

Questions and Answers

1. Why is there a focus on Te Ture Whenua Maori Act?

Te Ture Whenua Maori Act is the primary legislation for Māori land. Māori land owners have identified four key barriers that hinder the development of their whenua:

- varying levels of skill to govern and manage their whenua
- lack of ready access to resources, information and specialist knowledge
- limited access to a skilled workforce and good training where Māori freehold land is located, and
- navigating and complying with current complex rules, policies and regulations that impact on Māori freehold land.

2. Why are these changes necessary?

The proposed changes are necessary to make the Act work better for Māori land owners now and in the future and to support the Māori Land Court to operate more efficiently. The changes also seek to reduce the complexity and compliance requirements that Māori land owners encounter when dealing with the Māori Land Court.

3. What happened to the former Te Ture Whenua Maori Bill?

In April 2016, the previous Government proposed to reform Te Ture Whenua Maori Act 1993 and replace it with a new Act.

The current Government decided to withdraw the former Bill in response to widespread concerns from Māori land owners.

4. What is proposed?

The Government listened to the kōrero on Te Ture Whenua Maori Act. While there was concern about the comprehensive nature of the proposed reform, Māori land owners recognised that some changes were needed to make the Act clearer and fairer.

In response to their feedback, the Government decided to make targeted changes to the Act and other legislation to better support Māori land owner aspirations with regard to the governance, management and the utilisation of their whenua.

The changes proposed will be progressed in two stages.

The first stage involves changes to the Act to support the Māori Land Court and promote better connection between Māori land owners and their whenua, encourage greater participation in the governance and management of their whenua, and to allow whānau to make more informed decisions about how their whenua is used.

A second stage of changes will address issues with the rating and valuation of Māori land and the Public Works Act 1981.

The proposed legislative changes are part of a Whenua Māori Programme that the Minister of Māori Development, Hon. Nanaia Mahuta, announced in February 2019.

5. Will the proposed amendments alter the role of the Māori Land Court?

The proposed amendments are designed to better support the efficient operation of the Māori Land Court.

The Māori Land Court will continue to provide a court service for owners of Māori land, their whānau and their hapū that upholds the retention of Māori land, and assists with the occupation, development and use of that land.

6. Is there evidence supporting the proposed amendments?

The amendments proposed to the Act are supported by research.

During the development of the former Bill, Māori land owners told us about the problems they had navigating and complying with the Act, and the impact was that whānau were not getting involved in decisions about their whenua. These problems were confirmed by those involved with the Māori Land Court.

7. Have Māori land owners been given an opportunity to input into the proposals?

When developing the targeted amendments, the Minister met with various Māori land owners regarding the proposals and the feedback received has been encouraging.

The targeted amendments were guided by the comments received as part of the previous reform proposal.

8. Have the Māori Land Court judges been consulted on the proposals?

The Māori Land Court judges were sent an earlier version of the legislation to assess its workability in the court, and their feedback has been taken into account.

9. Will the changes require additional funding?

Investment is required to introduce a more efficient succession process and to establish a dispute resolution service. Funding for the Programme was confirmed as part of the 2019 Wellbeing Budget.

SUCCESSION

10. What are the problems with the current succession process?

Currently, all succession applications are heard at a sitting of the Māori Land Court. The Court receives on average 2,250 succession applications each year.

The need for a court hearing can discourage whānau from applying for succession and has led to land interests remaining in the name of a deceased owner. A court hearing often requires whānau to travel, or take time off work, to attend a hearing, including those applications where all whānau members agree who should succeed.

11. How will the proposed changes improve the succession process?

Simple and uncontested succession applications will be able to be dealt with by a court registrar without a formal hearing.

This change will enable whānau to more easily succeed to Māori land and begin reconnecting with their land and participating in its management. It is expected to also free up judicial time for other matters.

12. What is a “simple and uncontested” succession application?

The Bill includes examples of the kinds of matters that may now be dealt with by a Māori Land Court registrar.

When processing an application, if the registrar considers that the matter is not as simple as it initially appeared to be, the registrar may refer the application to a judge. All applicants will still have the right to choose to have their matter heard in open court.

13. How will disputes about tikanga Māori matters be resolved in succession applications?

The Bill includes a provision that allows the Māori Land Court to appoint experts in tikanga Māori or whakapapa as additional members of the court in proceedings concerning Māori land. This will assist in situations where there is contention surrounding the applicable tikanga in succession applications.

14. How are the rights of surviving spouses/partners being reconciled with the rights of the descendants of the deceased owners?

Upon the death of a Māori land owner, their descendants will be able to apply to succeed to their Māori land interests straight away, while their surviving spouses or partners will be able to obtain a life interest in income or grants from the deceased owner's interests in Māori land, as well as the right to occupy a family home situated on the land.

This proposal facilitates the connection and engagement of whānau with their land and removes a source of tension between descendants and surviving spouses or partners.

DISPUTE RESOLUTION PROCESS

15. What is the problem with the current system?

All disputes over Māori land must currently be considered by the Māori Land Court. Whānau disputes involving whenua Māori are often delicate and complex.

This public way of resolving disputes can often lead to long-lasting resentment between whānau members and have an impact on their relationships.

16. What are the benefits of dispute resolution?

A private and out-of-court dispute resolution process using a mediator and relevant tikanga to resolve the issues should help to maintain whānau relationships. Details of disputes will stay private and whānau can develop their own solutions. Having a mediator work with parties outside of a court process will better enable whānau to come up with a sustainable agreement.

17. Will parties have to pay to use the dispute resolution process?

The mediation process will be free, although the parties would need to meet the travel costs associated with attending the mediation and the costs of obtaining independent legal advice if required.

