



Ngā tāpaetanga a Te Hunga Rōia Māori o Aotearoa

Submissions of Te Hunga Rōia Māori o Aotearoa – The Māori Law Society

Te rā 21 o Poutū-te-rangi 2022

To: Ministry of Business, Innovation & Employment

Re: Te Ara Paerangi – Future Pathways Green Paper

A. Kupu whakataki | Introduction

1. **Te Hunga Rōia Māori o Aotearoa – the Māori Law Society (THRMOA)** was formally established in 1988. Since then, the Society has grown to include a significant membership of legal practitioners, judges, parliamentarians, **legal academics, policy analysts, researchers and Māori law students**. Our vision is **Mā te Ture, Mō te Iwi – by the Law, for the People**.
2. THRMOA encourages the effective networking of members, makes submissions on a range of proposed legislation, facilitates representation of its membership on selected committees, and organises regular national hui which provide **opportunities for Māori to discuss and debate legal issues relevant to Māori**.
3. When making submissions on law reform, THRMOA does not attempt to provide a unified voice for its members, or to usurp the authorities and **responsibilities of whānau, hapū and iwi, but rather, seeks to provide a whakaaro Māori based legal analysis and submissions on law reform**.
4. THRMOA welcomes the opportunity to make written submissions to the Ministry of Business, Innovation & Employment (MBIE) on the Te Ara Paerangi – Future Pathways Green Paper (Green Paper).

He whakarāpopototanga | Summary

5. This submission will make some general comments regarding our position on the reform generally as that pertains to the Wai 262 claim and the Waitangi Tribunal report ***Ko Aotearoa Tēnei*** (Wai 262).¹ We then make some high-level comments in relation to some of the key themes of the Green Paper, namely:
 - i. Embedding Te Tiriti and ensuring a Te Tiriti led system

¹ Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (WAI 262, 2011).



- ii. Research priorities
 - iii. Te Tiriti, mātauranga Māori, and supporting Māori aspirations
 - i. Engagement
 - ii. Mātauranga Māori
6. However, overall, **the submission’s focus is on how the Government can achieve its goal of embedding Te Tiriti and ensuring a Te Tiriti led Research, Science and Innovation (RSI) system.** As such, we have chosen not to respond to the specific questions posed in the Green Paper, although we consider our comments inform those questions.
7. THRMOA also notes our endorsement of the *Te Pūtahitanga: A Tiriti-led Science-Policy Approach for Aotearoa New Zealand* Report and in particular the specific findings and recommendations contained within that Report as well as the Te Pūtahitanga submission on the Green Paper.²

Ngā tāpaetanga a THRMOA | THRMOA Submissions

(i) General comments

8. THRMOA supports the Green Paper’s focus on embedding Te Tiriti o Waitangi (Te Tiriti) across the design and delivery attributes of the system, **and enabling opportunities for mātauranga Māori**, we well as ensuring the RSI system is Te Tiriti led. However, we remain apprehensive about the overall reform to the RSI system when the broader intellectual property system (IP system) still requires work to reflect true partnership. Therefore, notwithstanding the positive elements of the Green Paper, we consider the reform is inherently limited until broader constitutional conversations take place **regarding true partnership and the rights of Māori** under Te Tiriti.
9. As the RSI system is intimately connected to the IP system, any limitations or risks that exist within that system will be replicated in the RSI system. Currently, the IP system does not protect traditional knowledge, **mātauranga Māori, Māori relationships with native plant species, and therefore is not consistent with New Zealand’s obligations under the Te Tiriti, the Convention on Biological Diversity (CBD), and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRI P).**

² Ngā Pae o te Māramatanga. (2021). *Te Pūtahitanga: A Tiriti-led Science-Policy Approach for Aotearoa New Zealand*. www.maramatanga.co.nz/publication/te-p-tahitanga-tiriti-led-science-policy-approach-aotearoa-new-zealand



