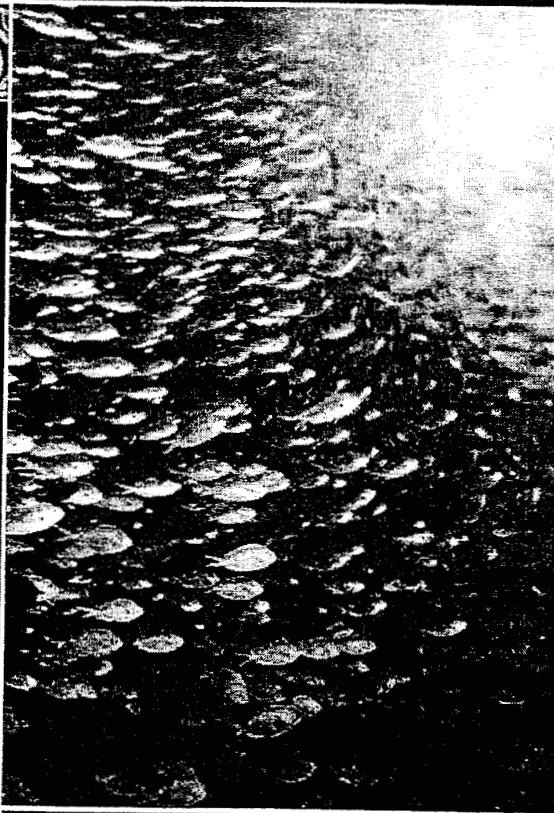
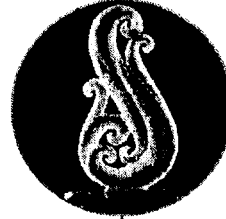


He Tohu Arahi

'A GUIDE TO REPRESENTATION
ON IWI ORGANISATIONS'



2001



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introduction

This panui is to let you know what is required before your Iwi is in a position to receive its share of the Maori Commercial Fisheries Settlement assets, currently held by the Treaty of Waitangi Fisheries Commission (Te Ohu Kai Moana).

While the Maori Commercial Fisheries Settlement is ultimately for the benefit of all Maori, allocation of fisheries assets will be to representative Iwi organisations. Iwi are defined as “traditional Maori tribes”.

As part of protecting the fisheries assets that belong to your Iwi, all of the elected members of your representative Iwi organisations will have an obligation to act on behalf of all their members and to be accountable to those members. As a Maori affiliated to a particular Iwi, you are entitled to know the rules that set out how and when you can choose the people to represent you on your Iwi organisation.

It won't matter whether you live in the city or in the traditional rohe of your Iwi you must still have a reasonable opportunity to choose who will represent you on your Iwi organisation.

Te Ohu Kai Moana has set standards to ensure that each representative Iwi organisation is accountable, and remains accountable, to those members. It has set particular constitutional requirements each Iwi organisation must meet before it receives its share of the settlement, and this booklet explains those requirements and their particular purpose.

The Maori Commercial Fisheries Settlement

In 1989, Maori and the Crown reached an interim agreement that a significant portion of New Zealand's commercial fisheries should return to Maori ownership as part settlement of claims under the Treaty of Waitangi for recognition of commercial fishing rights.

These assets are called the “Pre-Settlement Assets” or **PRESA** and are now worth about \$330 million.

In **1992**, when Sealord Products Limited was put up for sale, Maori claims to a portion of New Zealand's commercial fisheries were finalised. This resulted in a memorandum of understanding signed in August 1992 and a Deed of Settlement in September of that year. This set of assets – the “Post-Settlement Assets” or **POSA** – is worth about \$336 million.



What all Iwi organisations need to do

In order to receive their share of these assets, there are two important things that representative Iwi organisations must have set out in their constitutions or charters.

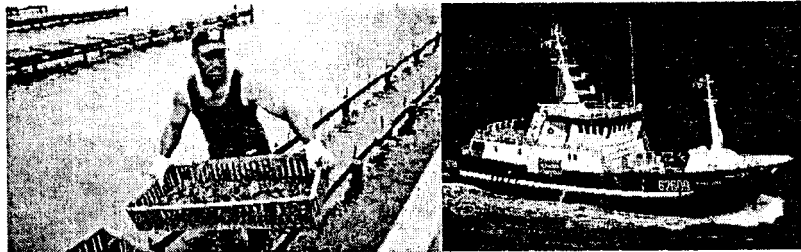
The constitution ensures that Iwi organisations can meet all the Te Ohu Kai Moana requirements to show they are representative of their members. That means holding regular elections, setting up a register of Iwi members, and holding annual general meetings along with a few other requirements. These are all outlined in this booklet.