18. What choice will parties have in who can be a mediator?

For the first two years of the new legislation, only Māori Land Court judges will be able to be used as mediators in the dispute resolution service. A judge appointed as a mediator may not sit as a judge on any subsequent proceedings relating to the matter.

After two years, the parties may request a mediator from a list of approved independent mediators. Parties will also be able to agree a mediator who is not on the list, so long as the appointment is approved by the Chief Executive of the Ministry of Justice and the referring judge/registrar. Parties will still be able to request a judge as mediator if that is their preference.

19. Why aren't the provisions concerning independent mediators coming into force sooner?

Delaying the commencement of these provisions allows more time for mediation organisations to build up a pool of mediators with the relevant skills and experience unique to the Māori land tenure system. It will also allow more time to understand the demand for the services and the nature of the disputes.

20. What qualifications does a person need to be a mediator?

Mediators must have the requisite skills and experience in Māori land, in dispute resolution and in relevant tikanga.

21. What happens if parties reach an agreement?

If parties reach an agreement, the mediator will record the terms of the resolution and provide this to the court to formalise.

22. What happens if the parties fail to reach an agreement?

If agreement is not reached at mediation, the mediator will notify the court. There are a range of options available to parties when considering the next steps to resolve the dispute.

MĀORI LAND COURT

23. Why is the jurisdiction of the Māori Land Court being extended?

The Bill will restore the Māori Land Court's jurisdiction under the Family Protection Act 1955, confer jurisdiction to deal with testamentary promises claims under the Law Reform (Testamentary Promises) Act 1949, and extend the Court's jurisdiction relating to certain matters under the Government Rounding Powers Act 1989, the Local Government Act 1974, and the Property Law Act 2007.

The Māori Land Court is better placed to hear applications relating to Māori land under these provisions. These changes would make the relevant remedies more accessible to owners and better utilise the expertise of judges, who have a close understanding of the dynamics of whānau and the Māori community. It is better placed to assess the cultural implications of how interests in Māori land should be dealt with and would bring expertise and empathy to the determination of claims of these kinds.

24. Why are the remedies of the Māori Land Court being expanded?

The Bill extends the range of remedies available to whānau to enforce a decision of the Māori Land Court.

Currently, the remedies available to enforce a decision of the Māori Land Court are not as comprehensive as in other jurisdictions. This causes unfairness to aggrieved parties and limits the ability of whānau to protect their land. The proposed changes will ensure that the remedies are practical and effective, as well as align more closely with the jurisdictions of other courts.

25. What reforms are being implemented to encourage the development of papakāinga housing?

Currently, whānau are discouraged from building papakāinga housing on marae and other Māori reservations as the maximum length of time that a lease or occupation licence may be granted for is limited to 14 years, with no right of renewal (although there is an exemption for leases granted for education and health purposes). This makes it unattractive for financial lenders to grant loans to develop housing.

Allowing the granting of leases for terms exceeding 14 years, with rights of renewal, will facilitate owners' access to finance in order to realise their housing aspirations.

26. Does the Bill support the housing aspirations of beneficiaries of whānau trusts?

Currently, the beneficiaries of a whānau trust are not able to apply to the Māori Land Court for an occupation order to use their Māori land for the purpose of housing. While the trustees of a whānau trust may apply for an occupation order on behalf of a beneficiary, trustees are often reluctant to do so as they would be liable if something goes wrong.

The Bill enables the court to grant occupation orders to beneficiaries of a whānau trust (provided the trustees of the whānau trust agree). This will stimulate housing development by enabling the beneficiaries of a whānau trust to use their land to achieve their housing aspirations. The proposed change should also make the establishment of whānau trusts more attractive, thereby reducing the further fragmentation of Māori land interests.

RELATED MATTERS

27. How will access to landlocked land be improved?

The Māori Land Court will need to consider more factors when making a decision on an application for reasonable access to landlocked land. The court will now need to consider:

- the relationship that the applicant has with the whenua and with any water, site, place or cultural or traditional significance or other taonga associated with the land, and
- the culture and traditions of the applicant with respect to the whenua.

The proposed change will improve the likelihood that applications for the granting of reasonable access will succeed.

The Bill also repeals the requirement that appeals regarding landlocked land need to be heard in the High Court. This will take advantage of the Māori Appellate Court's expertise and reduce the costs associated with appealing a decision relating to landlocked land.

28. What other changes are being made to promote the retention of Māori land?

Many of the proposed changes in the Bill will better protect Māori land, including:

- clarifying that Māori customary land and Māori reservations cannot be compulsorily acquired or vested under another statute;
- removing the requirement that when land is changed from Māori customary land to Māori freehold land the court must determine the owners' relative interests in that land;
- removing the provision deeming Māori customary land to be Crown land for the purposes of trespass;
- clarifying the process for the right of first refusal for sale or gift of Māori freehold land;
- protecting Māori land from claims under the common law doctrine of adverse possession;
- removing the requirement that a strip of land needs to be set aside for an esplanade reserve when Māori freehold land is partitioned; and
- clarifying that ownership interests in Māori land cannot be taken to pay judgement debts or unpaid fines.

29. What value will the changes have for existing land trusts and Māori incorporations?

The amendments will introduce a more streamlined process for dealing with simple and uncontested trust matters, by allowing them to be dealt with by a court registrar. The process for establishing a Māori incorporation will also be easier.

The Bill also updates the provisions around removing a trustee or a member of the committee of management of a Māori incorporation, and inserts a requirement for Māori incorporations to record the details of dividends paid to shareholders. These changes will align Māori land trusts and Māori incorporations with similar entities, and provide greater transparency for Māori land owners.