



# Message from the Tumuaki

Hutia te rito o te harakeke, kei hea te komako e ko Kii mai ki ahau, he aha te mea nui o te Ao? Maku e kii atu, he tangata, he tangata, he tangata

### Tiheimauriora!

Te Hunga Roia Maori o Aotearoa (**THRMOA**), the Maori Law Society Incorporated, has a proud history. In the 20 years since its establishment, it has been involved in, and in many cases been at the forefront of, the major legal developments that have impacted on Māori over that period.

Having successfully operated for 20 years, it is now time to look forward and ask ourselves what our organisation should focus on for the next 20 years.

The THRMOA Executive have been asked to consider that question by undertaking a review of THRMOA's purposes. As part of that exercise, the Executive wishes to hear from you, the THRMOA members. We want to know what you would like to see in the organisation that represents you as Māori lawyers and law students.

This document is intended to help you consider the future of our organisation, and to make your views known to the Executive. The Executive encourages each and every one of you to have your say. We will also be holding regional wanaga, to provide you with an opportunity to discuss your views with other members and assist you to make a submission on this important topic. We hope that you can attend at least one of those wananga hui.

Deciding the future direction of our organisation is, in many ways, an onerous burden. But it is much more than that. It represents an exciting opportunity for us to shape the future of our organisation as we would like it, to set our own goals and objectives and to make sure our organisation remains relevant and effective going forward.

The future is in our hands.

Nga mihi

Damian Stone

Co-President

Jolene Patuawa Co-President

Malean

# 1. Introduction

Te Hunga Roia Maori o Aotearoa (**THRMOA**), the Maori Law Society Incorporated, was incorporated in 1988 under the Incorporated Societies Act 1908 (the **Act**).

Last year, THRMOA celebrated its 20<sup>th</sup> anniversary, and in doing so recognised the enormous growth of the organisation, with its membership now including judges, parliamentarians, numerous practitioners, legal academics, policy analysts, researchers and law students. The 20<sup>th</sup> anniversary celebrations centred mainly on THRMOA's annual conference and Hui-a-Tau, which was held in September in Rotorua. The celebrations were a great success, and drew record numbers of judges, practitioners, students and other THRMOA members.

In celebrating 20 years of operation, the inevitable question was often raised during last year's annual conference and Hui-a-Tau – what should THRMOA focus on for the next 20 years? Many of the presenters at the conference commented on THRMOA's various activities during its 20 year history and posed the question of whether THRMOA should continue to undertake those activities for the next 20 years, or should it look at undertaking other activities. As a result, a large part of the Hui-a-Tau was devoted to discussion about the role THRMOA should play into the future. Various views were expressed during that discussion and it became apparent that further time ought to be devoted to the issue.

Consequentially, a resolution was passed at the Hui-a-Tau for the newly elected Executive of THRMOA to undertake a review of THRMOA's purposes. This would allow more time to be spent to properly analyse all of the issues, such as what THRMOA has done over the last 20 years, what it is particularly good at doing as a result, and what the future needs of THRMOA are likely to be.

# 2. Review process

Since being elected in September last year, the new Executive has met regularly to discuss the process that should be followed to undertake the review of THRMOA's purposes. The Executive strongly believes that such a review cannot be undertaken without canvassing the views of THRMOA's members and decided at a very early stage that it should consult those members.

You will recall that, earlier this year, the Executive circulated an email to the members that are on the current database to inform them of the process that is intended to be followed to undertake the review. At that stage, the Executive noted that it intended to:

- (a) prepare a consultation/wananga document, to be used to guide and facilitate discussion amongst THRMOA members on this topic;
- (b) hold regional wananga to allow discussion on this topic and to gather members' views kanohi ki te kanohi; and
- (C) subject to cost, undertake an electronic survey to ensure all members have an opportunity to express their views.

This document has been prepared to guide and facilitate discussion on the review of THRMOA's purpose. It identifies the main issues that the Executive considers should be taken into account as part of the review process. It is, however, by no means exhaustive. The Executive is keen to receive any feedback on this topic generally.

