Departmental Disclosure Statement

Te Ture Whenua Māori Bill

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.

8 April 2016.

Contents

Part One: General Policy Statement

This is a Bill to restate and reform the law relating to Māori land.

There have been more than 180 statutes relating to Māori land. The subject matter of these statutes has ranged from specific technical matters to substantial law reform, reflecting the changing nature of Māori land policy over the past 162 years. This Bill has had to be developed in the context of the historical regime for Māori land with all its complications.

Currently, the primary law relating to Māori land is contained in Te Ture Whenua Maori Act 1993. Te Ture Whenua Maori Act 1993 reflects a significant change of legislative focus from a legal framework that, historically, tended to regulate the ways in which Māori land could be assimilated and alienated and, instead, established a legal framework with retention of Māori land as its central policy premise.

This Bill recognises the intrinsic cultural dimension to Māori land. The Bill continues to have retention of Māori land as a central focus but its protection mechanisms are built more around procedural safeguards than around extensive reliance upon the exercise of judicial discretion.

Te Ture Whenua Maori Act 1993 has more than 200 operative provisions creating discretionary decision-making situations. In reports such as *Ko Ngā Tumanako o Ngā Tāngata Whai Whenua Māori: Owner Aspirations Regarding the Utilisation of Māori Land* (Te Puni Kōkiri, 2011) it has been noted that extensive reliance on judicial discretion creates uncertainty for owners of Māori land in the development of aspirations for their land and in the implementation of actions to achieve those aspirations.

Utilisation goes hand-in-hand with retention and Te Ture Whenua Maori Act 1993 expressly refers to the dual kaupapa of retention and utilisation of Māori land in its Preamble.

However, the Act treats the two objectives quite differently. Provisions in the Act relating to alienation are given a clear focus in order to avoid ambiguity in their application but provisions associated with utilisation have not been given the same focus.

The Bill addresses this imbalance with new provisions associated with the governance and utilisation of Māori land that set clear and unambiguous parameters for decision making and action. The Bill's provisions are designed to support and promote the use of Māori land by its owners and future generations and to more closely align legislative policy with the principle of rangatiratanga by facilitating the pursuit by Māori land owners of their aspirations for their land.

The policy settings for Te Ture Whenua Maori Act 1993 drew on advice contained in *The Māori Land Courts: Report of the Royal Commission of Inquiry* (1980) and the New Zealand Māori Council's discussion paper *Kaupapa Te Wahanga Tuatahi* (February 1983). The policy for this Bill continues to draw on that advice together with advice contained in the report of *Te Ture Whenua Māori Act 1993 Review Panel* (March 2014), and feedback from multiple rounds of consultation, workshops, and engagement with relevant Māori organisations. The Bill has been strongly influenced by submissions on an exposure draft released for public consultation in May 2015.

The development of this Bill has also been informed by advice and information contained in a number of other reports, including the Māori Land Investment Group's *Securing Finance on Multiple-Owned Māori Land: Options for Government* (1996), the

Federation of Māori Authorities' *Māori Land Court and Utilisation Options Under Te Ture Whenua Māori Act 1993* (1997), the Māori Multiple-Owned Land Development Committee's *Māori Land Development* (1998), Te Puni Kōkiri reports arising from the 1998 review of Te Ture Whenua Maori Act 1993 including feedback reports on consultation hui, *Report of the National Wānanga Held to Discuss the Principles to Underpin Māori Land Legislation* (1999), the New Zealand Institute of Economic Research's *Māori Economic Development: Te Ōhanga Whanaketanga Māori* (2003), the Controller and Auditor-General's *Māori Land Administration: Client Service Performance of the Māori Land Court Unit and the Māori Trustee* (2004), the Hui Taumata's *Māori Land Tenure Review: Report on Issues* (2006), Te Puni Kōkiri's *Ko Ngā Tumanako o Ngā Tangata Whai Whenua Māori: Owner Aspirations Regarding the Utilisation of Māori Land* (2011), the Ministry of Agriculture and Forestry's *Māori Agribusiness in New Zealand: A Study of the Māori Freehold Land Resource* (2011), and the Ministry for Primary Industries' *Growing the Productive Base of Māori Freehold Land* (2013).

Whenua Māori/Māori land

The total amount of Māori freehold land is now reduced to 1.456 million hectares out of a total land mass of 26.771 million hectares. This is approximately 5.5% of all land in New Zealand. Ninety-five percent of Māori freehold land, 1.390 million hectares, is in the North Island, and makes up approximately 12% of all land in the North Island. The greatest concentrations of Māori freehold land are in the Bay of Plenty/East Cape region, the central North Island, and Northland.

In *Kaupapa Te Wahanga Tuatahi*, the New Zealand Māori Council described Māori land in the following terms:

> Māori land has several cultural connotations for us. It provides us with a sense of identity, belonging and continuity. It is proof of our continued existence not only as a people, but as tangatawhenua of this country. It is proof of our tribal and kin group ties. Māori land represents turangawaewae.
>
> It is proof of our link with the ancestors of our past, and with the generations yet to come. It is an assurance that we shall forever exist as a people, for as long as the land shall last.
>
> But also land is a resource capable of providing greater support for our people – to provide employment – to provide us with sites for our dwellings – and to provide an income to help support our people and to maintain our marae and tribal assets.

The Bill reflects these special characteristics by keeping Māori land retention as a core focus and by continuing to regulate transactions where retention may be placed at risk. This is done using the same high thresholds for sales and permanent alienations applying under Te Ture Whenua Maori Act 1993 and building on those thresholds by enabling owners of Māori land to set even higher thresholds within the governance arrangements for their land. The Bill prescribes a clear decision-making process and provides the Māori Land Court with jurisdiction to ensure due process is followed and legal protections are complied with. The Bill also provides the Māori Land Court with some discretion over whether Māori freehold land status can be removed and over whether partitions will assist owners of Māori freehold land to retain, occupy, or develop their land.