The other important step is that representative Iwi organisations must have appropriate organisational structures in place. This means that the different key functions carried out by the representative Iwi organisation are separated for the sake of accountability and transparency. For example, Iwi organisations need to ensure the “income-making” stream of the Iwi is separated from the “benefit-distribution” stream of the Iwi. These requirements and their reasons for them are to be detailed in another booklet, “Iwi Structures”.

The relationship of the Iwi organisation with hapu and marae

In summary it is vitally important for all Iwi members – especially Iwi members' representatives – to know exactly what the responsibilities of those representative are and to whom they should answer.





Te Ohu Kai Moana is often contacted by Maori who say that they do not want the Iwi organisation *“telling our hapu [or marae] what to do”*.

Our view is that the Iwi organisation will be the most appropriate body to deal with some issues and others would best be dealt with at individual hapu or marae level.

An Iwi organisation is the sum of its constituent hapu and/or marae. However, it needs to be kept in mind that each hapu-Iwi relationship is unique and what applies to one Iwi may be entirely inappropriate for another. Therefore, it is for the collective constituent hapu and marae to decide how their Iwi organisation will exercise its representative role.

Iwi organisation’s constitutions and the right to vote

Te Ohu Kai Moana believes that Iwi members must have reasonable opportunity to choose their representatives. The representatives are those who will decide the broad targets and policies the commercial arm must follow in managing the fisheries assets and how benefits will be distributed. These elected representatives will be required to act according to the provisions laid out in the constitution, so that they are fully accountable to Iwi members for their actions.

A constitution, or charter, sets out the rules that an Iwi organisation must follow. A constitution will state that elected Iwi representatives are not able to act outside the powers that have been assigned to them. It will also set out the rights of Iwi members and the processes available to limit the actions of representatives who are acting outside the powers assigned to them in the constitution.

Constitutions might differ from Iwi to Iwi, but they must contain each of the kaupapa set out on the next page:

- The constitution must acknowledge the Iwi organisation’s obligation to act for all members of the Iwi,
- Iwi membership **is** a right open to all who affiliate to the Iwi by whakapapa
- Voting in elections must be confined to those who affiliate to the Iwi by whakapapa,
- Iwi members shall have the right to request a postal vote to elect representatives or consider amendments to the constitution,
- All Iwi organisations shall establish and maintain a register of Iwi members
- The Iwi organisation must hold an Annual General Meeting, where the Iwi organisation will furnish to members an annual plan, an annual report and annual audited accounts, and
- Proposals to amend any part of the Iwi organisation’s constitution pertaining to Te Ohu Kai Moana kaupapa and aratohu must receive at least a seventy five per cent [75%] majority of votes cast.





KAUPAPA 1: THE CONSTITUTION MUST ACKNOWLEDGE THE IWI ORGANISATION'S OBLIGATION TO ACT FOR ALL MEMBERS OF THE IWI.

The Maori Commercial Fisheries Settlement is for all Maori. Each Iwi organisation has an obligation to represent all members.

KAUPAPA 2: MEMBERSHIP, EXPRESSED AS THE RIGHT TO PARTICIPATE IN CHOOSING REPRESENTATIVES ON THE IWI ORGANISATION, IS OPEN TO ALL THOSE WHO AFFILIATE TO THE IWI BY WHAKAPAPA.

Membership of an Iwi is by whakapapa. It follows that an Iwi member cannot cease to be a member of that Iwi or lose rights to choose representatives for the Iwi. Individuals who wish to register with their Iwi organisation may be required to provide sufficient information to validate their whakapapa.

All members have the right to participate in elections to choose the representatives on their Iwi organisation. The body that represents the Iwi is sometimes known as the 'runanga' or 'board' or 'tribal council' and various other terms. Representatives are often referred to as 'Tustees' or 'Board Members'.

KAUPAPA 3: VOTING RIGHTS IN IWI ELECTIONS AND MATTERS RELATING TO CONSTITUTIONAL AMENDMENTS ARE CONFINED TO THOSE WHO AFFILIATE TO THE IWI BY WHAKAPAPA

KAUPAPA 3(A): ALL ISSUES RELATING TO WHANGAI SHOULD BE ENTIRELY DETERMINED ACCORDING TO THE TIKANGA OF EACH IWI. ACCORDINGLY, THE MATTER OF WHANGAI VOTING RIGHTS REMAINS AT THE DISCRETION OF EACH IWI ORGANISATION

only Maori who whakapapa to a particular Iwi should have the right to elect persons to represent them on that Iwi organisation. However, this requirement does not prevent Iwi members from choosing non-Iwi members to represent them.