To allow further discussion on this important issue, regional wananga will be held around the country. A facilitator will chair the wananga and facilitate discussion on this important topic. The dates and venues for each regional wananga are as follows:

Region	Te Tai Tokerau/ Tamaki Makaurau	Waikato	Waiariki	Te Tai Rawhiti	Te Whanganui-a- Tara	Otepoti
Date and Time	14 May 2009, commencing at 6.00pm	16 April 2009, commencing at 6:30pm	17 May 2009, commencing at 4.00pm	Beginning 15 April 2009	20 April 2009, commencing at 6.00pm	28 April 2009, commencing 12 noon
Venue	Bell Gully Level 21 Vero Building Shortland Street Auckland	McCaw Lewis Chapman One on London 1 London Street Hamilton	Rangitauira & Co 1115 Pukaki Street Rotorua	Holding a Socrates Café - email, internet based consultation - http://en.wikipedi a.org/wiki/Socrat es_cafe and http://en.wikipedi a.org/wiki/Socrat ic_Method	Bell Gully Level 21 HP Tower 171 Featherston Street, Wellington	Otago University Staff Library 9th floor Faculty of Law Richardson Building
Facilitator	Tama Potaka	Aidan Warren	Spencer Webster	N/A	Damian Stone	Jacinta Ruru

We encourage you to attend at least one of these regional wananga to participate in this important process.

### 3. How to make a submission

We encourage you to attend at least one regional wananga hui to express your views on this matter.

You can also make a written submission. Submissions must be received by the Secretary by no later than 5pm on Friday 5 June 2009. The address to which your submission should be sent is:

The Secretary
Te Hunga Roia Maori o Aotearoa
C/- New Zealand Law Society
PO Box 5041
WELLINGTON
DX SP 20202

**Tel:** 64 4 472 7837 **Fax:** 64 4 473 7909

E-mail: PrimeW@teohu.maori.nz

We encourage you to make a submission.

### 4. Outline of this consultation document

In this document we:

- discuss the current legal framework within which THRMOA operates, including its current purposes;
- considers how THRMOA has been achieving its purposes to date;
- assesses whether THRMOA has been achieving its purposes in an appropriate manner;
- sets out some preliminary options that could be adopted by THRMOA going forward; and
- sets out some questions that may be useful for you to consider in making a submission on this issue.

# 5. Current Legal Framework

### 5.1 The Act

An incorporated society is a group of at least 15 people who have applied for registration as an incorporated society under the Act. Once registered, the incorporated society becomes a separate legal entity distinct from its members. This means that the members are not personally liable for the society's debts, contracts or other obligations. Likewise, members do not have any personal interest in any property or assets owned by the society.

Among other things, the Act stipulates that incorporated societies shall have a membership and officers elected by that membership. Officers are accountable to the membership through an annual general meeting and such other mechanisms as the society's constitution provides. An annual report must be provided to the Registrar of Incorporated Societies. Incorporated Societies must be not-for-profit. Whilst the society is permitted to make money, it can be only for maintenance costs and must not be for pecuniary gain.

### 5.2 THRMOA and its current purposes

THRMOA is an incorporated legal entity under the Act. Its certificate of incorporation was issued on 4 August 1988.

THRMOA's constitution (the **Rules**) contains the rules by which THRMOA must operate. Rule 3.2 confirms that the society does not have, as an object, the pecuniary gain of Members and no Member shall be entitled to receive any dividend out of any subscriptions, fees, donations or other income or funds of the Society in accordance with the Rules.

The Rules specifically set out the permitted objects of THRMOA, which are:

- (a) to promote fellowship and mutual support amongst its members;
- (b) to identify and respond to the legal needs of Te Ao Māori;
- (c) to support and encourage whanau, hapu, iwi and rohe initiatives;
- (d) to promote and conduct research on any issue of relevance to its members and Te Ao Māori;
- (e) to promote the representation or appointment of its members on or to bodies, Executives, committees, commissions, judicial fora, tribunals, organisations and the like;
- (f) to monitor legislation and promote law reform for Te Ao Māori;
- (g) to promote the education of its members in terms of tikanga Māori and Te Ture Pakeha;
- (h) to communicate and/or affiliate with other organisations in New Zealand and around the world who promote similar aspirations;

- (i) to promote awareness of the roles of the members both generally and specifically;
- (j) to pursue these objects in a manner that is consistent with Te Tiriti O Waitangi; and
- (k) to act in a manner that is consistent with tikanga Māori.