In order to reflect the dual kaupapa expressed by the New Zealand Māori Council, the Bill reflects a policy shift to more clearly support land utilisation as determined by the owners themselves. This is done by providing a new framework within which owners of

Māori land are themselves better able to determine, design, establish, and operate effective governance arrangements for their land. The new framework establishes a

clear and explicit governance environment, providing certainty for those working within it, flexible options for governance structures, the ability to reflect tikanga Māori in governance arrangements, baseline thresholds for certain decisions, appropriate measures for governor accountability, and new dispute resolution procedures.

Tikanga Māori

One of the principles of the Bill is that tikanga Māori is central to matters involving Māori land. The Bill expressly defers to tikanga Māori for a range of matters including, as examples, the way associations with Māori customary land are determined, the way preferred recipients of Māori freehold land are determined, the way relationships of descent are determined, and the way disputes are resolved.

While the common law as applied in New Zealand has always been amenable to development to take account of tikanga Māori, which is considered to be part of the values of the New Zealand common law (*Takamore v Clarke* [2012] NZSC 116), statute law has tended to be less cognisant of tikanga Māori. However, a statute dealing with Māori land is one in which tikanga Māori should clearly be recognised and applied.

In making references to tikanga Māori in the Bill, care has been taken to avoid a statutory codification of what constitutes tikanga Māori. The Bill directs courts to determine any question as to the tikanga Māori that applies in a particular situation on the basis of evidence.

As noted by the Chief Justice, Rt Hon Dame Sian Elias, in *Takamore v Clarke,* what constitutes tikanga Māori in any particular case is a question of fact for expert evidence and a court asked to identify the content of tikanga Māori by evidence is not engaged in a process of interpretation or law-creation.

Whenua tāpui

The Bill provides for whenua tāpui, which are the equivalent of Māori reservations under Te Ture Whenua Maori Act 1993 but with some differences.

Under the Bill, a Māori Land Court order is required in order to reserve land as whenua tāpui but in most cases the process will no longer require the two steps of a court recommendation and, then, a notice by the Chief Executive of Te Puni Kōkiri published in the *Gazette*.

Unless the relevant land is Crown land, the court will have jurisdiction to make, rather than merely recommend, the reservation of whenua tāpui and a subsequent notice in the *Gazette* will not be required.

In the case of Crown land, the Bill provides that the Minister responsible for that land is able to reserve it as whenua tāpui by publishing a declaration to that effect in the *Gazette* without requiring a Māori Land Court order.

The Bill enables land owners to agree that the underlying beneficial ownership of land reserved as whenua tāpui for the purposes of a marae or urupā may vest in the collective group for whom the marae or urupā is established. For this to occur, the holders of at least 75% of the pre-existing beneficial ownership interests must agree.

The Bill provides for court-appointed administering bodies, rather than individual trustees, to administer whenua tāpui. This is more consistent with the administration of reserves, generally.

The Bill provides that land reserved as whenua tāpui cannot be disposed of or vested under an Act or in any other way. This does not prevent cancellation of the reservation or any vesting associated with the cancellation, nor the granting or cancellation of certain easements and leases, nor the disposition of an individual freehold interest in the underlying beneficial ownership.

To avoid undue complexity, Māori freehold land held by a governance body cannot be reserved as whenua tāpui but the Bill provides an alternative mechanism in that case through a new instrument called a kawenata tiaki whenua.

A kawenata tiaki whenua may apply to an area of cultural or historical interest or a place of special significance according to tikanga Māori and requires the area to be managed so as to preserve and protect those values.

Status of Māori land

The Bill continues to provide specific land statuses for the Māori land categories of Māori customary land and Māori freehold land, both of which are unique forms of private land with characteristics that differ significantly from other private land.

The focus of the Bill is Māori land and accordingly the statuses of general land and general land owned by Māori are not provided for. They are no longer required.

The status of Māori customary land is a statutory recognition of land held by Māori in accordance with tikanga Māori. It is neither a codification of the common law doctrine of aboriginal title nor an extinguishment of aboriginal title.

The Bill continues the jurisdiction of the Māori Land Court to determine whether land is Māori customary land and makes important changes to other aspects of the court's jurisdiction in relation to Māori customary land.

The jurisdiction of the Māori Land Court to determine and vest ownership of Māori customary land on the basis of individual interests is discontinued and replaced with a jurisdiction to determine ownership only on a collective basis. If the court exercises its jurisdiction to change the status of Māori customary land to Māori freehold land, the land must remain in collective ownership. This provides a closer alignment of the law with tikanga Māori and ends the process of individualisation of customary land, the implementation of which has been found to have been inconsistent with the principles of the Treaty of Waitangi.

Since 1909, Māori customary land has been deemed to be Crown land for the purposes of preventing trespass or other injury to the land, recovering damages for trespass or injury, and recovering possession from anyone in wrongful occupation. The Bill discontinues this method of dealing with trespass and related matters affecting Māori customary land and, instead of deeming such land to be Crown land, enables the Māori Land Court to appoint a kaiwhakahaere to act as the agent of the owners to deal with those matters. If there is no kaiwhakahaere, the Bill empowers the Māori Trustee to represent owners for those purposes.

The Bill provides that Māori customary land cannot be disposed of or vested under an Act or in any other way. This does not prevent recognition of customary transfers, the establishment of whenua tāpui, a change of status to Māori freehold land, or the creation and cancellation of certain easements and access arrangements.

Under the Bill, all land that has previously become, or subsequently becomes, Māori freehold land under any enactment continues to have that status until it ceases to be Māori freehold land by declaration of the Māori Land Court, or as a consequence of an exchange or boundary adjustment, or under an enactment. The Bill places limitations

on the jurisdiction of the Māori Land Court to make an order declaring that Māori freehold land ceases to have that status.

The Bill places protective restrictions on a wide range of dispositions of Māori freehold land.

Māori land tenure

Unlike other forms of private land, Māori land tenure is derived from customary rights that have their basis in tikanga Māori rather than from the Crown through a system of estates. Owners of Māori customary land hold their interests on the basis of tikanga Māori, not on the basis of an originating Crown grant.