Kaupapa 3, however, is closely linked to Whangai Voting Rights, which Te Ohu Kai Moana acknowledges are firmly grounded in the tikanga of each Iwi.

KAUPAPA 4: INDIVIDUAL IWI MEMBERS SHALL HAVE THE RIGHT TO REQUEST AND EXERCISE A POSTAL VOTE IN ANY PROCESS THAT ELECTS REPRESENTATIVES TO THE IWI ORGANISATION OR CONSIDERS AMENDMENTS TO THE CONSTITUTION

Te Ohu Kai Moana fully acknowledges the vital role that hui play in the affairs of Iwi. It is normal for elections to be carried out at hui and most Iwi organisations provide for this in their constitutions, although some Iwi conduct full postal votes.

Given the number of Iwi members who no longer live in their rohe, and being aware of the importance of giving reasonable access to Iwi members to take part in elections, Te Ohu Kai Moana has formed the view that Iwi members should be provided the option of attending hui for election of Iwi representatives or of requesting a postal vote. Under these circumstances it would be the responsibility of each individual Iwi member to provide a written request for a postal voting form within the period provided.

In order to give effect to this right, Iwi organisations have an obligation to ensure that any requests for an individual postal vote are granted. Iwi organisations might be wary of providing postal votes to people who have not confirmed their whakapapa. and Te Ohu Kai Moana considers it a reasonable stance if Iwi constitutions state that postal voting provisions will only be met for registered Iwi members. This implies that the Iwi organisation will provide fair opportunity for members to register.

It is important to note that the postal vote provision applies only to those Iwi members who request the postal vote. It does NOT mean that if one Iwi member requests a postal vote that the Iwi organisation must send a voting form to every known Iwi member.



KAUPAPA 5: ALL IWI ORGANISATIONS SHALL ESTABLISH AND MAINTAIN A REGISTER OF IWI MEMBERS

The use of an Iwi register as an administrative tool will become increasingly important as the Iwi resource base increases, both from fisheries and other Treaty settlement outcomes. In particular they will be a vital tool in providing postal voting rights. Registers can help determine who is eligible to participate in Iwi affairs at any given time, and to benefit from any fisheries income.

Te Ohu Kai Moana believes registers are essential and expects all Iwi organisations to establish and maintain an Iwi register before allocation occurs. Iwi organisations might keep in mind that maintenance of registers will be a much more cost-effective process once the Maori Registration Service is established.

KAUPAPA 6: THE IWI ORGANISATION MUST HAVE AN ANNUAL GENERAL MEETING AT WHICH IT WILL PROVIDE TO IWI MEMBERS, AN ANNUAL PLAN, AN ANNUAL REPORT AND ANNUAL AUDITED ACCOUNTS

Reporting to Iwi members is a key part of accountability. Normally this is carried out at an Annual General Meeting (AGM) or Hui-a-Iwi. An AGM is the occasion where elected representatives can tell their people how money has been earned and spent, what the representatives have done, and to seek Iwi members' approval for what the representatives want to do in the next year.

KAUPAPA 7: CONSTITUTIONAL AMENDMENTS TO ANY OF THE KAUPAPA AND ARATOHU SET BY TE OHU KAI MOANA REQUIRE AT LEAST A SEVENTY FIVE PER CENT [75%] MAJORITY OF VOTES CAST TO BE CARRIED

A well-designed constitution provides certain measures that exist to ensure accountability of Iwi representatives, but also to protect Iwi representatives from unreasonable actions taken by Iwi members. Therefore, a constitution should not be able to be changed without widespread approval from Iwi members.

The constitution should specify that amendments can be made only after the reasonable opportunity for participation by all Iwi members has been provided. Acting alone, the executive body cannot alter the constitution. A seventy five per cent [75%] majority of votes cast at a properly notified hui would be essential to carry any amendments which change any clauses which set out Te Ohu Kai Moana's kaupapa and aratohu. Postal votes would be valid. This requirement does not apply to parts of the constitution which do not set out Te Ohu Kai Moana kaupapa and aratohu, for example it would be ridiculous to insist on this full process to register a change of address.

Nga Aratohu

The seven kaupapa are the basic principles that Te Ohu Kai Moana has applied to the constitutions of Iwi organisations to ensure accountability. The aratohu that follow are the mechanisms to help give effect to those kaupapa.