### 5.3 Should the purposes be amended?

The objects of THRMOA are fairly wide. They enable THRMOA to undertake a wide range of activities. In considering this issue, one of the first questions to address is whether the current purposes need to be amended.

Obviously, THRMOA must operate within its Rules (including its objects). If the members wish for THRMOA to operate for a purpose or purposes different from those listed above, the Rules will need to be amended. Clause 22 of the Rules does not allow the Rules to be amended, added to or rescinded unless done so by a resolution of at least 75% of THRMOA's members present and entitled to vote at an Annual General Meeting or at a special meeting convened for that purpose and unless written notice of the proposed amendment, addition or rescission is given to all Members in accordance with the Rules. Therefore, any amendments to the purposes set out in the Rules will need to be put to and approved at the 2009 Hui-a-Tau.

# 6. How has THRMOA been achieving its objects?

The manner in which THRMOA has achieved its objects has varied from year to year, depending on the relevant issues of the day. However, it is possible to summarise the activities that THRMOA has undertaken in relation to each of its specific objects.

### 6.1 Promote fellowship and mutual support amongst its members

THRMOA has historically excelled at promoting fellowship and mutual support amongst its members. This has involved facilitating, through the regional representatives appointed to the Executive from time to time, regional networking activities and other associated initiatives.

The primary means by which THRMOA achieves this objective, however, is through the annual conference. Over the last few years, the conference has been a focal point of the organisation and the one event that most of our members are likely to attend in any given year.

### 6.2 Identify and respond to the legal needs of Te Ao Maori

This is a wide ranging (and potentially limitless) objective. It is an objective that involves understanding what the legal needs of Te Ao Māori are at any given time (which, of course, are varied and extensive) and determining the best way to respond to those needs. That requires significant time and resource.

It is perhaps fair to say that, in recent times, THRMOA has been reactionary in its approach, focusing on responding to topical legal issues of the day. That is largely as a result of the limited funding it receives and the voluntary nature of the organisation. Pro-actively identifying and responding to legal issues necessarily involves time and resource, to which THRMOA has limited access.

### 6.3 Promote and conduct research on any issue of relevance to its members and Te Ao Maori

Again, this objective involves taking proactive steps to "lead" discussion and analysis on a particular legal topic. THRMOA has, to some extent, led discussion on various issues over the years. Also, as part of its role of monitoring and making submissions on law reform, it has been required to promote (and in most cases undertake) research on a range of topics. However, given THRMOA's largely reactionary approach (itself a consequence of limited funding), it has had limited opportunity to promote and conduct research outside of its activities of reviewing and commenting on law reform initiatives proposed from time to time.

### 6.4 Appointments of members

The increase over the 20 year history of the organisation in the number of members being appointed to the Bench, tribunals, commissions and other bodies has been significant. THRMOA is constantly asked to comment on a range of legal appointments and invariably is asked to recommend appointments.

Often, in respect of any particular appointment, more than one THRMOA member may have applied, or are being considered, for the position. In those instances, THRMOA often does not comment on the appointment.

For those appointments that are to be made by THRMOA (such as appointing the THRMOA representative to various New Zealand Law Society committees), THRMOA will usually seek expressions of interest from its members for the position, and will decide on the appointment accordingly.

#### 6.5 Monitor legislation and promote law reform for Te Ao Maori

The monitoring of legislation is a key function undertaken by THRMOA. THRMOA often submits on Bills before the House that affect Māori. Recent Bills on which THRMOA has made submissions include the Waka Umanga Bill, the Coroners Bill and the Treaty of Waitangi (Removal of Conflict of Interest) Amendment Bill. THRMOA also regularly makes submissions on government discussion papers (for example, the Bioprospecting Discussion Document in 2007).

### 6.6 Promote education of its members – Tikanga Māori and Te Ture Pakeha

As noted above, the annual conference facilitated by THRMOA is the main activity undertaken by THRMOA to promote education of its members. Those conferences always include a number of presentations by experts within their respective fields, with the intent that conference participants will learn from their experience and expertise. In addition to the annual conference, educational seminars and other such activities are often held on a regional basis and facilitated by the THRMOA regional representatives.