Owners of Māori freehold land hold individual or collective freehold interests that, with a few exceptions arising from historical anomalies in the law, are based on connections with the land and with one another that are derived through whakapapa.

The Bill reflects these unique factors through the principles that tikanga Māori is central to matters involving Māori land and that Māori land endures as a taonga tuku iho by virtue of whakapapa and by providing that a parcel of Māori freehold land does not vest in the Crown as *bona vacantia* but, instead, vests in the collective owners who would, in accordance with tikanga Māori, hold it if it were Māori customary land. Similarly, the Bill provides that individual freehold interests in Māori freehold land do not vest in the Crown as *bona vacantia* but, instead, vest proportionately in the remaining owners.

The nature of property rights in the context of Māori land

The Bill strikes a balance between two important public policy issues. First, laws that enable ancestral Māori land to be held as individual personal property are inconsistent with the principles of the Treaty of Waitangi and, secondly, those who have acquired a property interest through the historic legal framework applying to Māori land should not be arbitrarily deprived of their interest.

Property interests in Māori land, even individualised interests, are not the same as interests in a freely tradable economic commodity and, in particular, are not the same as property interests in other private land.

As a rule, notions of “ownership” of Māori land tend to be regarded by Māori in terms of stewardship and connection, rather than proprietorship, and in terms of permanence rather than transience.

Property interests in Māori land are characterised by the cultural importance of the land as a taonga tuku iho, as a source of connection and of identity, and by the fact that, despite individualisation in the late 19th century, the ongoing multiplicity of interests has meant there remains a collective characteristic to Māori land ownership.

In the context of legal theory, “property” is not a thing in itself. It is a legal relationship with a thing. The registered proprietor of an estate in fee simple in land does not own the land itself but, rather, owns an abstract thing called an estate in land. In the same context, “property rights” have come to be regarded as a “bundle of rights”.

It is necessary to take into account the bundle of rights and obligations that make up a property interest in Māori land in order to strike an appropriate balance between the two public policy issues referred to above.

Generally accepted elements of the bundle of rights, which include obligations, and how they relate to Māori land include the following.

The right to exclude—collectively, the owners of Māori land are entitled to exclude non-owners from using or enjoying their land but in practice the right is constrained by the

multiple nature of Māori land ownership (individually, owners cannot exclude other owners or those who are invited or have the permission of other owners) and if the land is vested in a governance body the right passes to the governance body and becomes a right, at law at least, to exclude not just non-owners but also owners.

The right to possess—to the extent that the right to possess includes the right to occupy, this is a constrained right for multiple owners of Māori land due to the practical issue that when everyone has the same right they cannot all exercise it at once without interfering with each other's rights (in effect the right is held collectively, not individually).

The right to use—for the same reasons that the right to possess is constrained, the right to use is also a constrained right for multiple owners of Māori land individually and, as it can only be exercised collectively, generally requires a governance body to exercise the right on behalf of the owners or the creation of a third party right to use through an instrument such as a lease.

The right to alienate—

- in relation to a whole parcel of land, the right to alienate is constrained, first, by the practical difficulty of requiring every owner to participate in the transaction, secondly, by a legal framework that places restrictions on the alienation of Māori land and, thirdly, by the widely accepted view that Māori land is taonga and should be protected from alienation:
- in relation to individual shares in Māori freehold land, the right to alienate is constrained by a legal framework that places restrictions on the capacity to alienate shares, and that has historically included the requirement to obtain an order from the Māori Land Court, which must satisfy itself on a range of jurisdictional threshold requirements and has been given a discretion as to whether, ultimately, to make the order.

The right to receive income—in principle, the owners of Māori land enjoy the right to receive income but the effect of fragmentation and ever-diminishing interests render the right meaningless for many and the ability to generate income is constrained by the practical limitations arising from multiple ownership. If a governance body is in place, the right may also be affected by the discretion of the governance body to retain earnings for future investment (the right to receive income passes to the governance body).

The duty to refrain from using property in a way that harms others—in the context of Māori land, this duty can be likened to a duty to a wider, inter-generational community of interest associated with Māori land, given its generally accepted status as taonga tuku iho, and includes a duty to care for the land and ensure it remains to be passed to future generations.

Many legal frameworks that have general application to land, such as the Rating Valuations Act 1998, are not well aligned with the unique characteristics of Māori land and the Bill contains measures designed to lead to a more equitable application of those frameworks to Māori land.

Ownership of Māori freehold land

In the case of Maori freehold land in multiple ownership (other than a collective class of owners), the Bill contains a presumption of a tenancy in common in equal shares unless there is other proof to the contrary. This provides a closer alignment of the law with principles of tikanga Maori.

Existing ownership interests in Māori freehold land are preserved but the Bill provides a new option for the owners to convert to collective ownership. If the land is owned by tenants in common, converting to collective ownership will require the agreement of owners holding at least a 75% share of the land. If the land is owned by joint tenants, they will all need to agree.

Establishing whānau trusts for ownership interests in Māori freehold land is an important mechanism for mitigating the effects of fragmented interests and whānau trusts are continued under the Bill, but instead of requiring a Māori Land Court order to establish them they will be able to be set up by owners by registering a declaration of trust or by making provision for them under a will. Whānau trusts also become the default mechanism on intestate succession unless members of the whānau enter into an alternative family arrangement.

The Bill replaces the jurisdiction of the Māori Land Court to establish kai tiaki trusts for owners under a disability with a new jurisdiction to appoint kaiwhakamarumaru to act as managers for owners needing protection, being owners under 18 years of age or owners who, in the opinion of the court, wholly or partly lack the legal capacity or competence to manage their own affairs in relation to their land interests. The new jurisdiction aligns more closely with the provisions for the appointment of managers under the Protection of Personal and Property Rights Act 1988.

