

# Departmental Disclosure Statement

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Māori Purposes Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Te Puni Kōkiri.

Te Puni Kōkiri certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

29 May 2015

**Contents**

Contents..... 2

Part One: General Policy Statement ..... 3

Part Two: Background Material and Policy Information ..... 6

Part Three: Testing of Legislative Content..... 7

Part Four: Significant Legislative Features ..... 9

Appendix One: Further Information Relating to Part Three..... 11

Appendix Two: Further Information Relating to Part Four..... 13

## Part One: General Policy Statement

The Māori Purposes Bill is an omnibus Bill that amends the Māori Purposes Act 1991 (the principal Act), which governs the Wi Pere Trust (the trust), and the Māori Trust Boards (Transitional Provisions) Order 2012. The main purposes of the Bill are to—

- improve the governance arrangements for the trust; and
- enable the trust to acquire and hold general land for investment purposes; and
- clarify the relationship between the principal Act and Te Ture Whenua Māori Act 1993 (the 1993 Act); and
- correct a minor drafting error in the Māori Trust Boards (Transitional Provisions) Order 2012.

### Amendments to Māori Purposes Act 1991

The Wi Pere Trust was set up in 1899 to administer the estate of Wiremu Pere, his family, and co-beneficiaries. The trust subsequently became a statutory trust and is currently governed by the Māori Purposes Act 1991. The principal Act gives the Minister of Māori Affairs responsibility for certain aspects of the administration of the trust. All land held by the trust is currently deemed by the principal Act to be Māori freehold land, which is subject to the 1993 Act and Māori Land Court oversight. The trust is not, however, a trust established under the 1993 Act and not all provisions of the 1993 Act apply to the trust.

The aim of the amendments to the principal Act is to give effect to the wishes of the trust's beneficiaries and trustees to improve governance arrangements and the trust's operational capability.

The amendments to this Act—

- replace the trustees with an incorporated trust board with body corporate status and limited liability; and
- allow the trust board to adopt rules relating to internal management and governance, and set out the new trust board's initial constitution in new Schedule 1; and
- remove unnecessary ministerial involvement in the governance of the trust; and
- remove the provision deeming all land held by the trust to be Māori freehold land; and
- enable the trust to acquire and hold general land for investment purposes; and
- allow the trust to maintain its own register of beneficial interests; and
- clarify the interface between the principal Act and the 1993 Act, and the jurisdiction of the Māori Land Court.

#### *Incorporated trust board*

The trust currently operates as a statutory trust with 5 trustees. The Bill proposes to replace these trustees with an incorporated trust board, which will be the trustee for the trust. Incorporating the current trustees as a trust board provides more commercial flexibility, enables the easier registration of trust assets under 1 legal entity, and protects trust board members from personal liability, unless they incur liabilities due to dishonesty, wilful breach of trust, or lack of good faith.

#### *Internal management and governance through constitution*

The Bill requires the trust board to adopt a constitution and lists matters that must be addressed by the new constitution, including the election of trust board members and their removal. The constitution may also address other issues as long as these are

consistent with the Bill and other applicable legislation. The initial constitution developed by the current trustees, after consultation with beneficiaries, is inserted into the principal Act as new Schedule 1.

This approach removes the need for ministerial involvement in matters of administration, and strengthens the direct relationship of accountability between the trust board and beneficiaries of the trust. The trust board will be accountable to beneficiaries under the constitution, and will continue to be accountable under the Trustee Act 1956 and the amended principal Act. The Bill includes requirements for the preparation of financial statements and for audit.

The Bill gives the High Court jurisdiction to determine any disputes relating to the administration and governance of the trust that cannot be resolved through the trust's dispute resolution procedures as set out in the constitution.

#### *Status of land held by trust*

Section 2(13) of the principal Act currently provides that all land vested in the trust, regardless of its status at the time of acquisition, shall have the status of Māori freehold land. The Bill removes this requirement and allows the trust to acquire and hold general land for investment and other purposes. This gives the trust the ability to exercise greater economic autonomy in the management of its landholdings. The status of this general land will not be general land owned by Māori as defined in the 1993 Act, and the land will not be subject to the jurisdiction of the Māori Land Court.

New Schedule 2 lists land that was general land at the time it was acquired by the trust and that will revert to general land status.

New Schedule 3 lists the land titles held by the trust that will retain Māori freehold land status. This is to avoid any doubt about the status of this land, following the repeal of the current section 2(13) deeming all land held by the trust to be Māori freehold land. Should the trust want to change the status of any of its land in the future, it will need to go through the usual processes in the Māori Land Court.