10. Further, THRMOA considers this reform should also include consideration of **New Zealand's position in relation to the Nagoya Protocol**, including how New Zealand regulates the discovery and subsequent use of genetic resources and protects mātauranga Māori in genetic resources, and the development of a bioprospecting regime or access and benefit sharing protocols that are Te Tiriti compliant.
11. The above types of reforms were envisaged as part of the response to Wai 262 **as they are relevant to the protection of mātauranga Māori and kaitiaki relationships**. As such, these reforms are directly relevant to the RSI system and in particular the **Green Paper's** questions concerning the **protection of mātauranga Māori**.
12. We consider these are matters of urgency given that the RSI system **proposes to engage further with mātauranga Māori**. As such, without the adequate protections in place within the IP system, the risks to mātauranga Māori and kaitiaki relationships not only remain but may increase under the proposed RSI system.
13. THRMOA encourages the Government to continue working towards a fully inclusive IP system that:
 - i. **recognises and protects traditional knowledge and mātauranga Māori;**
 - ii. **recognises and protects Māori relationships, including kaitiaki relationships, with native species;**
 - iii. is based on Te Tiriti **including an ongoing partnership with Māori;**
 - iv. **gives effect to New Zealand's obligations under the CBD and UNDRIP;**
 - v. **considers a review of New Zealand's accession to the Nagoya Protocol; and**
 - vi. **works with Māori to develop a bioprospecting regime and ABS protocols that are Te Tiriti compliant.**
14. While THRMOA acknowledges that the reform seeks (in part) to respond to Wai 262, for this to happen in a meaningful way, there is a broader constitutional conversation that needs to occur. This was a key aspect of Wai 262, which sought constitutional review and, in particular, focused on *true* partnership, with *shared decision making between Māori and the Crown*. In essence the claimants sought '**Māori control over things Māori**'. This is particularly relevant to the RSI reform as there needs to be a devolution of power, including a devolution of **funding to ensure that Māori**



have exclusive spaces and funding to undertake Māori research and development in a Māori way.

15. THRMOA also notes there has been no mention of Te Pae Tawhiti, the whole of Government response to Wai 262 that was released in 2019. This response was created with the aim of discussing longstanding issues raised by Wai **262 and Ko Aotearoa Tēnei**.³ Notwithstanding the direct relevance of Te Pae Tawhiti to the matters addressed in the Green Paper, there has been little to no information released since 2020. This is disappointing and demonstrates the importance of coordinated reform across related policy areas.
16. However, notwithstanding THRMOA's concerns, we note that we consider the approach proposed within the Green Paper positive and a necessary step in the right direction, particularly as it acknowledges the relevance and importance of ensuring that the RSI system responds to and addresses the issues and recommendations identified in Wai 262.

(ii) *Green Paper*

a. *Embedding Te Tiriti and ensuring a Te Tiriti led system*

17. Embedding Te Tiriti requires a true partnership approach to the design and development of *every* stage of the RSI reform. Importantly, while co-design, co-development and co-governance are essential, to embed Te Tiriti there must also be separate spheres **that recognise and enable "by Māori for Māori" RSI**. For example, this will require separate Māori RSI institutions as well as devolution of funding that is allocated *exclusively* for Māori research and development, to enable Māori to exercise tino rangatiratanga in substance.
18. Adequate resourcing and funding are integral to embedding Te Tiriti. **Lack of adequate funding is a key barrier to building Māori capacity and capability and enabling Māori to engage as an active Te Tiriti partner.** Therefore, funding and resourcing is integral to the success of the RSI reforms and building Māori capacity and capability. Such funding must include:
 - i. Māori RSI;
 - ii. building intergenerational capacity and capability through initiatives aimed at increasing rangatahi Māori in STEM;

³ Te Puni Kōkiri (2019) Wai 262 – Te Pae Tawhiti The role of the Crown and Māori in making decisions about taonga and mātauranga Māori.



