

In Confidence

Office of the Minister for Māori Development

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Committee

World Intellectual Property Organization Diplomatic Conference May 2024 - Negotiating Mandate

Proposal

- 1 This paper seeks agreement for a Cabinet mandate so New Zealand can participate in Diplomatic Conference negotiations at the World Intellectual Property Organization (**WIPO**) in May 2024. The Diplomatic Conference is intended to conclude an International Legal Instrument Relating to Intellectual Property (**IP**), Genetic Resources and Traditional Knowledge Associated with Genetic Resources (**the instrument**).

Executive Summary

- 2 New Zealand has been participating in negotiations for an instrument relating to Genetic Resources and associated Traditional Knowledge at a specialised agency of the United Nations, the WIPO, for 15 years. The WIPO General Assembly has scheduled a Diplomatic Conference intended to conclude the instrument, to take place in Geneva, Switzerland from 13 to 24 May 2024.
- 3 The key proposal in the instrument is a “disclosure of origin” requirement. This would require states that choose to adopt the instrument to implement a mandatory requirement that patent applicants disclose the sources of genetic resources and/or traditional knowledge used in their inventions. The instrument focuses on the source or origin of the Genetic Resource and/or the Traditional Knowledge, rather than the ownership of it.

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- 5 After the conclusion of negotiations, it will be up to Cabinet whether New Zealand takes steps to be bound by the instrument. This will be subject to Parliamentary scrutiny, including a National Interest Analysis.

Background

WIPO has been working towards instruments for protection Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

- 6 The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was established in 2001.

Since 2009, the IGC's work has been focused on developing international instruments to ensure "balanced and effective protection" of genetic resources, Traditional Knowledge, and Traditional Cultural Expressions. New Zealand has taken an active role in the IGC since its inception. Many WIPO member states perceive New Zealand as a leader in enabling indigenous-led outcomes across a wide range of areas, including the IP system.

- 7 The IGC has been developing international legal instruments to ensure "balanced and effective protection" of Traditional Knowledge and Traditional Cultural Expressions. The challenge of the work is to provide effective protection of Traditional Knowledge and Traditional Cultural Expressions, whilst ensuring the requirements are not overly burdensome or cost-intensive, nor create a chilling effect on innovation.
- 8 The negotiations are separated into two workstreams:
 - 8.1 Genetic Resources, defined in the Convention of Biological Diversity (which New Zealand ratified in 1993) as, "genetic material of actual or potential value". "Genetic material" is defined as "any material of plant, animal, microbial or other origin containing functional units of heredity."
 - 8.2 Traditional Knowledge, comparable to mātauranga Māori. Traditional Cultural Expressions, are akin to tangible or intangible expressions of mātauranga Māori, such as, haka, tā moko, or waiata.
- 9 The Genetic Resources Diplomatic Conference, scheduled for May 2024, marks significant progress for the forum.
- 10 The cross-governmental work at WIPO recognises Indigenous Peoples as the holders of Traditional Knowledge. It considers how that knowledge can be appropriately used in innovations and acknowledged accordingly. The international instrument being considered at the Diplomatic Conference also acknowledges the source or country of origin of Genetic Resources. This connects the country of origin to the invention regardless of where the Genetic Resource is sourced. This does not give any ownership rights for Indigenous Peoples over Genetic Resources, it seeks only to acknowledge the source or country of origin of the Genetic Resource used towards creating an invention, for which a patent has been applied for.

New Zealand's has supported a disclosure of origin requirement for patent applications

- 11 To date, New Zealand has supported an international mandatory disclosure of origin requirement as a means to increase understanding of how and where New Zealand's genetic resources and associated Māori Traditional Knowledge are being used overseas. This requirement could open opportunities for patent applicants to work with iwi and Māori, businesses and local industries, should their research and development relate to our country's Genetic Resources or Traditional Knowledge.
- 12 In 2018, MBIE led public consultation on potential disclosure of origin requirements alongside the Plant Variety Rights Act review [CAB-18-MIN-0434

refers]. The 2018 discussion document outlined potential options for implementing a disclosure of origin requirement domestically and sought submitters' views on how New Zealand should approach an international disclosure of origin regime, as proposed in the WIPO negotiations. MBIE's preferred option from 2018 largely aligns with the disclosure of origin articles in the draft instrument. Submitters also broadly support the approach that has taken.

- 13 Alongside the 2018 consultation, MBIE commissioned an economic evaluation conducted by Castalia Strategic Advisors.¹ This provided a cost-benefit analysis which indicated that, if New Zealand were to adopt the instrument, the costs (estimated over 30 years) were relatively low and should not impose a significant burden on patent applicants or on the Intellectual Property Office. MBIE and Te Puni Kōkiri consider that this analysis remains accurate.
- 14 In early 2024, Te Puni Kōkiri and MBIE undertook targeted stakeholder engagement to update stakeholders on the progress of the instrument, the mandatory disclosure of origin requirement, and proposed approach to negotiations. Feedback on the disclosure requirement largely mirrored established positions from the 2018 consultation.

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¹ Economic Evaluation of Disclosure of Origin Requirements, Castalia Strategic Advisors, April 2018 [castalia-economic-assessment-evaluation-disclosure-origin-requirements.pdf](https://mbie.govt.nz/economic-assessment-evaluation-disclosure-origin-requirements.pdf) (mbie.govt.nz)

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Next steps

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Financial Implications

- 21 There are no financial implications for this paper. Continued participation of New Zealand in the IGC will continue to be met through existing Te Puni Kōkiri and Ministry of Business, Innovation and Employment baselines.

Legislative Implications

- 22 There are no legislative implications directly arising from this mandate. If New Zealand decides to fulfil the obligations under the proposed international instrument, and therefore ratify or accede to the instrument, an amendment to existing New Zealand Patent Law is required.

Impact Analysis

- 23 A Climate Implications of Policy Assessment is not required for this paper. A National Impact Analysis will be undertaken should New Zealand agree to the final text of the instrument.

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Human Rights

- 26 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 27 The Ministry of Business, Innovation and Employment and Te Puni Kōkiri have consulted with Te Arawhiti, Ministry of Foreign Affairs and Trade, Ministry for the Environment, Department of Conservation, Department of Internal Affairs, Statistics New Zealand, Ministry for Culture and Heritage, Ministry for Primary Industries on this Cabinet paper. The Department of Prime Minister and Cabinet and The Treasury have been informed.

Communications

- 28 No publicity will be undertaken for this decision.

Proactive Release

29 At this stage, our intention is to proactively release this Cabinet paper, with redactions as appropriate where there are international implications.

Recommendations

The Minister for Māori Development and Minister for Commerce and Consumer Affairs recommend that the Committee:

1 **note** that New Zealand officials require a mandate to participate in Diplomatic Conference negotiations intended to conclude an International Legal Instrument Relating to Intellectual Property (IP), Genetic Resources and Traditional Knowledge Associated with Genetic Resources, happening in Geneva, Switzerland, from May 13 to 24 2024.

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- 4 **Direct** the Minister for Māori Development and the Minister of Commerce and Consumer Affairs, should the conclusion of the instrument be successful, to report back to Cabinet with a National Interest Analysis on whether New Zealand should work towards ratifying the resultant international legal instrument.

Authorised for lodgement

Hon Tama Potaka

Minister for Māori Development

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs

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