori economy in the regions. These include the *Auckland Māori Economy* report, produced by the Independent Māori Statutory Board,<sup>11</sup> the *Northland Māori Economic Growth Strategy* by the Tai Tokerau Iwi Chief Executive Consortium,<sup>12</sup> and the *Tairāwhiti Māori Economic Plan*, prepared by a collective of businesses, iwi, hapū, community and government agencies.<sup>13</sup>

### **Partnerships between Iwi and business**

15. Māori incorporations are increasingly seeking opportunities to partner with business both domestically and internationally. A summit, hosted in February this year by Ngati Kahungunu iwi, saw about 250 business leaders and politicians from their respective communities come together to explore commercial collaboration opportunities. It is reported that from the summit at least one deal has already been completed “involving the purchase of a kiwifruit orchard in Hawke’s Bay for \$40 million, and the associated employment and engineering businesses worth \$12 million. The buyer was a Māori Trust, while Chinese importers expressed strong interest in developing a direct importing relationship.”<sup>14</sup>
16. Te Rūnanga<sup>15</sup> o Ngai Tahu and Waikato Tainui are good examples of how big iwi corporates that are financially strong are influencing / partnering with big business. Both

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<sup>8</sup> Two early large settlements—with Waikato-Tainui in 1995 and Ngāi Tahu in 1998—included relativity clauses. This means that the Crown is liable to make payments to maintain the proportion of the Waikato-Tainui and Ngāi Tahu settlements at, respectively, 17% and 16.1% of all treaty settlements. In October 2012, the total value of settlement redress had exceeded \$1 billion in 1994 present value dollars, triggering the clauses for the first time. In 2012, the Crown paid Waikato-Tainui \$70 million and Ngāi Tahu \$68.5 million, representing the undisputed relativity redress to date.

<sup>9</sup> <http://www.mbie.govt.nz/info-services/infrastructure-growth/maori-economic-development/strategy-and-action-plan>

<sup>10</sup> <https://www.tpk.govt.nz/en/a-matou-mohiotanga/business-and-economics/he-kai-kei-aku-ringa--the-crown-maori-economic-gro>

<sup>11</sup> <https://www.imsb.maori.nz/index.php/auckland-s-maori-economy-what-is-it>

<sup>12</sup> <http://www.northlandnz.com/business/services/maori-economic-development>

<sup>13</sup> [http://m.nzherald.co.nz/the-country/news/article.cfm?c\\_id=16&objectid=11810679](http://m.nzherald.co.nz/the-country/news/article.cfm?c_id=16&objectid=11810679)

<sup>14</sup> [http://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11826900](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11826900)

<sup>15</sup> A Rūnanga is the governing council or administrative group of a Māori Hapu or iwi.

organisations have entered into numerous commercial partnerships in the tourism, agriculture and primary industries sectors.

### ***Impact of Treaty settlements on Māori business***

17. Government are, through Treaty of Waitangi settlements, providing opportunities for indigenous groups to grow and develop business opportunities. The settlements are not restricted to financial opportunities, but enable iwi to implement commercial activities that promote and protect tikanga (traditional values).
18. For, example the Whanganui River Settlement focuses on the health and well-being of the Whanganui River which becomes its own entity under the settlement. Similarly, the Tuhoe Claims Settlement provides for the joint ownership and management of Te Urewera (a significant national park) by the Crown and Tuhoe (Te Urewera Board). Te Urewera has also become its own legal entity and the Board members act as its trustees.