- iii. **building the Māori RSI workforce such as building technical capacity and knowledge in RSI.**
19. In terms of funding, it is essential that decision-making regarding the use of **funding sits with Māori. Funding that embeds Te Tiriti must enable Māori** to undertake RSI according to their own values and priorities. As such, prescriptive funding models will only reinforce the status quo and impede **Māori RSI. We highlight the recommendation of Te Pūtahitanga regarding** the development of Tiriti-based guidelines for RSI funding. Such guidelines will ensure funding is equitable, embeds Te Tiriti and enables the realisation of **Māori aspirations.**
20. In addition to **separate Māori institutions and funding streams, Māori must** also have governance roles within key RSI institutions such as universities and Crown Research institutes. Such positions will ensure that the use and **development of mātauranga is Māori** led and controlled, which is integral to its protection. Further, these institutions must actively seek to decolonise and shift their approach to **mātauranga and tikanga Māori. While traditional** Western science is **not inconsistent with mātauranga and tikanga Māori**, it has been used to undermine and suppress these forms of knowledge.
21. We recommend MBIE seeks guidance from He Puapua (Report of the Working Group on a Plan to Realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand)⁴, as this sets out what a **Te Tiriti led system could look like and notes the importance of Māori exercising authority over Māori matters as agreed by Māori, such as the development and protection of mātauranga Māori.**

b. Research priorities

22. THRMOA supports the use of research priorities to guide and direct the RSI system and the associated funding streams. However, these priorities must **reflect Māori aspirations**, which requires **Māori interests and aspirations to** be central to all aspects of the RSI and its associated reform. Further, there must be **meaningful and substantive opportunities for Māori to input and influence the RSI priorities, decisions and outcomes. This requires Māori to** be substantively included at every stage of the policy development process. As discussed further below, this will require more than traditional forms of consultation and engagement as well as include a devolution of power and resources.
23. We note that following consultation on this Green Paper, a strategy document (the White Paper) will be produced that will set out directions for

⁴ *He Puapua: Report of the Working Group on a Plan to Realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand* (2019).



policy development and **provide greater certainty about the Government's preferred direction.** It is integral that the interests of iwi, hapū, and Māori generally, are reflected in this White Paper for Te Tiriti to be embedded within the RSI system. The absence of such aspirations and priorities will reflect a process that has not been Te Tiriti led and which has failed to embed Te Tiriti.

24. **Ensuring research priorities reflect Māori aspirations and priorities will also be key in ensuring funding is equitably allocated across the RSI system as we assume that funding allocation will reflect these research priorities.** The challenges facing Aotearoa are numerous, and the RSI system provides an **opportunity to respond to, and solve, these challenges in a Māori way.** This is particularly important, because many of the key challenges facing Aotearoa such as emissions reduction, climate change adaptation, land use transition and waste reduction, have been recognised as likely to **disproportionately impact Māori.** Therefore, the **prioritisation and funding of Māori interests is integral to embedding Te Tiriti as well as ensuring the RSI systems responds to the current challenges facing Aotearoa.**

*c. **Te Tiriti, mātauranga Māori, and supporting Māori aspirations***

*i. **Engagement***

25. **The Green paper has identified that responsiveness to Māori in the current RSI system is weak and models of engagement poor, with stakeholders noting that considerable work was required to improve the system's interaction with Māori at multiple levels.** As noted above, for this reform to be Te Tiriti led and to embed Te Tiriti, engagement must go beyond traditional forms of consultation and reflect true partnership. This requires substantive engagement, which may include seeking consensus or agreement or in the language of UNDRIP, obtaining Free Prior and Informed Consent (FPIC) where relevant.
26. The Waitangi Tribunal has provided guidance on Te Tiriti compliant engagement, which, in some cases, requires compromise or the need to obtain FPIC. Importantly, the reports all emphasise the principle of partnership, exercised in good faith, and the duty of active protection. As such, we consider MBIE should seek guidance on the appropriate level of **engagement with Māori in the RSI space.** As a first start, we would recommend that MBIE review the Tribunal jurisprudence on consultation and engagement beginning with Wai 262 given its focus on the protection of **mātauranga Māori and kaitiaki relationships.**
27. Further, it is integral that engagement in ongoing and iterative to ensure **that Māori** are able to inform all aspects of the RSI reform as it progresses. To achieve embedment of Te Tiriti and ensuring the process is Te Tiriti led, **Māori must be included from the beginning as engagement is essential to**