ARATOHU 1; A recommended **minimum of 21** days notice in the appropriate media must be given before Iwi **AGMs**, elections or hui to consider constitutional amendments; details should be published in the public notice **or** be readily available on request by individual **Iwi** members.

For matters of such significance 21 days notice, in the appropriate media, is considered to be a reasonable minimum. The notice would have to indicate that elections or constitutional amendments were part of the agenda. The notice should provide the relevant details or otherwise give a postal and telephone/facsimile (and perhaps e-mail) address, where the details can be readily obtained by Iwi members.

Some Iwi organisations have told the Commission that this minimum period actually makes things easier for their administration staff who are not having to rush things before the hui. Once an Iwi organisation has its administrative practices in place these policies should happen automatically as they come up on the calendar.





Iwi organisations remain at liberty to decide that, in the interests of providing access for wide participation, they advertise well in advance of the suggested minimum periods, but that is up to them.

ARATOHU 2: Notice of elections shall call for nominations in writing to be received at the Iwi office at least five working days before the hui or election; any Iwi member who wishes to exercise a postal vote shall make that request, in writing, to be received at the Iwi office at least five working days before the hui and/or election is due to take place

The notice of elections calls for nominations in writing to be lodged with the Iwi office a set number of days before the election process. This will enable postal voting forms to be sent out to any Iwi member who **has** requested them so that they can be returned in time to be counted. If all votes were to be counted on the day of the hui then – in order to allow for return mail – a minimum of five working days would be necessary.

ARATOHU 3: Iwi organisations are required to advertise any processes involving elections or proposed constitutional amendments, and all annual general meetings, in any area containing significant concentrations of their members

Many Iwi organisations only give notice of hui in their local media. In many cases, they have significant concentrations of Iwi members living elsewhere in the country, especially in the big cities. Clearly, if those iwi members are **to** have the opportunity to be involved they must be made aware **of** hui. This justifies a requirement that Iwi advertise [at least for AGMs, and **any** electoral process or proposed constitutional amendments] in any area containing significant concentrations of their members.

This “significant concentration” could be determined on a case-by-case basis, as Te Ohu Kai Moana holds Census data for all Iwi. Te Ohu Kai Moana does not expect small Iwi, in particular, to advertise in areas where only a handful of their members reside, as this would put an unreasonable financial burden upon the Iwi organisation.

ARATOHU 4: Constitutions shall state the period of office of elected representatives, that period not to exceed five years

It is normal for persons to be elected to office for a defined period of time. The most common period is three years. If the period is too short it may not give the elected representative time to “learn the ropes” but if it is too long it does not give Iwi members the opportunity to confirm that they are happy with the representative by re-electing him or her; nor does it give them reasonable opportunity to replace them in a fair and open election. Te Ohu Kai Moana’s preferred period is three years.

ARATOHU 5: If an Iwi organisation decides to provide for alternates to the elected representatives, each alternate must be elected by, and as part of, the same process which elected the particular representative onto the Iwi organisation.

An alternate is a person appointed or elected to stand in at a meeting of the Iwi organisation for an elected representative who cannot attend for whatever reason.

Some Iwi say that if a person is elected to represent their members then it is their individual responsibility to attend trustees’ meetings.

Other Iwi say that provision for alternates means that a wider range of representation is available at each meeting, and allow executive members to nominate alternates [or “proxies”] to attend, and vote at, executive meetings on their behalf. Te Ohu Kai Moana contends that a danger exists





that giving elected representatives the right to choose whoever they want to act as their alternate has the potential for persons not elected by their marae/hapu/takiwa, to “represent” them on the executive.

In Te Ohu Kai Moana’s view the use of alternates at executive meetings is something individual Iwi organisations must decide. Whatever the decision on allowing alternates – “yes” or “no” – it should be written into the constitution or charter of the Iwi organisation.

ARATOHU, 6: Iwi organisations shall make a copy of their constitution available for viewing by Iwi members at their Iwi office in normal office hours, and available by post on request, on a cost recovery basis if necessary

The constitution of the Iwi organisation is the key document that, apart from setting out the rights and responsibilities of both Iwi members and the board members, will set out the relationship between the Iwi organisation and its subsidiary structures, such as the fisheries asset management body and the body which delivers benefits to Iwi members.

Therefore, it is necessary that all Iwi members have the opportunity to either view the constitution or receive a copy when they request it.



Te Mutunga

The issues covered in this booklet are some of the most important issues facing Iwi. Te Ohu Kai Moana urges all Maori to contact their Iwi organisation to find out more information about its constitution and the ability to participate in elections and to choose your leaders.

For more information from Te Ohu Kai Moana, please write to:

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