Preferred recipients and preferred entities

The Bill continues the policy of limiting those who may acquire, or have preference to acquire, Māori freehold land or individual freehold interests in Māori freehold land. This approach is consistent with the principles of retention of Māori freehold land in Māori ownership, of tikanga Māori being central to matters involving Māori land, and of Māori land enduring as a taonga tuku iho by virtue of whakapapa.

There are important differences in the way the Bill defines “preferred recipients” when compared with Te Ture Whenua Maori Act 1993. In particular, no-one can be a preferred recipient under the Bill unless they have an association with the relevant Māori freehold land in accordance with tikanga Māori.

In addition to a change in terminology from “preferred classes of alienees” (Te Ture Whenua Maori Act 1993) to “preferred recipients” (the **Bill**), the main changes made by the Bill are summarised as follows:

Bill	**Te Ture Whenua Maori Act 1993**
Children, grandchildren, and other descendants of the owner if the children, grandchildren, or other descendants are associated with the land in accordance with tikanga Māori.	Children and remoter issue of the owner whether or not the children or issue are associated with the land in accordance with tikanga Māori.
Grandparents, parents, uncles, aunts, siblings, nieces, nephews, and first cousins of the owner if the grandparents, parents, uncles, aunts, siblings, nieces, nephews, or first cousins are associated with the land in accordance with tikanga Māori.	Whanaunga of the owner if the whanaunga are associated with the land in accordance with tikanga Māori.
Other owners of the relevant land if those owners are associated with the	Other owners of the relevant land if those owners are members of the hapū

land in accordance with tikanga Māori.	associated with the land.
Former owners of the relevant land if those owners are associated with the land in accordance with tikanga Māori.	No equivalent.
Descendants of former owners of the relevant land or any former parcel the land formed part of if the descendants are associated with the land in accordance with tikanga Māori.	Descendants of former owners if the former owner is or was a member of the hapū associated with the land.

Under Te Ture Whenua Maori Act 1993, a Māori incorporation has a second right of preference, behind members of the preferred classes of alienees, to acquire shares in the incorporation (ie, individual freehold interests in the land). The Bill extends this right to "preferred entities". Preferred entities are a "rangatōpū" and a "representative entity". A rangatōpū is a new type of governance body. To qualify as a preferred entity, a rangatōpū must be managing the relevant Māori freehold land or any other Māori freehold land that has one or more owners who are preferred recipients in relation to the relevant land. A representative entity is an entity that represents a hapū or an iwi associated with the relevant land in accordance with tikanga Māori and that is recognised by the owners of the land as having authority to represent the hapū or iwi.

Decision making by owners of Māori land

Under the Bill, the role of the Māori Land Court changes from having final discretion over a range of decisions to one of ensuring due process and legal requirements are complied with. The Bill provides greater autonomy for owners of Māori land and their own entities to make final decisions about their land. This change recognises the principle of rangatiratanga, articulated by the late Dr Apirana Tuahae Mahuika as follows (Te Ture Whenua Māori hui, Pakirikiri Marae, Tokomaru Bay, 15 August 2014):

> Nooku te whenua, kei a au te korero…Nooku te whenua, ko au te rangatira.
>
> The land is mine, I have all the say…The land is mine, I make all the decisions.

There are more than 2.5 million individual freehold interests in Māori freehold land. The number of owners for each parcel ranges from one through to 14,286, with an average of nearly 100 owners per parcel. This presents a unique set of challenges for decision making.

Under the Bill, owners of Māori freehold land with a governance body are able to prescribe decision making processes of their own choice or preferences to be included within the governance agreement for their land. If a process is not included in the governance agreement or if the land is not managed by a governance body, the Bill prescribes a default decision making process designed to ensure as many owners as possible are aware that a decision is to be made and have the opportunity to participate.

The Bill provides that owners may participate in decision making using postal or email voting forms or by using an electronic voting system and may attend meetings of owners in person, via a nominated representative, or via telephone or Internet-based technology.

Certain decisions require the agreement of a minimum threshold of all the ownership interests in the relevant parcel of Māori freehold land. Those decisions are, for the most part, decisions that will affect the ownership and retention of the land and include decisions to apply to the Māori Land Court for an order declaring that the land ceases

to be Māori freehold land, decisions to convert to collective ownership, decisions to offer the land for sale, and decisions to agree to a disposition of the land under an Act other than Te Ture Whenua Maori Act, all of which require the agreement of owners together holding a 75% or more share in the land.

Decisions to exchange Māori freehold land, to agree to a boundary adjustment that changes the area of the parcel by more than 2%, to partition the land, or to grant a long-term lease of more than 52 years require the agreement of owners together holding more than a 50% share in the land.

The Bill also provides for certain decisions, mostly to do with the management and utilisation of the land, to be made with the agreement of a minimum threshold of the ownership interests of owners who actually participate in making the decision (referred to in the Bill as the "participating owners") as distinct from all the owners.

Decisions that can be made by "participating owners" include decisions to appoint a governance body, to approve a governance agreement, to change the name of a parcel of Māori freehold land, or to amalgamate parcels of Māori freehold land (all of which require the agreement of owners who together hold more than 50% of the combined share in the land of the participating owners) and decisions to set a land management plan, to revoke the appointment of a governance body, or to aggregate the ownership of Māori freehold land or cancel an aggregation (which require the agreement of owners who together hold 75% or more of the combined share in the land of the participating owners).

Prescribed thresholds are included in the Bill rather than subjective criteria such as "a sufficient degree of support" or "no meritorious objection" used in Te Ture Whenua Maori Act 1993. The Bill provides an objective framework with clear and unambiguous decision-making criteria so as to facilitate final decision making by the owners themselves rather than having the final decision dependent on a subjective assessment by the court.

For decisions that can be made by "participating owners", the Bill provides a graduated set of participation thresholds. These are not the same as the decision thresholds and set the minimum level of participation needed before a decision can be considered.

If there are 10 or fewer owners, they are all required to participate. If there are more than 10 but not more 100 owners, at least 10 owners together holding a 25% or more share in the land are required to participate. If there are more than 100 but not more than 500 owners, at least 20 owners together holding a 25% or more share in the land are required to participate. If there are more than 500 owners, at least 50 owners together holding a 10% or more share in the land are required to participate.

