NGĀ TOKI WHAKARURURANGA

PROTECTING RONGOĀ IN THE TRADE SPACE

Kawakawa balm being made. Source: File

WHAT DO FREE TRADE AGREEMENTS (FTAS) HAVE TO DO WITH RONGOĀ?

FTAs are international "trade" treaties between Aotearoa New Zealand and other states that require governments to make domestic law comply with their rules. Those rules go way beyond trade and impact on te taiao, including laws associated with rongoā and natural health products. These agreements are capitalist in nature, driven and fed by the exploitation of our natural and human resources for the benefit of a few, mainly big corporations. FTAs put money ahead of mana and the greed of the already wealthy ahead of the needs of Papatūānuku.

These agreements are negotiated in secret. Ngā Toki Whakarururanga is tasked with ensuring that New Zealand's obligations under Te Tiriti o Waitangi are effectively addressed in FTA negotiations. Ngā Toki Whakarururanga is actively being excluded by the Crown and our proposed trading partners from decision making in these negotiations, making it next to impossible for Ngā Toki Whakarururanga to fulfil its obligations set down in a binding mediation agreement reached between the Crown and the claimants in the Wai 2522 claim on the Trans-Pacific Partnership Agreement (TPPA).

The opportunity for Ngā Toki Whakarururanga representatives to comment on the text of FTAs during the negotiations requires a non-disclosure agreement, effectively gagging Ngā Toki Whakarururanga from raising concerns about potential infringement of Te Tiriti rights and responsibilities with anyone else, even if they would be affected. This effectively denies Māori and rongoā interests the right to ensure their rights and interests are protected and not undermined by the FTA.

Another area of concern for Ngā Toki Whakarururanga is the active involvement of MFAT in the setting of domestic health policy and legislation such as the Therapeutic Products Act. The setting of domestic health policy must be driven by the health needs of the people of Aotearoa, rather than a need to honour or offer more favourable terms to associated international trade interests. Ngā Toki Whakarururanga is not anti-trade. It welcomes trade with overseas markets on terms that uphold Māori values of utu (reciprocity), where due consideration is given to the care and sustainability of the taiao and the rights of the Indigenous Peoples to practice their own tikanga and exercise mana motuhake in the interests of their taonga and practices, as agreed in 1840.

HOW MIGHT FTAS IMPACT ON RONGOĀ?

FTAs affect rongoā in several ways.

On one hand, they **threaten rangatiratanga and kaitiakitanga** over rongoā. For example, the TPPA (which became CPTPP) requires governments to expand Plant Variety Rights (PVRs), a Western intellectual property right designed to enable people, mainly corporations, to develop, disseminate and exploit new varieties of plants.

Mamaku fern. Source: File

The notion of plant ownership of any sort is contrary to a Māori world view. People do not own plants; they have a responsibility to care and protect them, using or harvesting them in sustainable ways.

Technology has enabled us to breed new plant species much faster than the rest of the environment can adapt to these accelerated changes. This in itself presents its own issues. However, when specially bred new species are planted across the country in significant numbers it can threaten the DNA of closely-related endemic species which are more susceptible to natural hybridisation over a much shorter space of time than would have naturally occurred. This, in turn, can impact on the safety of rongoā if only hybridised species are available in the near future.

At the same time, the FTAs **can require NZ health policy and legislation to be harmonised** with those in other countries. Changing our domestic laws to align with the law of another country as part of an FTA has the potential to deny the rights and responsibilities of Māori signatories to Te Tiriti. They also have the potential to trade the interests of all New Zealanders for the benefit of a few who stand to significantly gain from an FTA. Their rules also impact on how rongoā can or can't be prepared for sale overseas, even when it would otherwise meet the import requirements of another country. This could have a major impact on existing and future indigenous to indigenous trade arrangements.

The FTAs **breach the Mātaatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples**. The Declaration was designed to provide international rules and protections that reflect indigenous worldviews and our responsibilities as Indigenous Peoples. It is ignored by the Crown, and other states, when they negotiate FTAs.

FTAs also routinely breach our rights under the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** to our indigenous medicines and health practices, including conservation of vital medicinal plants, animals and minerals.

Denying an independent seat in FTA negotiations to those charged with ensuring considerations and protections agreed to in Te Tiriti, fails to recognise the rights of Indigenous Peoples to self-determination in these matters.

HOW HAS RONGOĀ BEEN EXPLOITED OFFSHORE?

These agreements increase the likelihood of exploitation offshore. Exploitation of our natural resources, including plants and minerals, make it increasingly difficult to source processed native plant materials here in Aotearoa. For example, in recent years an international essential oil company purchased all the Mānuka essential oil available in the country, making it impossible for domestic retailers and consumers to purchase it. It is also sometimes easier to access Pukatea and Tōtara extracts from Australia than it is in Aotearoa.

We have also shared our rongoā practices with others overseas who are now claiming to be experts in rongoā in their own countries without the mandate of their teachers or kaitiaki of the profession. That risks bringing our practice into disrepute.

Tā Moko, haka and whakairo can all be applied as functions of rongoā and we see images of these being used insensitively overseas as well as our sacred symbols appearing on trinkets.

