**Legal Framework for Burial and Cremation in New Zealand**

 First Principles Review



Submission from Public Issues Network of the Methodist Church of New Zealand,

Te Hāhi Weteriana o Aotearoa

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## Contact

Betsan Martin PhD

Co-ordinator, Methodist Public Issues

 PO Box 12 297, Thorndon, Wellington 6144

Email: betsan@publicquestions.org.nz

Ph. 04 473 2627 / 64 (0) 21 388 337

## Public Issues Network

Methodist Public Issues is a network of approximately four hundred members and over two hundred parishes concerned with public issues.

Members are from the constitutive partners of the Methodist Church: Te Taha Māori and Tauiwi. Tauiwi is comprised of eleven synods, eight of which are regional synods with ethnically diverse membership. The other three are Sinoti Samoa, Vahefonua Tonga and Wasewase ko Viti Kei Rotuma e Nuisiiladi (Fiji and Rotuman). The synods function within the Laws & Regulations of the church, and the three cultural synods provide for culturally appropriate ways of functioning.

There are ecumenical groups associated with the Public Issues Network as well. The Methodist church as a whole has approximately 200,000 members.

# Submission

## Introduction

This submission is from Public Issues of the Methodist Church, Te Haahi Weteriana o Aotearoa.

We appreciate that the Review Paper raises a number of issues, including discussion of bringing the management and planning of cemeteries under the RMA and devolving it to the local level. The overview of historic development of law and regulation provides an excellent orientation to the discussion. Proposals for more accessible and appropriate fora for resolving disputes through the District Court and the Maaori Land Court are also helpful.

This submission is brief due to time constraints. It makes a contribution on a framework for law revision, to strengthen respect for tikanga Maaori that is also beneficial for Pakeha and the increasingly diverse population of Aotearoa New Zealand. There will be submissions from other groups in the church. Most notably we know of the interest of Te Taha Maaori, the tangata whenua partner of Te Haahi Weteriana, in contributing to this discussion.

One of the main themes of this Review for public consultation is the need to update legislation on burial and cremation. The Review paper is very helpful in setting out provisions for Maaori burial and in noting some of the issues of tikanga and how these are different from the views and practices of non-Maaori. One example is the European practice of scattering ashes in rivers, which transgresses tikanga and is contrary to M**ā**ori world views.

 Main points if interest for the purpose of this submission:

1. The comment ‘as a society we are increasingly concerned with protectin g the autonomy and dignity of the individual and the rights of freedom of expression (para 45, p. 11)
2. Opening up the scope for burial on private land (para 51. P. 12)
3. There is no specific regulations governing the scattering or disposal of human ashes (Para 57, p. 13).
4. Issues of Custom Law / Tikanga M**āori** (para 72-77, pp. 17-18)
5. Resolutions of disputes (para 87 ff. p. 20

We note that while there is reference to the exception of urup**ā** in the 1882 Statute (papra 32) burial on urup**ā** ((para 24) detail of the regulations covering urup**ā** are not given (in the Summary).

## Philosophy, Values and Tikanga for Burial

The Review addresses matters of decisions about burial in the face of different understandings of who has authority to decide where a burial should take place in the context of a dispute. While there is growing understanding of different cultural approaches and of Te Ao Maori in the Pakeha world, this is a matter that exposes significant gaps between the more individualized approaches of nuclear families, where a husband or wife might be presumed to have decision-making authority over a spouse’s burial. Custom in Te Ao Māori, would vest authority about burial in the hapuu and Iwi. These are somewhat reductionist charicatures, as in many situations Pakeha clearly provide for extended family involvement, and in Te Ao Māori,, whanau and individuals express preferred views.

As a church with significant Pacific membership, we would add that Pacific custom for burial in Island nations is different again, because in Pacific Island contexts people live on ancestral land. In the context of Aotearoa there is likely to be a shared understanding of the role of village leaders, people with chiefly status such as Matai, and Ministers to have a role in decisions about burials and in arbitrating where there is dispute.

We note the attention to the growing cultural diversity in Aotearoa New Zealand in the Review, and the need for our law to be sensitive to newer cultural practices and make provision for these.

This submission invites the Law Commission Review to consider a proposal that challenges the individualization of interests, and legal protections that favour individualized interests. These are likely to become aggregated so that effectively majority interests prevail, and over-ride and disrespect the tikanga, custom and world view of Te Ao Maaori.

## Burials on Private Land

We bring to the attention of the Review some concerns regarding discussion and proposals for burials on private land. We understand that urupā on Māori land may be designated as ‘private’ land or reserved land.

We wish to ensure that burials in urupā remain under the authroity of hapuu and Iwi, and that tikanga propotols are fully protected. In the reform option ‘providing greater scope for individuals to be buried on private land’ (para 51) there is no specific reference to including urupā in this ‘opening up’, any new regulations need to be sure to exclude urupā from this option.