If the applicable participation threshold is not met, the Bill provides that the decision making process can be re-run without the required threshold requirement provided the second process is commenced within 20 working days and is notified to the owners in a way that clearly explains that the resulting decision will be valid if it is agreed to by the required majority of the participating owners, irrespective of how many owners participate in making the decision.

The "participating owner" provisions are designed to address the practical difficulties associated with owner decision making for parcels of Māori freehold land.

Representation of owners of Māori land

The Bill continues to provide a mechanism for court-appointed agents for owners of Māori land that does not have a governance arrangement in place. The Bill refers to agents as kaiwhakahaere.

The role of a kaiwhakahaere is to represent owners for mostly one-off, specific issues such as responding to a notice issued by a local authority or the Crown, or when the land is affected by a process under the Resource Management Act 1991, or implementing a decision of the owners.

The kaiwhakahaere process under the Bill involves the owners, is within the purview of the court, and is a protective mechanism.

Governance of Māori freehold land

The Bill contains important reforms for the governance of Māori freehold land, moving from a regime of trusts and incorporations appointed by the court to a regime of owner-appointed governance bodies operating under owner-approved governance agreements.

The Bill's approach continues and builds on an ongoing policy direction first noted by Mahon J in *Alexander v Maori Appellate Court* [1979] 2 NZLR 44 (SC) at 53 when he said—

> …I should think it no longer safe to rely upon the historical view that members of the Māori race are incapable of managing their own affairs without supervision. As I see it, there has been a shift in legislative policy directed towards liberating the Māori race from juridical control of their transactions in relation to Māori land and for that reason, as already stated, I should think it unsatisfactory to place too much reliance today upon those judicial opinions expressed many years ago, which stressed the parental role of the Māori Land Courts in relation to matters within their jurisdiction.

The Bill's framework for Māori land governance bodies is based on:

- enabling owners to easily appoint whatever form of governance body they choose, with compliance measures limited to those things essential to ensure the process is fair and transparent:
- providing options for owners to form their own legal entity and design its constitution to reflect their aspirations and their culture:
- enabling existing trusts and incorporations to transition as simply as possible without disrupting their ongoing operations:
- providing a clear, straightforward legal framework within which to operate and that protects the interests of owners if things go wrong.

Owners forming new governance bodies will have a wide choice of entity. They may choose to form a new entity referred to in the Bill as a rangatōpū or they may appoint an existing rangatōpū. A rangatōpū may take the form of a private trust or an entity registered under another Act (such as a company, a limited partnership, or an incorporated society) or the owners may choose to register it as a body corporate under new provisions contained in the Bill.

Instead of forming a rangatōpū, owners have the option to appoint an existing statutory body, namely a Māori Trust Board, the Māori Trustee, Public Trust, or a trustee company, or to appoint a representative entity. The Bill defines a representative entity as an entity that represents a hapū or an iwi associated with the land in accordance with tikanga Māori and that is recognised by the owners of the land as having authority to represent the hapū or iwi.

Existing ahu whenua trusts, whenua tōpū trusts, and Māori incorporations will transition as they are, with the terms of their existing trust orders or constitutions preserved. After a transition period, existing trustees and incorporation committee members will need to meet eligibility criteria contained in the Bill and trustees' terms will be for a finite period.

Under the Bill, appointing and forming governance bodies is a matter for the owners of the relevant Māori freehold land themselves through a process of decision making and registration instead of requiring a discretionary decision from the Māori Land Court by way of application, hearing, and adjudication. This change provides consistency with the principle of rangatiratanga and contributes to a new framework in which Māori land utilisation in accordance with the aspirations of the owners is supported and facilitated.

The appointment process for governance bodies requires the appointing owners to approve a governance agreement under which the body is to operate. The Bill sets out minimum, as well as default, provisions for governance agreements while providing owners with the flexibility to set up governance arrangements tailored specifically for their own circumstances and preferred way of operating, whether that be with a commercially oriented focus or with a strong tikanga focus.

In terms of accountability, the Bill continues to provide the Māori Land Court with jurisdiction to investigate governance bodies within prescribed parameters. The court's powers include a new power to disqualify individual governors, referred to as kaitiaki, from holding such a position on any governance body. That power can be exercised in specified circumstances, such as fraudulent, reckless, or incompetent performance, and is consistent with similar powers under the Companies Act 1993 relating to the disqualification of company directors.

In addition to the right of owners or governance bodies to initiate cancellation of a governance agreement, the Māori Land Court is given power to do so if it is satisfied the governance body is insolvent, the governance body has failed to comply with statutory duties or obligations, or continuation would materially prejudice the owners.

Māori freehold land and succession

The Bill's succession provisions reflect policy preferences that the community of ownership of Māori freehold land should comprise individuals who have an association with the land that accords with tikanga Māori and whakapapa links, that intestate succession should not result in excessively fragmented individual interests, and that as far as possible succession should be an administrative process.

The Bill provides that individual freehold interests in Māori freehold land may be gifted under a will but only to a preferred recipient or to the rangatōpū, if there is one, managing the land in which the interest is held. A whole parcel of Māori freehold land may only be gifted to a preferred recipient or a preferred entity.

The Bill makes changes to the way eligible beneficiaries are determined on intestacy and the way in which individual freehold interests or parcels of Māori freehold land devolve on intestacy. The determination of who might be an eligible beneficiary does not go further back than the descendants of the deceased owner's grandparents, after which the interest vests in all the other owners of the relevant land. This differs from Te Ture Whenua Maori Act 1993 under which the determination traces back through the chain of title of the deceased owner until a beneficiary is found.

Descent relationships are crucial to determinations about whether a person is an eligible beneficiary or a preferred recipient in relation to Māori freehold land. Descent relationships by birth are clear but when there is an adoption, whether by custom (whāngai) or by adoption order, descent relationships are more complex.