### 6.7 Communicate and/or affiliate with other organisations

THRMOA does not currently have any formal relationships with any external organisations, other than the New Zealand Law Society. However, THRMOA has a number of informal relationships with a number of organisations, such as the Māori accountants network.

#### 6.8 Promote awareness of the roles of the members

THRMOA does not actively promote the roles of its members, because those roles are extremely diverse. Inherently, however, THRMOA represents its members and, in doing so, promotes awareness of its members.

### 6.9 Pursue the objects in a manner consistent with Te Tiriti

THRMOA pursues its objects in a manner consistent with Te Tiriti.

#### 6.10 Act in a manner consistent with tikanga Māori

THRMOA endeavours to act at all times in a manner consistent with tikanga Māori.

# 7. Is THRMOA doing a good job?

### 7.1 Can we do things better?

Many would say that THRMOA is achieving its current objectives. The holding of the annual conference allows THRMOA to promote education, fellowship and mutual support amongst its members. THRMOA also makes submissions on legislation and law reform, and undertakes research in that context as and when required. It comments on appointments (when appropriate) and communicates with other organisations.

Some would question the standard by which those objectives are being met. For example:

- (a) It could be said that the monitoring of Bills by THRMOA is relatively haphazard. There are no specific procedures in place to identify every bill that goes through the House that impacts Māori communities. Since THRMOA is a voluntary organisation, it does not have the resources to thoroughly monitor and comment on every Bill that affects Māori. We are often required, therefore, to prioritise the Bills that we wish to make submissions on.
- (b) The position is also complicated when it comes to commenting on Bills and other Māori issues. Often there is no clear position that THRMOA could take on behalf of all of its members. More often than not, members would have differing opinions on a particular issue. THRMOA is, therefore, often limited to commenting on matters where there is a clear consensus of opinion among THRMOA members. It is interesting to note that, in this context, the New Zealand Law Society usually only makes submissions on Bills to the extent that they impact on the rule of law. That is largely because it is likely that lawyers' views will vary on any particular Bill or law reform.
- (c) Although THRMOA undertakes research to the extent it is necessary to comment on a Bill or other law reform initiative, it does not actively promote research outside of that context. That is understandable given that the organisation is voluntary and receives no funding, but the question could be asked whether the organisation ought to focus more on promoting research and potentially leading discussion on Māori law reform initiatives. The Law Commission undertakes such a research and promotion function in a more general sense, and THRMOA could potentially perform a similar function for Māori related issues.
- (d) THRMOA does not have any formal relationships with iwi or hapu, or any pan-Māori organisations. While the organisation is likely to support and encourage whanau, hapu, iwi and rohe initiatives (as is one of its objects), it has no formal process in place to be advised of those initiatives.
- (e) THRMOA runs a well organised and successful annual conference. There are often comments, however, about the format of the conference for any particular year. Some would prefer for the conference to focus on educational seminars, to ensure the participants learn as much as they can during the conference (and to encourage their employers to allow them to attend the conference). Others would prefer for the conference to be more "wananga" focussed, with topical issues being debated and, ideally, an agreed THRMOA position being determined as a result. This is often a difficult balance to strike and one that inevitably will be subject to criticism from time to time.
- (f) THRMOA actively makes appointments to the committees and bodies to which the organisation is entitled to appoint members. There is, however, room for improvement on this front. There is no comprehensive list of bodies to which THRMOA may make appointments, nor is there a database where members can indicate interest or nominate themselves to be appointed for one of these positions. There is thus no pool of members from which to select nominees for particular positions.

#### 7.2 Should we be doing other things?

The objects of THRMOA are expressed in wide terms. It is hard to imagine what THRMOA may wish to do that does not fall within those wide objects (such as to "identify and respond to the legal needs of Te Ao Māori"). Therefore, the issue may not be so much about amending the existing objects as set out in the Rules, but more about whether THRMOA should be doing other things to achieve those objects.