#### *Register of beneficial interests*

The trust's register of beneficial interests is at present maintained by the Māori Land Court. The Bill allows the trust to maintain its own register of beneficial interests, which will contribute to the autonomy of the trust and to the relationship of direct accountability between the trust board and the beneficiaries of the trust. It will also help the trust administer its succession rules.

The Bill also seeks to confirm and clarify the trust's existing succession arrangements. The original intention behind the drafting of the principal Act was to clarify that succession is limited to direct lineal descendants of Wi Pere. The practice of the trust and the original intention behind the current legislation is unchanged, but the section governing succession has been reworded to better reflect this intention.

The High Court is given jurisdiction to determine lineal descent for succession purposes. The Māori Land Court will retain jurisdiction over issues relating to Māori freehold land interests, but the initial question of whether a person is a lineal descendant of Wi Pere, if not able to be settled between the trust board and the claimant, will go to the High Court.

#### *Relationship with Te Ture Whenua Māori Act 1993*

The existing relationship between the principal Act and the 1993 Act is not always explicit. The trust was not created under the 1993 Act and is not currently subject to all of that Act's provisions, nor to the full jurisdiction of the Māori Land Court as provided in

that Act. The Bill seeks to clarify the relationship between the 2 Acts, respecting the ability of the trust to manage its land and other property while ensuring that the key protections available for Māori land under the 1993 Act continue to apply.

New Schedule 4 sets out the application of the 1993 Act in respect of Māori freehold land that is trust property. The 1993 Act will not apply to general land held by the trust. Likewise, the Bill gives the Māori Land Court jurisdiction over matters relating to Māori freehold land that is trust property, while the High Court is given jurisdiction over matters relating to general land.

#### **Amendments to Māori Trust Boards (Transitional Provisions) Order 2012**

The Māori Trust Boards (Transitional Provisions) Order 2012 came into effect on 10 August 2012. This order specifies the transition dates for certain Māori trust boards transferring to updated financial accountability requirements under the updated Māori Trust Boards Act 1955.

This order currently refers to the Tauranga Moana Māori Trust Board as the Tauranga Māori Trust Board. While the error in the name does not affect the validity of the order, it nonetheless needs to be corrected.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
No regulatory impact statement was required. The amendment to the Māori Trust Boards (Transitional Provisions) Order 2012 is a very minor technical correction. The amendments to the Māori Purposes Act 1991 relate specifically to the Wi Pere Trust, and will have no or only a minor impact on businesses, individuals and not-for-profit entities.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
The amendments to the Māori Purposes Act 1991 are intended to strengthen the governance and enhance the operational capability of the Wi Pere Trust, to the benefit of present and future beneficiaries. The proposed amendments to that Act have been developed at the request of the Wi Pere Trust, which has consulted with its beneficiaries.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
Should the statutory standards not be met, then the aim of good governance will not be achieved. The proposed new trust board will be accountable to beneficiaries under the Trust's new constitution and the amended Māori Purposes Act 1991, and will also continue to be accountable under the Trustee Act 1956.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

#### 3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

- The list of Acts in Appendix 3 of the Legislation Advisory Committee Guidelines has been checked for relevance to the Bill; and
- The list of treaties to which New Zealand is a party has been checked for relevance.

Particular consideration was given to the UN Declaration on the Rights of Indigenous Peoples, which affirms the rights of indigenous peoples.

### Consistency with the government's Treaty of Waitangi obligations

#### 3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The rights and interests of Māori have been considered. The Wi Pere Trust has requested amendments to the Māori Purposes Act 1991, in order to strengthen the Trust's governance arrangements, improve its capability to operate successfully in commercial settings, and increase its level of autonomy. The Wi Pere Trust has a strong preference to continue to be governed by its own statute, as the trustees consider this is the best way of meeting the Trust's goals. Te Puni Kōkiri has worked closely with representatives of the Wi Pere Trust in the course of developing the policy changes to which the Bill gives effect and in the course of developing the Bill. These changes include reducing the role of the Crown, increasing direct accountability to beneficiaries and replacing the existing trustees with a trust board. The trustees of the Wi Pere Trust consulted with the beneficiaries in 2009 and again in 2013, which included circulation of the draft constitution and an overview of what the proposed amendments to the Māori Purposes Act 1991 are intended to achieve.