The Bill provides that it is the tikanga of the relevant iwi or hapū that determines whether a whāngai relationship at any link in the chain of descent is to be treated as a relationship of descent for the purposes of any provision that refers to a child,

grandchild, brother, sister, parent, grandparent, whānau, or descendant, or that refers to an association with land in accordance with tikanga Māori.

The Bill overrides the Adoption Act 1955 by providing that it is the tikanga of the relevant iwi or hapū, rather than that Act, that determines whether an adopted child is in a relationship of descent with either or both of the adopting parents or the birth parents.

Under the Bill, there is an automatic whānau trust if there is more than one eligible beneficiary on intestacy unless one or more beneficiaries do not want to participate in a whānau trust. If that is the case, a family arrangement may be entered into and the Māori Land Court has jurisdiction to give effect to the family arrangement.

This approach is consistent with the aim of mitigating or reducing excessive fragmentation of ownership interests in Māori freehold land and also reflects the nature of property rights in the context of Māori land described above. It aligns with views such as those expressed by the late Sir Robert Mahuta in *He Matapuna* (New Zealand Planning Council, 1979; cited in the report of the 1980 *Royal Commission of Inquiry on the Māori Land Courts*) when he said, "*Perhaps we should be subscribing to some kind of title structure which ensures group inheritance; trusteeship rather than individual ownership*."

Generally, successions under the Bill do not require an application to the Māori Land Court and can simply be registered administratively in the Māori land register. Transparency remains important so a succession on intestacy cannot be registered without publication of notice of the application to register it.

Māori incorporations will continue to be able to process transfers of, and testate successions to, shares in the incorporation.

The special powers of the Chief Judge of the Māori Land Court to correct errors or omissions is continued under the Bill and extended to include errors or omissions in the Māori land register arising from the new administrative processes.

Māori land register

Historically, details about Māori freehold land title and ownership have been held in the records of the Māori Land Court. The Bill establishes a formal Māori land register of Māori land title, ownership, and governance. The establishment of the Māori land register is important because, under the Bill, many of the dealings affecting Māori land title, ownership, and governance will be transacted by the owners themselves and their governance bodies without requiring Māori Land Court orders so they will not be recorded in the records of the court.

The Māori land register will record both legal and beneficial interests in Māori freehold land. Māori freehold land will continue to be subject to, and registered under, the Land Transfer Act 1952. Legal interests in Māori freehold land will be recorded in the land transfer system as well as in the Māori land register.

The Māori land register will—

- enable owners of Māori land and interests affecting Māori land to be identified:

- enable people to know whether a parcel of Māori freehold is managed by a governance body and, if so, to access information about the body and the governance agreement under which it operates:

- enable people to know whether Māori freehold land or an interest in Māori freehold land is managed by any other person such as a kaiwhakamarumaru and, if so, to access information about that person and the land or interest:

- facilitate—

    - decision making, by enabling owners of Māori freehold land and other interested persons to be identified when decisions need to be made in relation to the land:

    - dealings with beneficial interests in Māori freehold land:

    - giving effect to the purpose of the Act:

- assist the court, the chief executive, Registrars of the Māori Land Court, and the Registrar-General of Land in the exercise or performance of their powers, functions, or duties under the Act or any other enactment:

- enable compliance with the requirements of the Act or any other Act for recording instruments or other matters affecting Māori land or interests in Māori land.

Given the broad nature of its content, the Māori land register will have a public part and an administrative part. The administrative part will be accessible by Māori land governance bodies and those authorised to act on behalf of owners of Māori land or to arrange meetings of owners of Māori land.

Dispute resolution

The Bill establishes a new dispute resolution mechanism for disputes about Māori land. The approach to dispute resolution is based on a concept of mātauranga takawaenga, which is a process to assist people and groups to resolve disagreements and conflicts in accordance with the tikanga, values, and kawa of the relevant hapū or whānau, both as to process and in substance.

The dispute resolution process recognises that the parties will often be connected with one another in an ongoing relationship and mitigating the risk of relationship damage is important. The process is designed to reflect the principle of rangatiratanga and to empower parties to achieve their own solutions and outcomes rather than having to accept an outcome imposed on them by a court.

The Bill makes it mandatory for certain disputes to be referred to dispute resolution before the court has jurisdiction to consider them on a litigated basis. Examples include disputes over whether a person is a whāngai or whāngai descendant.

Mandatory mediation is not a new concept. It has been operating successfully in a number of jurisdictions such as the Canadian province of Ontario where it applies to a range of civil disputes, such as disputes related to estates and trusts.

The Bill also provides Judges of the Māori Land Court with a previously unavailable power to hold judicial settlement conferences in which the Judge is able to assist parties to negotiate their own settlement.

Māori Land Court

The Māori Land Court remains a key institution for the determination of matters relating to Māori land. Both the Māori Land Court and the Māori Appellate Court are continued under the Bill.

In addition to jurisdiction conferred under the Bill, the Māori Land Court continues to have jurisdiction under more than 25 other Acts.

The Bill provides for the jurisdiction of the Māori Land Court along lines similar to that first suggested by the 1980 *Royal Commission of Inquiry on the Māori Land Courts,* which recommended (among other things)—

> There should be as far as possible a separation of the administrative and judicial functions relating to Māori land. This would minimise the necessity for Judges to be involved in other than judicial matters. The court should aim at being a court of law and not an administrative body.

The focus of the Bill is Māori land and its ownership, protection, and governance. The Māori Land Court and the Māori Appellate Court are provided for as part of the supportive institutional framework rather than as the central focus of the legislation, as has tended to be the case historically.

The Bill is an omnibus Bill introduced in accordance with Standing Order 263.