### ***Māori business development and support organisations***

19. Māori Women's Development Inc was established in 1987. It is a unique indigenous financial institution formed and run by Māori women for the economic development of Māori women and their whānau. Its work includes:<sup>16</sup>
  - providing loans to Māori women and their whānau to enable and assist them to enter into and commence business and/or to expand and restructure their existing businesses.
  - establishing and maintaining a society for the promotion, advancement and encouragement of Māori women and whānau into business throughout NZ.
  - providing developmental training programs for Māori women and their whānau to empower and enable them towards economic and financial independence
  - empowering Māori business women and their whānau through sharing information and knowledge
  - assisting, supporting and fostering the development of business ideas, opportunities and up-skilling amongst Māori women and their whānau
  - encouraging and supporting Māori women and their whānau into general wealth through business development
20. The Federation of Māori authorities was established in 1987 to foster and advance the economic interests of Māori authorities.<sup>17</sup> It provides pathways and tools for members to develop profitability, performance and sector specific skills. It also works with industry and government to represent members' interests on issues of national importance.

### ***Māori business initiatives***

21. Self-determination is essential to indigenous peoples. It is a human right and is recognised in both the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, the Treaty of Waitangi, and the Declaration on the rights of Indigenous Peoples. Developing and maintaining the financial prosperity and sustainability of iwi is a core component of self-determination.
22. In 2006 Te Runanga o Ngāi Tahu set up a medium-long term savings programme to improve the wellbeing of Ngai Taha whānau. It seeks to achieve this by:<sup>18</sup>

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<sup>16</sup> <http://www.mwdi.co.nz/>

<sup>17</sup> <http://www.foma.org.nz/about-foma/>

<sup>18</sup> <http://www.whairawa.com/what-is-whai-rawa/whai-rawa-savings-programme/>

- providing a vehicle for distributions to all whānau
- encouraging savings for home ownership, education and retirement
- being a 'best of class' savings vehicle
- growing financial capability

## CHALLENGES

23. While recent studies confirm an expansion of the size of the Māori economy asset base, they also highlight the importance of recognising that this should not be the only focus in terms of a measure of Māori economic health. Rather, the focus should be on the wellbeing that arises from Māori ownership and control of these assets.<sup>19</sup> A continuing challenge is to ensure that a stronger asset base translates into improvements in Māori wellbeing and enjoyment of rights.

### **Meeting the specific needs of Māori business**

24. A 2013 study highlights the unique characteristics and context of Māori businesses, which therefore have different needs.<sup>20</sup>

*With this in mind it is pertinent to note that Māori enterprises and businesses are not new to the economy. However, Māori enterprises are likely to be on a different development cycle than others in the New Zealand economy. Many Māori enterprises are well governed, innovative and export oriented, while some others are in earlier stages of development. Moreover, the capability and capacity structures within many Māori organisations are being replenished and revitalised, having suffered (for a variety of reasons) decades of neglect. These structures will inevitably be different from others in the New Zealand economy, reflecting differing responsibilities and expectations, combined with different emphasis on values. Some Māori organisations are further progressed than others in this process of renewal, while others are just beginning. This renewal is being undertaken within the context of a wider New Zealand economy that is in advanced stages of development, fully integrated into the global economic landscape. It is this context that should be recognised to ensure suitable policy settings are adopted so that the Māori economy develops in tandem with the wider New Zealand economy, as would be implicit in a true Crown-Māori partnership.*

### **Data**

25. There are a range of initiatives which examine and monitor the ongoing development of the Māori economy – including *He Kai kei Aku Ringa – the Crown-Māori Economic Growth Partnership*. While considerable data exists, deficiencies remain, particularly in relation to Māori women and disabled people.<sup>21</sup>

### **Employment and education disparities**

26. Entrenched inequalities in education and employment outcomes, continue to impact upon Māori income as well as participation in business.

<sup>19</sup> Te Puni Kōkiri, (2015), *Te Ōhanga Māori 2013 – Māori Economy Report 2013*, <https://www.tpk.govt.nz/en/a-matou-mohiotanga/business-and-economics/>

<sup>20</sup> Ibid.