If is fair to say that, when THRMOA does comment on Bills, its submissions often carry a lot of weight. In that regard, THRMOA does have a significant degree of political leverage and potential legislative influence. This influence could be used more effectively. For example, THRMOA could actively lobby, rather than just make submissions to select committees from time to time.

We should also recognise that our members constitute a significant asset for THRMOA. Our members comprise the best Māori legal minds in the country and we could be taking advantage of this in a number of ways. We could better utilise that resource for a range of matters, including in legislative monitoring and law reform matters.

We are also largely a reactive organisation. We respond to issues rather than identify what it is that needs to happen and actively pursue it.

### 7.3 What is stopping us from doing more?

We are a voluntary organisation. We have limited funds, limited assets and no ongoing or regular funding streams. In fact, it is remarkable, and indicates the true commitment of its members, how much THRMOA does achieve given its financial circumstances.

There is no clear ability for THRMOA to ensure it has access to the resource that is comprised of its potential members. Once admitted to the bar, the New Zealand Law Society has information and access to all persons who hold a practicing certificate. THRMOA's membership, however, extends to law students and those who have qualified as lawyers, but who may not have practicing certificates. Even once members are identified and enrol on the THRMOA database, it is often difficult to maintain up-to-date contact details for all members.

It is also clear that, in respect of the objects set out in the Rules, there are no identified priorities in respect of those objects, nor any strategies to achieve them. Essentially, it is left to the Executive from time to time to determine its own objectives and how to achieve them. Given that the Executive members are usually elected for a 2 year term, often any strategic objectives they set for the organisation are limited to that timeframe. There is, unfortunately, no long term game plan, nor any particular incentive to develop one.

### 8. What should we do now?

The purpose of this review is to determine what our organisation should focus on for the next 20 years and what steps need to be taken to do so. We have assumed that we have a clean slate – it is up to us to decide now what we would like to see from our organisation going forward. Having said that, any organisation is necessarily limited by its own financial constraints. Therefore, in considering the future of THRMOA, regard must be had to its financial capabilities. There is no point in suggesting that THRMOA actively lobby on all law reforms that affect Māori without also providing a plan for THRMOA to obtain the funding required to do so.

The Executive has considered some options for the future. Again, they are by no means exhaustive and are intended to facilitate discussion and debate about this important topic. Those options are set out below.

### 8.1 Maintain the status quo

One option is to retain THRMOA's current practices. This acknowledges that the current objects for THRMOA are appropriate and recognises that THRMOA has done a reasonably good job of achieving those objects (given its financial position).

### 8.2 Refocus and priortise

Assuming that THRMOA continues to receive no external funding for its operations, one option could be to refocus our activities. We could identify those objects that we think are most important, and focus on those in priority to others. An example of this would be, rather than to attempt to submit on any number of Bills in a largely haphazard fashion, THRMOA could limit the Bills it looks at to those that THRMOA is best placed to comment on.

The New Zealand Law Society operates in a similar manner. NZLS does not comment on every Bill that is introduced into the House (primarily because that would be financially prohibitive), but instead only comments on those Bills that impact upon all legal practitioners generally or on the rule of law. To the extent that any practitioners wish to comment on a particular Bill, they are free to do so. This approach also avoids the potential for NZLS to make a submission on a Bill that some (potentially a majority) of its members do not agree with.

THRMOA could also limit its role in a similar vein. Given its financial resources, it may be too onerous to expect THRMOA to submit on every Bill that affects Māori. Also, if there are differing views among members on an issue (which is often the case), it might be preferable to allow those views to be expressed by those that hold them. Such an approach would allow THRMOA to focus on a limited number of Bills and, as a result, make more robust submissions.

### 8.3 Leadership

Our organisation is largely reactive. Choosing to refocus and priortise on a more limited set of objectives will still involve a reactive, rather than proactive, approach.

One option for THRMOA would be to attempt to *lead* discussion on a particular topic from time to time. In that sense, THRMOA would select a topic that requires further consideration or legislative reform, and would control the discussion and debate around that topic.

The Law Commission operates in a similar way. It produces reports on areas of law that require reform. It undertakes research on a particular area, and publishes a report of its findings and recommendations. The government of the day is then able to take up those reports and, if in order, facilitate any required reforms.