It is intended to divide the Bill at the committee of the whole House stage so that—

- *Parts 1 to 9* and *Schedules 1 to 4* become Te Ture Whenua Māori Bill:
- *Parts 10 to 15* and *Schedules 5 to 7* become Te Kooti Whenua Māori Bill:
- *Part 16* and *Schedules 8 to 12* become Te Ture Whenua Māori (Repeals and Amendments) Bill.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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?	**YES**
Ko Ngā Tumanako o Ngā Tangata Whai Whenua Māori: Owner Aspirations Regarding the Utilisation of Māori Land, Te Puni Kokiri, April 2011 http://www.tpk.govt.nz/en/a-matou-mohiotanga/land/owners-aspirations-regarding-the-utilisation-of-ma/ *Te Ture Whenua Māori Act 1993 Review Panel Discussion Document*, March 2013 https://www.tpk.govt.nz/en/a-matou-mohiotanga/land/te-ture-whenua-maori-act-1993-review-panel-discuss *Report of Te Ture Whenua Māori Act 1993 Review Panel*, March 2014 https://www.tpk.govt.nz/.../**Te-Ture-Whenua-Review**-Panel-**Report**.pdf *Te Ture Whenua Māori Reform: Summary of Submissions*, Te Puni Kōkiri, September 2015 http://www.tpk.govt.nz/mi/a-matou-kaupapa/crown-iwi-hapu-whanau-maori-relations/consultation/review-of-te-ture-whenua-maori-act-1993/	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	**NO**

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	**YES**
A Regulatory Impact Statement was prepared on 28 August 2013 in accordance with the necessary requirements, and was submitted when policy approvals were sought for the Bill in September 2013. Updated versions of the RIS were prepared and submitted on 26 November 2013 and 25 June 2014 when we sought Cabinet support to implement the proposals to improve the utilisation of Māori land through the Bill and to develop the Māori Land Service respectively. A separate Regulatory Impact Statement was prepared and submitted on 4 December 2015 in relation to enabling the better utilisation of Māori land. The references for the Regulatory Impact Statements are as follows: *Regulatory Impact Statement: Reform of Te Ture Whenua Māori Act 1993* (Te Puni Kōkiri, 28 August 2013) *Regulatory Impact Statement: Reform of Te Ture Whenua Māori Act 1993* (Te Puni Kōkiri, 26 November 2013) *Regulatory Impact Statement: Reform of Te Ture Whenua Māori Act 1993* (Te Puni Kōkiri, 25 June 2014) *Regulatory Impact Statement: Enabling Better Utilisation of Māori Land (Rating and Valuation)* (Te Puni Kōkiri, 29 January 2016) These are all found under the following link: http://www.tpk.govt.nz/a-matou-mohiotanga/land/regulatory-impact-statements-ttwmb	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	**YES**
The RIA Team in the Treasury provided an independent opinion on the quality of the regulatory impact statements that were provided to inform the policy decisions that led to this Bill. In regard to the RIS prepared on 28 August 2013 and was subsequently updated on 26 November 2013 and 25 June 2014, the RIA Team considered that the information and analysis summarised in the RIS meets the quality assurance criteria. They noted that implementing some parts of the proposal will require a more detailed business case and is contingent on future Cabinet decisions about funding. The RIS makes these implementation risks transparent, but Ministers should be aware that more information is required about the costs to Government, particularly of online services, before the preferred option can be implemented. In relation to the RIS prepared on 29 January 2016, the RIA Team considered that the RIS did not analyse the cost implications or net benefits of the recommendations and has not been subject to adequate consultation. Further there was no analysis of the likelihood of councils adopting discretionary policies or how they would be implemented so it is unclear how effective or consistent they will be. The RIS consequently did not meet the quality criteria. The RIAT Team noted that, if the recommendations in the paper were agreed, Cabinet rules require that a post-implementation review of the RIS is undertaken.	
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	**NO**

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	**NO**

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	**YES**
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	**NO**
An analysis of the potential costs and benefits of the policy to be given effect by this Bill is described in the Regulatory Impact Statement that was prepared by Te Puni Kōkiri.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	**NO**
(b) the nature and level of regulator effort put into encouraging or securing compliance?	**NO**

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?

Te Puni Kōkiri officials reviewed available lists of international treaties to which New Zealand is a party and international conventions supported or ratified by New Zealand in order to identify any obligations for which the policy to be given effect by this Bill may be relevant and the Ministry of Foreign Affairs and Trade and the Ministry of Justice were consulted.

In April 2010 New Zealand expressed support for the *United Nations Declaration on the Rights of Indigenous Peoples* and in November 1972 New Zealand ratified the *International Convention on the Elimination of All Forms of Racial Discrimination*. The policy to be given effect by this Bill is considered to be consistent with both of those conventions. No other international obligations of relevance to this Bill were identified.

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?

Te Puni Kōkiri officials reviewed *The Principles of the Treaty of Waitangi*, an appendix to volume II of the *National Overview Report* of the *Rangahaua Whānui Series* published by the Waitangi Tribunal. The principles of the Treaty of Waitangi are expressed in a range of judgments and Waitangi Tribunal reports summarised in the appendix to the *National Overview Report*.

The laws relating to Māori land have a controversial history dating back to the Native Territorial Rights Act 1858 and the Native Lands Acts of 1862 and 1865. These laws are characterised by numerous amendments and restatements. Significant restatements and amendments of the laws relating to Māori land include the Native Land Court Act 1886, the Native Land Court Act 1894, the Native Land Act 1909, the Native Land Act 1931, the Māori Affairs Act 1953, the Maori Affairs Amendment Act 1967, the Māori Affairs Act 1974 and Te Ture Whenua Māori Act 1993.

The operation and impact of these laws has long been acknowledged as breaching the principles of the Treaty of Waitangi, primarily as a result of the prejudicial effect of awarding titles to individuals and the consequential erosion of collective tribal and hapū custodianship of land. Examples of recent acknowledgements of those breaches can be found in section 7(2) of the Maraeroa A and B Blocks Claims Settlement Act 2012, section 7(10) of the Ngai Tāmanuhiri Claims Settlement Act 2012, section 6(7) of the Ngāti Mākino Claims Settlement Act 2012, section 7(6) of the Ngāti Manawa Claims Settlement Act 2012, section 8(6) of the Ngāti Manuhiri Claims Settlement Act 2012, section 7(6) of the Ngati Porou Claims Settlement Act 2012, section 8(7) of the Ngāti Whātua o Kaipara Claims Settlement Act 2013 and section 6(11) of the Waitaha Claims Settlement Act 2013.