There is a further concern about opening private land to burials, such as farm land. This would propose that any burials on private land (apart from urupā) require a change of designation to Reserve Land. Provision needs to be made for land used for burial to be excluded in the transfer of land ownership that is intrinsic to land in fee simple title. Otherwise interred bodies become part of the buying and selling aspect of private property.

## A Framework

We propose that consideration be given to Te Tiriti o Waitangi as an overarching framework for updating legislation on burials and cremations. This would give effect to Te Tiriti as a founding document that has greater cogency on matters of burial and cremation in the contemporary world.

A Te Tiriti framework would enable due respect to be given to tikanga in burials, and provide a reference that ensures that proper regard be given to tangata whenua protocols for death and burial. The preamble to Te Tiriti is important in considering such a provision. The Preamble sets out an intention of peace and goodwill to protect the’ just rights and property’ of the Māori people and to ‘preserve rangatiratanga’ in the face of current and anticipated ‘evils’ that arise from immigration and lawlessness.

The Articles allow for governance that takes account of the interests of all citizens, while ensuring due regard for tino rangatira. Under the ‘religious freedom’ statement, Custom is guaranteed.

A Te Tiriti framework would be designed to build more robust safeguards for Custom with regard to burial and cremation (acknowledging burial is traditionally favoured). Legal protections for tikanga would bring a profound symbolic and practical recognition if Tikanga Maaori and generate a new level of recognition and respect for Custom Law. At present there is no legal protection for burial and disposal of ashes that requaires regard for Tikanga Māori. For instance there could be a law prohibiting the scattering of ashes in rivers. This would give a strong position nationally for the world view of Te Ao Maori.

A Te Tiriti framework would take us forward as a country in recognizing indigenous interests and in providing a framework that is beneficial for all citizens. A majoritarian approach to decisions about burial and cremation brings the strong tendency for Māori interests to be over-ridden, and for the concerns of tangata whenau to be assessed in minority terms. This tendency is not necessarily identified in the discussion document – rather it is an historical reality which is a risk of repetition when weighing different cultural interests.

## Procedures for Managing Disputes

A Te Tiriti o Waitangi framework to revised legislation and regulations for burial and cremation will not solve all disputes, including the specific issues of the *Takamore* case outlined in the Review. However it will provide a framework with provision for Tikanga Māori, and non Māori of diverse cultural affiliations.

The discussion on procedures to resolve disputes is clearly elaborated. We appreciate the more localized procedures proposed through the option of the Family Court to solve disputes, identified in Question 18.

The option of giving the Māori, Land Court jurisdiction to solve matters involving Customary Law when all parties agree the dispute should be heard in this forum is considered and modified below in Proposal One (Question 19,p.21).

Neither of these options fully address the *Takamore* dispute, because it is an inter-cultural issue. In a case such as this it is unlikely that the non-Māori party would agree to proceeding through the Māori Land Court (as per the requirement in the proposal outlined.

**Proposal One:**

We submit that there be development of a procedure which has already being used, for Officers of the Māori Land Court to facilitate discussions between the parties.

**Proposal Two:**

Development of a model such as a Council of Elders with the authority to facilitate discussion and resolution between parties. Such a Council to be comprised of M**āori** and Non- M**āori** representatives from the District Court and the M**āori** Land Court, and include kaumatua/kuia (from the Iwi concerned) and people who can bring wisdom to the process, possibly Ministers involved with the burial /cremation. The challenge of such a council is that it needs to be convened quickly and must have the capacity for appropriate representation for the matter at hand.

The Methodist church works with a model of a Council of Elders, which represents Te Tiriti in the constitutional arrangements of the church, as well as the wider cultural membership of the church. The Council of Elders provides guidance where needed and acts as a steadying centre-board when the winds become turbulent.

## Conclusion

This submissions proposes a Te Tiriti framework for law and regulation on planning and management for burials and cremations. This would provide a plumbline for values and respect for tikanga Māori, while also giving an orientation that is beneficial to all New Zealanders in decisions about burials and cremations. It is proposed to ensure that tikanga and custom are given legal recognition in burial and cremation, and to give greater assurance of non- Māori (Pakeha and diverse cultures) respect for tangata whenua Custom and tikanga. Clearly a process of consultation for tikanga Maaori guidelines would need to take place.

We note the need for systems of dispute resolution, particularly brought to public attention through the *Takamore* case. Along with new authorization of the District Court and the Māori Land Court for such disputes, we propose a model that has the capacity to address inter-cultural disputes involving tangata whenua, such as a Council of Elders, with representatives from Iwi/hapuu and from Pakeha/non-Maori with the authority to make a decision. Such a model may be adjusted to respond to disputes between different cultural groups. It would need to have legislated status, while retaining attributes of flexibility and responsiveness.

We commend these proposals for your consideration

Warm regards

Betsan Martin for Methodist Public issues