### Consistency with the New Zealand Bill of Rights Act 1990

#### 3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

### Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
See Appendix 1 for response to question 3.4(b).	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice was consulted on the draft Cabinet paper seeking approval for the proposals, and also on the draft Bill. See also the response to question 3.3. The Ministry of Justice also identified some technical and operational issues, for example the need to revisit the applicable fee level under the Māori Land Court Fees Regulations 2013. This issue will be addressed once the Bill is enacted.	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
Clause 9 (new section 19) requires the new trust board to maintain its own register of beneficial interests. This is not intended to be a publicly available register. This will contribute to the autonomy of the Wi Pere Trust and to the relationship of direct accountability between the trust board and the beneficiaries of the Trust, and will help the Trust maintain its succession rules. The Māori Land Court currently holds, and will continue to hold, information about owners of interests in Māori land, including beneficiaries of the Wi Pere Trust.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
The Privacy Commissioner was consulted on the provisions in the draft Bill enabling the new trust board to maintain the Trust's register of beneficial interests. No concerns were raised.	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
See Appendix 1 for response to question 3.6.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>Yes</b>
Consultation with representatives of the Wi Pere Trust included working through the proposals and the draft Bill to ensure that they meet the needs of the Trust and its beneficiaries. See Appendix 1 for further information regarding question 3.7.	



## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
<p>Section 2(13) of the Māori Purposes Act 1991 currently deems all land held by the Wi Pere Trust to be Māori freehold land. The Bill provides that the land listed in Schedule 2 will become general land. This land has been identified as having the status of general land at the time that it was acquired by the Trust. All changes to land status are deemed to occur from the enactment of the Bill. Te Puni Kōkiri is satisfied that there will be no prejudice to other interests, including to any mortgagee's interests. The Trust's representatives have confirmed that there is no papakāinga development on the land listed in Schedule 2.</p> <p>The Bill gives the new trust board the first option to purchase Māori freehold land transferred to a beneficiary for a residential building site at a fair market value under certain circumstances (see also the response to question 4.6). This may differ from existing arrangements, though clause 9, new section 8 of the Bill is intended to provide that arrangements entered into prior to the Bill's enactment are not invalidated.</p>	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
See Appendix 2.	

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>YES</b>
See Appendix 2.	

## Appendix One: Further Information Relating to Part Three

### Jurisdiction of a court or tribunal – question 3.4(b)

The Wi Pere Trust was established in 1899 to administer the estate of Wiremu Pere (a prominent East Coast politician), his family and co-beneficiaries. The Wi Pere Trust subsequently became a statutory trust and is currently governed by the Māori Purposes Act 1991.

All land held by the Wi Pere Trust is currently deemed by the Māori Purposes Act 1991 to be Māori freehold land, which is subject to Te Ture Whenua Māori Act 1993 and Māori Land Court oversight. The Trust, however, was not created under Te Ture Whenua Māori Act 1993 and is not currently subject to all of that Act's provisions, nor to the full jurisdiction of the Māori Land Court as provided in that Act.

The effect of clause 9 (new sections 29-32) is that in the future, the Wi Pere Trust will be able to hold both general and Māori freehold land. The Bill seeks to clarify which provisions of Te Ture Whenua Māori Act 1993 apply, and also to clarify the respective jurisdictions of the Māori Land Court and the general courts.

The Bill provides for the following:

- for the avoidance of doubt, the Trustee Act 1956 applies to the Trust except where a contrary intention is expressed in the Bill or constitution (clause 9, new section 5);
- the Trustee Act 1956 will be the default option for disputes relating to the Trust, and the High Court or District Court will have jurisdiction as applicable. This includes matters relating to governance, disputes between beneficiaries and the trust board, general land held by the Trust and determining whether someone is a lineal descendent (where there is a dispute) (clause 9, new sections 5, 26, 33, and 40). The initial constitution attached in Schedule 1 of the Bill also includes an internal disputes procedure;
- the Māori Land Court will have jurisdiction in relation to the Māori freehold land held by the Trust, as specified in the Bill. This includes questions relating to the succession to Māori land interests (clause 9, new sections 33-36, and 39);
- Te Ture Whenua Māori Act 1993 only applies as specified in the Bill (clause 9, new sections 30, 32 and Schedule 4);
- clause 9, new sections 34-36 set out the objectives of the Māori Land Court in exercising its jurisdiction under the Māori Purposes Act 1991;
- in circumstances involving both Māori freehold land and general land owned by the Wi Pere Trust, the Trust may choose whether to take a separate application under the Fencing Act 1978 to the Māori Land Court in respect of the Māori freehold land only; or to take an application relating to both the Māori freehold land and general land to the District Court (clause 9, new section 40); and
- clause 9, new section 19 gives the new trust board the ability to maintain its own register of beneficial interests. The trust board must notify the Registrar of the Māori Land Court of any change recorded in the register. The Registrar of the Māori Land Court must notify the trust board of any order of the Court that affects the information held in the register (clause 9, new section 20).

### External consultation – question 3.6

The changes proposed in the Bill have been developed at the request of the Wi Pere Trust, and Te Puni Kōkiri has worked closely with representatives of the Wi Pere Trust in the course of developing the policy changes to which the Bill gives effect and in the course of developing the Bill. The representatives of the Wi Pere Trust have also been consulted on the draft Bill. The views of the Trust representatives have as far as possible been reflected in the Bill.