The policy given effect by this Bill is designed to address these issues. The Bill's emphasis on empowering Māori land owners to make and act on their own decisions is considered to be consistent with the principle of rangatiratanga. The removal of obstacles to land utilisation is considered to be consistent with the principle of a right to development. The option to replace individual ownership interests with collective ownership is considered to be consistent with the principle that Māori should hold their resources and cultural assets in accordance with their own customs, having regard to their own cultural preferences.

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**
The draft Bill has been provided to the Ministry of Justice to undertake a review of the content of the Bill against the provisions of the New Zealand Bill of Rights Act 1990. The Ministry of Justice will provide advice to the Attorney General once the review is complete.	

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)?	**YES**
Clause 402 of the Bill creates offences for specified matters in the nature of contempt of court. This carries forward existing contempt of court offences under ss.89 and 91 of Te Ture Whenua Māori Act 1993 with an updated list of matters that constitute contempt of court. The Bill has a single maximum penalty for each matter (Te Ture Whenua Māori Act 1993 has the same maximum penalty as the Bill for obstructing officers of the court and a lesser maximum for other contempt matters). The Bill removes the offence of cutting or removing standing timber trees, or any timber or other wood, or any flax, tree ferns, sand, topsoil, metal, minerals, or other substances from Māori freehold land without lawful authority currently contained in s.346 of Te Ture Whenua Māori Act 1993.	
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	**YES**
The Bill changes the jurisdiction of the Māori Land Court. The Māori Land Court will remain the judicial body responsible for ensuring the law relating to Māori land is observed. The Court will continue to deal with matters involving Māori land ownership when owners cannot make a decision, there is a challenge to a decision or if there is a dispute of some sort. It will also still determine and change the status of Māori customary land and Māori freehold land, grant access to landlocked Māori freehold land, and make declaratory orders to correct inaccuracies in the Māori land register. However, the Māori Land Court will no longer deal with applications where land owners have made decisions for themselves: for example, what governance structure they choose and what land utilisation decisions they make. The Māori Land Service will facilitate and register such decisions.	

3.4.1. Was the Ministry of Justice consulted about these provisions?	**YES**
The Ministry of Justice was consulted during policy development and at a few stages during the drafting of the Bill.	

Privacy issues

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?	**YES**

The Bill establishes a formal Māori land register of Māori land title, ownership, and governance. Its establishment is important as many of the dealings affecting Māori land title, ownership, and governance will be transacted by the owners themselves and their governance bodies without the need for Māori Land Court orders. Consequently, they will not be recorded in the records of the court.

The Māori land register will record both legal and beneficial interests in Māori freehold land. Māori freehold land will continue to be subject to, and registered under, the Land Transfer Act 1952. Legal interests in Māori freehold land will be recorded in the land transfer system as well as in the Māori land register.

Given the broad nature of its content, the Māori land register will have a public part and an administrative part. The administrative part will be accessible by Māori land governance bodies and those authorised to act on behalf of owners of Māori land or to arrange meetings of owners of Māori land.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	**YES**
The Office of the Privacy Commissioner was consulted during policy development and on the draft provisions relating to the Māori land register. A number of changes were made to those provisions in response to points raised by the Office.	

External consultation

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?	**YES**
In February 2015, Te Ture Whenua Māori Ministerial Advisory Group was established to provide independent advice on the Bill, from the perspective of those who operate within the Māori land regime. Since its establishment, the Ministerial Advisory Group has held fifteen meetings and numerous teleconferences during which its members have reviewed the proposed legislative reforms, and sought and assessed further information on some issues. It also chaired seven engagement meetings with representatives from Māori leadership groups including the Federation of Māori Authorities, New Zealand Māori Council, Māori Women's Welfare League, Te Hunga Rōia Māori o Aotearoa, Te Tumu Paeroa and Te Ture Whenua Māori Iwi Leaders Group. They also met with the Judges of the Māori Land Court on four occasions.	

Other testing of proposals

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?	**YES**
The policy settings for the Bill drew on advice contained in *The Māori Land Courts: Report of the Royal Commission of Inquiry* (1980) and the New Zealand Māori Council's discussion paper *Kaupapa Te Wahanga Tuatahi* (February 1983) together with advice contained in the report of Te Ture Whenua Māori Act 1993 Review Panel (March 2014), and feedback from multiple rounds of consultation, workshops, and engagement with relevant Māori organisations. The Bill has also been strongly influenced by submissions on an exposure draft released for public consultation in May 2015.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	**NO**

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	**NO**
The Bill allows the adoption of regulations that prescribe charges or fees for the services provided by the Māori Land Service and prescribe fees associated with taking proceedings before the Māori Land Court or the Māori Appellate Court.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	**NO**

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

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

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	**YES**
The Bill provides that a kaitiaki of a governance body is not, by reason only of being a kaitiaki, personally liable for any obligation of the governance body or any act done or not done by the governance body in good faith in the performance or intended performance of the duties and responsibilities of the governance body.	

Significant decision-making powers

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?	**YES**
Generally Māori freehold land has multiple owners including owners who have become disconnected or are unable to participate in decisions relating to their land. The Bill changes the primary protection mechanism for those owners from one that relies on the exercise of judicial oversight and discretion to one that is based on procedural safeguards within decision making processes, such as proper notice, participation thresholds, minimum decision-making thresholds and where there is potential for significant impact confirmation by the Māori Land Court of due compliance.	

Powers to make delegated legislation

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?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The Bill provides for the making of regulations in relation to a range of matters necessary to give full effect to the primary legislation. The Bill also makes technical amendments to legislative instruments made under other legislation.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
The Bill provides a comprehensive legal framework for Māori land which in itself is a unique form of tenure and provisions of particular importance, such as the application of tikanga Māori, are referred to in the general policy statement.	