Taking such an approach would enable THRMOA to arguably get "the most bang for its buck". By leading debate on an issue, THRMOA would have more control over it. Also, although there will always be uncertainty regarding the eventual outcome of leading debate on a topic, there is arguably much less certainty involved in making a submission on a Bill (the extent to which any submission by THRMOA may be effective is largely dependant on the outcome of the political process).

#### 8.4 Commercialise

THRMOA's limited funding and revenue streams necessarily limits the activities it may undertake. Obtaining an ongoing funding stream of some nature would enable THRMOA to be more effective. Some options include the following:

### (a) Charge a membership fee

At present THRMOA does not charge a membership fee. Such a fee could be charged to provide a source of funding for the organisation.

# (b) Seek funding from external providers

Historically, THRMOA has received some funding from lotteries grants, Te Puni Kokiri and various other funding sources. THRMOA could continue to seek that funding. It should be noted, however, that such funding is tagged to particular purposes and is not guaranteed from year to year.

### (c) Commercialise the annual conference

THRMOA's annual conference is heavily subsidised and, therefore, is substantially cheaper than many mainstream legal conferences. The content is often far superior to mainstream conferences and still cost much less to attend.

It is possible to commercialise the annual conference. There are a number of existing mainstream conferences that charge significant participation fees. Many of those conferences use our members (and invariably do not pay them) to give seminars and presentations on Māori legal issues. There are likely to be opportunities for THRMOA to participate in that market.

Obviously, a key aspect of the THRMOA annual conference is the attendance by Māori law students. It will be important to maintain that opportunity if the THRMOA conference is commercialised in any way.

### (d) Leverage the expertise within our membership

We often expect our members to prepare submissions on Bills, on behalf of THRMOA, for no payment. They are then required to read the Bill, consider its implications, and draft submissions on it. That often involves a significant amount of work to be undertaken on a pro-bono basis.

THRMOA could access the vast resource is has access to (being its members) to commercialise that aspect of our current operations. For example, THRMOA could act as a facilitator to get its members to prepare submissions on Bills for interested Māori organisations. THRMOA may be able to seek funding to undertake this role, and may also be able to fund its members to prepare submissions as and when required.

There are obviously a number of options that are available to THRMOA in addition to those set out above. We are interested in receiving your views on any options you consider are appropriate.

### 9. Consultation Questions

To assist you to prepare a submission on this topic, set out below are some of the questions that you may wish to consider.

### 9.1 Objects generally

- Should the existing objects of THRMOA be amended?
- If so, what amendments are required?
- Which objects should take priority? Are you able to rank the objects accordingly?
- Which objects do you consider THRMOA currently achieves to a high standard? Why?
- Which objects do you consider THRMOA does not achieve well (or at all)? Why do you think that is the case?

#### 9.2 Law reform

- Should THRMOA limit its involvement in law reform to areas that relate to the rule of law or where there is a clear consensus among its members?
- Should THRMOA otherwise prioritise the Bills it considers?
- Should THRMOA instead focus on one issue and lead discussion on it?

### 9.3 Annual conference

- Should the annual conference continue in its current format? If not, what changes would you make?
- Should the annual conference focus on educational seminars, or debate on topical issues? Why?
- Do you think the annual conference should be commercialised? Should the registration fee be increased accordingly?
- Should the annual conference be held separately from the Hui-a-Tau?
- Should the annual conference be open to non-members?

### 9.4 Funding and external relationships

- Does THRMOA receive sufficient funding to achieve its current objectives?
- If more funding is required, where could that funding coming from?

Could THRMOA be more useful and relevant to other organisations? For example, should THRMOA develop relationships with iwi and pan-Māori organisations so that its work is relevant to Māori communities?

### 10. Conclusion

We are consulting you, as members of our society, with an open mind. We encourage you to make a submission. We hope this consultation document assists you in doing so.

Your submissions must be received no later than 5pm on Friday 5 June 2009.

Once all of the submissions have been received, the Executive will review them and formulate a response which incorporates recommendations arising out of the consultation process. The recommendations will then be put to the members at this year's Hui-a-Tau for discussion and approval.

Te Hunga Roia Maori O Aotearoa Maori Law Society Inc.

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