We have no laws to limit bioprospecting in Aotearoa. That has led to a number of patents (another intellectual property right) and PVRs over the use of our taonga species around the world. These patents and PVRs are protected through FTAs.

Rongoā could be further exploited offshore in the future if protections aren't put in place. We could find increasing pressure on our fragile biodiversity and an imbalance occurring in the taiao if rongoā plants were to disappear due to supply demands from other countries.

Tōtara. Source: File

PAST CHALLENGES TO FTAS' IMPACTS ON MĀTAURANGA

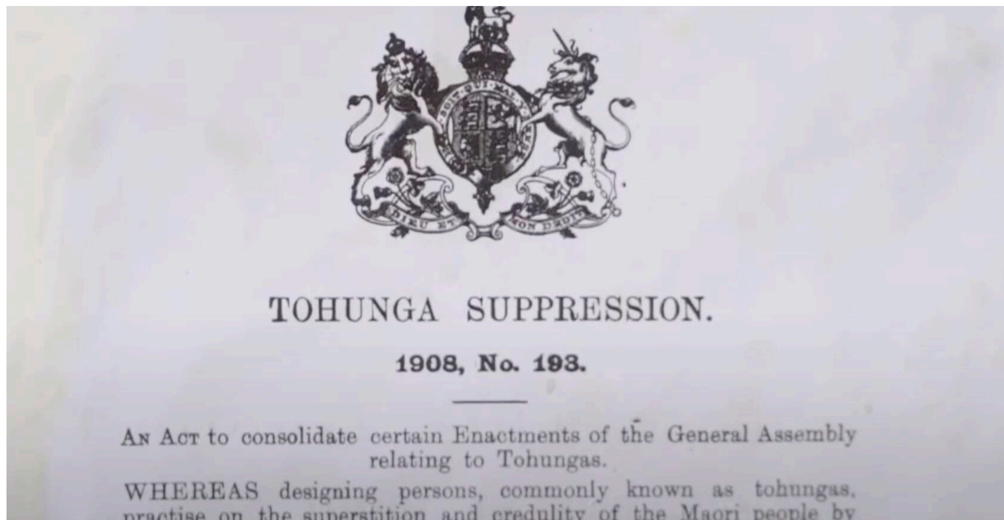
These FTAs breach Te Tiriti because they fail to protect the indigenous mātauranga of Māori. When FTAs are made, only the Crown is at the table. Its priority is on doing the trade deal; safeguarding Tiriti rights and responsibilities, and Crown obligations, are a much lower priority and often just mean adding an old, inadequate Treaty of Waitangi clause.

Here are three examples. As part of the Wai 262 claim to the Waitangi Tribunal, Te Waka Kai Ora challenged proposals under the Australia NZ trade agreement (CER) for a single standard that would override rangatiratanga and kaitiakitanga over rongoā. Strong opposition saw that dropped.

More recently, the TPPA was negotiated in secret. It promised NZ would adopt an international agreement on plant variety rights (UPOV 1991) that Māori had fought off for years. Without talking to Māori, the Crown inserted something it thought would protect Tiriti rights while

allowing it to agree to UPOV 1991, ignoring the contradictions in that, and it used terms about indigenous species that make no sense. The claimants to the Wai 2522 TPPA inquiry challenged the content and the process MBIE was using to implement it. But the Tribunal said the Crown had tried its best and that was good enough. Māori would have to live with the new Plant Variety Rights Act.

Just last year, there was a battle over the Therapeutic Products Act inclusion of rongoā. We strongly suspect that was driven by obligations in FTAs, but any information on that was kept secret, even under the Official Information Act.



TOHUNGA SUPPRESSION.

1908, No. 193.

An Act to consolidate certain Enactments of the General Assembly relating to Tohungas.

WHEREAS designing persons, commonly known as tohungas, practise on the superstition and credulity of the Maori people by

The Tohunga Suppression Act 1907 . Source: File

THIS IS THE LATEST OF MANY ATTACKS ON RONGOĀ:

These "trade" agreements perpetuate a long history of colonial/western law's attacks on the practice of rongoā:

- The **Tohunga Suppression Act 1907** outlawed traditional practices and some Māori spiritual practices from 1907-1962.

- The **Quackery Prevention Act 1908** followed, stopping rongoā practitioners from making health claims in relation to rongoā rākau. Those two acts were repealed and eventually replaced by the Medicines Act 1981.

- The **Medicines Act 1981** makes it illegal for rongoā practitioners to say things that are true, such as using text on labels saying "as traditionally by used by Māori" on products.

- The **Therapeutic Products Act**, due to come into effect in 2026, replaces the Medicines Act 1981. The Act is now being considered for repeal by the Coalition Government. In this Act the Crown assumed self-appointed control of rongoā Māori practice, including what devices practitioners can and cannot use in their work and what they can and can't say about rongoā rākau, Rongoā does not enjoy the same advantages and privileges as other health practices in Aotearoa, despite being the oldest medical practice in the country. Access to rongoā medicines is not subsidised, whereas pharmacy is, and investment in rongoā Māori R&D (compared to 'green pharmacy') is virtually invisible.