ensuring Māori interests and Te Tiriti are central to the RSI reform, which is necessary to be able to determine Māori aspirations and priorities.

ii. **Mātauranga Māori**

28. The Green Paper notes the research system needs stronger and explicit **processes, procedures and mechanisms to ensure that mātauranga Māori** is not misappropriated within our system, and the mana or mandate for its use is appropriately retained by Māori or kaitiaki. THRMOA agrees, noting that given the increased focus on the use of mātauranga Māori, which is positive, there are increased risks particularly within an RSI system that does not adequately recognise and protect that knowledge. Further, as a taonga, the Crown have a duty to ensure its protection.⁵
29. As noted, the use and development of mātauranga Māori must be Māori led and controlled, which requires adequate funding and resourcing, the **inclusion of Māori in governance of RSI institutions, and separate Māori RSI institutes**. Further, mātauranga Māori must be adequately protected and recognised as a system of knowledge. This is imperative because **mātauranga Māori is part of a broader knowledge system within te ao Māori** that has its own tikanga and kawa. As such, **mātauranga Māori must be recognised in light of this broader knowledge system, rather than compartmentalised or reduced in a way that makes sense to those not accustomed to this broader knowledge system**.
30. A Te Tiriti led RSI system would provide adequate protection and properly **acknowledge and recognise the value Mātauranga Māori brings to RSI**. Further, as noted in Wai 262, a genuine commitment to the principles of Te Tiriti implies not only kaitiaki control of taonga where justified but also “a genuine **infusion of the core motivating principles of mātauranga Māori** – such as whanaungatanga and kaitiakitanga – into all aspects of our national life.”⁶
31. In terms of practical measures to protect mātauranga Māori within the RSI system, we **emphasise Te Pūtahitanga’s recommendation of the establishment of an autonomous Māori Commission/Entity that will provide leadership over mātauranga Māori including Māori knowledge priorities** that extend beyond the RSI sector. Further, the Tribunal in Wai 262 recommended the preparation of adequate ethical guidelines and codes of conduct for use by those in research and development, and in the education sector more broadly where mātauranga Māori and/or tikanga is concerned.⁷

⁵ Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (WAI 262, 2011); Waitangi Tribunal *Report on the Crown’s Review of the Plant Variety Rights Regime* (WAI 2522, 2020).

⁶ WAI 262, at 248.

⁷ WAI 262, Te Taumata Tuarua (Volume 1) at 212.



32. However, as discussed, the question of protection and recognition also relates to the broader IP system, which does not adequately protect or **recognise mātauranga Māori**. The lack of adequate protection and recognition in the IP system risks undermining any proposals for the **protection of mātauranga Māori within the RSI system**.

In Closing

33. THRMOA **supports the reform’s focus on embedding Te Tiriti and ensuring the reform and RSI system is Te Tiriti led**. Achieving embedment will require ongoing substantive engagement and an RSI system that results in **a devolution of power and resources to Māori**. **However, we note that** more work is required to ensure a fully inclusive intellectual property regime that reflects the vision in Wai 262 that ensures that **mātauranga Māori and kaitiaki relationships are fully recognised and protected**.
34. THRMOA expects to be informed regarding this kaupapa, including any progress and developments and any further consultation.
35. **Should you have any pātai or wish to discuss any aspect of our submissions**, please feel free to contact Toni Love at [Privacy - 9\(2\)\(a\)](#).

Ngā mihi nui ki a koutou

Toni Love
On behalf of THRMOA