The current trustees consulted with beneficiaries in 2009, and again in 2013. The 2013 consultation included circulation of the draft constitution and an overview of what the proposed amendments to the Māori Purposes Act 1991 were intended to achieve. The Trust held its annual general meeting in November 2013, at which time 143 beneficiaries (31% of all beneficiaries, representing 57% of beneficial interests) voted on the proposals for change. Of these, 91% supported the changes.

The Law Commission provided comments at an early stage on whether the proposed policy conflicted with their review of trusts (at that stage unpublished), and their feedback was incorporated in the policy under development.

The Privacy Commissioner was consulted on the provisions in the draft Bill enabling the new trust board to control and maintain the Trust's register of beneficial interests, and no concerns were raised.

### **Other testing of proposals – question 3.7**

Consultation with representatives of the Trust included working through the proposals to ensure that they meet the needs of the Trust and its beneficiaries. Te Puni Kōkiri worked closely with representatives of the Trust to ensure the proposed amendments met the needs of the Trust, and to clarify how the interface between the amended Māori Purposes Act 1991 and Te Ture Whenua Māori Act 1993, and between the respective jurisdictions of the Māori Land Court and general courts, would operate in practice.

## **Appendix Two: Further Information Relating to Part Four**

### **Significant decision-making powers – question 4.6**

The Bill clarifies the respective roles and jurisdictions of the Māori Land Court and the general courts (see Appendix One above). Beneficiaries will have access to the courts in the event of disputes, and the Bill will make it clearer which court has jurisdiction in particular circumstances. Internal disputes procedures are also set out in clause 10 of the initial constitution, set out in Schedule 1 of the Bill.

The Bill removes the role of the Minister of Māori Affairs in relation to the appointment and removal of trustees, approval of travel expenses, approval of the Trust's auditor, and requiring a copy of the Trust's audited accounts. The intention of the Bill is to make the new trust board, which will replace the current trustees, directly accountable to beneficiaries rather than to the Minister of Māori Affairs. This is similar in approach to recent amendments to the Māori Trust Boards Act 1955, which aimed to make trust boards more directly accountable to beneficiaries.

Clause 9, new section 25 enables a beneficiary to gift beneficial interests in the Wi Pere Trust to another lineal descendant during the beneficiary's lifetime, if the trust board approves. The trust board must not unreasonably withhold this approval.

Clause 9, new section 27 enables the trust board to increase or decrease a beneficiary's beneficial interest in trust property provided that this does not change the interest as a proportion of the total beneficial interests, and is made solely for administrative ease (for example, to avoid having to express interests as fractions).

Clause 9, new section 39 enables the trust board to apply to the Māori Land Court to transfer Māori freehold land to a beneficiary for a residential building site. Depending on the agreement reached between the beneficiary and the trust board, this may or may not involve cancelling the beneficiary's interests in whole or in part. This provision also gives the trust board the first option to purchase the land at a fair market value if the beneficiary who receives the land dies; proposes to sell, give or otherwise permanently dispose of the land; proposes to lease the land for more than ten years; ceases to personally occupy the land for more than 10 years; or uses the land for a purpose other than a residential building site. This provision is intended to balance the interests of individual beneficiaries who may wish to obtain land on which to build, and the wider interests of the beneficiary group as a whole.

While the new sections outlined above amend existing decision-making powers, clause 9, new section 8 upholds any process or arrangement validly entered into prior to the Bill's enactment.

### **Unusual provisions – question 4.9**

The Bill provides for the continuation of the Wi Pere Trust's succession provisions, which limit succession to direct lineal descendants of Wi Pere. This reflects the existing and longstanding arrangements that have applied to the Wi Pere Trust, and which are supported by the trustees and beneficiaries. See clause 9, new sections 21-26 and the response to Question 3.3.

Clause 9, new section 29 of the Bill changes the status of the land listed in Schedule 2 from Māori freehold land to general land. The Trust has requested this change, as the Māori Purposes Act 1991 currently deems all land held by the Wi Pere Trust to be Māori freehold land. This includes any general land that has previously been acquired by the Trust, as well as land which it might acquire in the future. This provision limits the ability of the Trust to readily acquire and dispose of land for investment purposes. The land listed in Schedule 2 has been identified as having the status of general land at the time it was acquired, and the Bill will return this land to the status of general land. To avoid doubt, clause 9, new section 30 clarifies that general land held by the Trust will not be general land owned by Māori for the purposes of Te Ture Whenua Māori Act 1993. This will better enable the Wi Pere Trust to make decisions about its own land.