<sup>21</sup> <http://www.mbie.govt.nz/info-services/infrastructure-growth/maori-economic-development>

27. The Human Rights Commission's *Tracking Equality at Work* tool (2016) highlights poor outcomes in employment that continue to disproportionately affect Māori, and in particular, Māori women and Māori with disabilities.<sup>22</sup>
28. While labour market outcomes for Māori improved slightly over the past five years, the Māori unemployment rate (11%) at September 2016 was more than double the national rate (5.2%). The Maori employment rate has increased since 2011, to 59.4% in 2016, but remains below the national rate.<sup>23</sup> In terms of overall labour market participation, the participation rate for Māori has increased to reach 66.8% in 2016, but is yet to reach the pre-global financial crisis rate.
29. The rate of Māori young people not engaged in employment, education or training (NEET), while lessening slightly in recent years, is also higher than that of other ethnic groups. As at December 2016, the NEET rate for Māori was around double that of Europeans and the national average (20% for Māori; 9.9% for Europeans; 12% total all ethnic groups).<sup>24</sup>

### **Discrimination**

30. Research published in 2015 (based on 2011/12 survey data) by the Ministry of Health shows that Māori adults were more than twice as likely as non-Māori adults to have experienced discrimination at work, or have been refused a job because of their ethnicity.<sup>25</sup>
31. Another recent study highlights the issue of discrimination in relation to housing.<sup>26</sup> Researchers of '*Looking Māori Predicts Decreased Rates of Home Ownership Institutional Racism in Housing Based on Perceived Appearance*' identified bias in home ownership for Māori, who looked Māori. The findings of the study suggest there is, or at least has been in the recent past, institutional racism against Māori in the home lending industry, which prevented many Māori from accessing finance, and contributed to disparities in rates of home ownership.

### **Meaningful engagement / Free, prior, informed consent**

32. Aside from Māori engagement and participation in business, Māori engagement with business interests can involve challenges, particularly in relation to the use of natural resources such as minerals and water, and where the free, prior and informed consent of Māori is not routinely obtained.<sup>27</sup>

<sup>22</sup> <http://tracking-equality.hrc.co.nz/#/>

<sup>23</sup> MBIE, (September 2016), *Māori in the Labour Market (2011-2016)*. Available at: <http://www.mbie.govt.nz/info-services/employment-skills/labour-market-reports/maori-labour-market>.

<sup>24</sup> MBIE, (December 2016), *Māori in the Labour Market – December 2016*, <http://www.mbie.govt.nz/info-services/employment-skills/labour-market-reports/maori-labour-market/maori-in-the-labour-market-fact-sheets/maori-dec-2016/document-image-library/dashboard-maori-dec-16.pdf>. Also see: <http://www.mbie.govt.nz/info-services/employment-skills/labour-market-reports/maori-labour-market/maori-in-the-labour-market-fact-sheets/maori-dec-2016/neet>.

<sup>25</sup> Ministry of Health, (2015). *Tatau Kahukura: Māori Health Chart Book 2015 (3rd edition)*. Wellington: Ministry of Health. At pp 14-15.

<http://www.health.govt.nz/publication/tatau-kahukura-maori-health-chart-book-2015-3rd-edition>

<sup>26</sup> Houkamau CA, Sibley CG (2015) Looking Māori Predicts Decreased Rates of Home Ownership: Institutional Racism in Housing Based on Perceived Appearance. *PLoS ONE* 10(3): e0118540.

<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0118540#sec013>

<sup>27</sup> For example, see: <http://www.radionz.co.nz/news/national/326013/our-submissions-were-ignored-mining-protectors>; <http://www.radionz.co.nz/news/national/325982/taranaki-iwi-rejects-%27haters-and-wreckers%27-tag>; <http://www.maoritelevision.com/news/regional/ngati-hau-wants-financial-backing-puhipuhi-gold-mining-project-pulled>; <http://www.radionz.co.nz/news/national/323444/maori-oppose-taranaki-sand-mining>; <http://www.stuff.co.nz/business/better-business/90356795/ngati-tama-seek-judicial-review-of-council-over-springs>