Public Commentary

Te Ture Whenua Maori (Succession, Disputes Resolution and Related Matters) Amendment Bill

1. Māori land is taonga tuku iho for retention through the generations. It contributes to the cultural and economic wellbeing of Māori and has unrealised potential for productive economic growth, including job creation for whānau. There are approximately 1.4 million hectares of Māori land, which equates to around 5 percent of New Zealand's land area, with most concentrated in the mid to upper North Island.

2. An effective legal framework is required to support Māori land owners to realise the full potential of their land.

3. Māori land is governed by Te Ture Whenua Maori Act 1993 (**TTWM Act**), which recognises that Māori land is taonga tuku iho with special cultural significance for Māori. The TTWM Act endeavours to balance the retention of Māori land while facilitating the occupation, development and utilisation of that land by its owners and their whānau, hapū and descendants.

4. The TTWM Act has been in operation for over 25 years and continues to provide a sound legal framework for Māori land tenure, supporting whānau to retain, as well as develop and utilise, their Māori land. However, the Act would work better for whānau if some practical and technical changes were made to reduce the complexity and compliance requirements that Māori land owners encounter when they engage with the courts about their Māori land.

Succession

5. One of the big challenges facing Māori land is the high number of ownership interests where whānau have not applied for succession.

6. To succeed to an interest in Māori land, an application must be made to the Māori Land Court to prove the successor's right to succeed. From 2008-2017 (inclusive), the Court has received 2241 succession applications per year.

7. All succession applications must be heard at a sitting of the Māori Land Court. This often requires whānau to travel, or take time off work, to attend a hearing, including for uncomplicated applications where all family members agree who should succeed. The length, complexity, and costs of participating in this process have been a disincentive for whānau applying for succession, and have contributed to Māori not succeeding to their land interests.

Simple and uncontested succession applications

8. The Bill will enable simple and uncontested succession applications to be received, confirmed and recorded by a Registrar of the Māori Land Court, instead of going through a full court hearing process.

9. 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.

10. The Bill includes examples of the kinds of matters that may now be dealt with by a Registrar. When processing an application, if a 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.

11. Allowing a Māori Land Court registrar to determine simple and uncontested succession applications will require the addition of new section 113A, which is set out in clause 26 of the Bill.

Additional changes

12. Some additional changes have been proposed to address other issues with the succession regime.

Whāngai

13. Persons adopted in accordance with tikanga Māori are only entitled to succeed to Māori land interests if the Māori Land Court determines they have been formally recognised as being the whāngai of the deceased owner. The factors that the Court may take into consideration when making this determination are not set out in the Act.

14. The Bill clarifies that the tikanga of the relevant iwi or hapū will determine whether whāngai are eligible to succeed. In the event that the Māori Land Court finds that the relevant tikanga does not recognise a relationship of descent, the whāngai will be eligible to receive income or grants from the estate and the right to occupy the family home.

15. These proposals are found in new section 114A, as well as in changes to sections 115 and 116 (see clauses 27 and 28 of the Bill).

Surviving spouse or partner

16. Upon the death of a Māori land owner, their surviving spouse or partner may receive a life interest, either by will, or as of right where there is no will. This means they can receive income and grants from the deceased owner's interests in the land, occupy a family home situated on the land, and participate (e.g. vote) in decision-making about the land.

17. These interests only pass to the deceased owner's descendants once the spouse or partner has died, entered a new relationship, or surrendered the rights. The opportunity for descendants to be involved in the decision-making of the land is therefore delayed.

18. The Bill proposes that upon the death of an owner of Māori land, their interests pass to their descendants immediately. This will enable the next generation to be involved as owners of the land straight away. The surviving spouse or partner of the owner will no longer be entitled to participate in decision-making about the land. However, they are still entitled to a life interest in income and grants from the deceased owner's interests in Māori land, as well as occupation rights in respect of a family home situated on the land.

19. These proposals are set out in new sections 108A and 109AA, as well as in changes to sections 108 and 109 (see clauses 21 to 24 of the Bill).

Dispute resolution

20. Disputes involving Māori land are often delicate and sensitive situations, involving people with close kinship ties to each other. Many disputes could be resolved earlier if a mediation process were available. The absence of disputes resolution in TTWM Act has forced parties to focus their positions on the outcomes sought and not on finding creative, constructive solutions agreeable to both parties. For many people, taking a case to court is time-consuming, expensive in terms of legal fees, and time spent away from work.

21. The Bill establishes a voluntary mediation process that allows people to resolve disputes about Māori land using a process that draws on tikanga Māori. Providing mediation would not only avoid unnecessary litigation but should be less expensive for the parties compared to going to court. Mediation, if entered into in good faith and in the right circumstances, would give the parties a sense of control over the decision made about their land, lead to more durable resolutions of disputes and help preserve the long-term relationship between the parties.

22. The Māori Land Court already has the power to refer certain fisheries, aquaculture and representation disputes to mediation. Enabling mediation in the area of Māori land is consistent with these existing powers.

Mediation process

23. The mediation process will be confidential, fully funded (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), limited to matters within the Māori Land Court's jurisdiction (so long as they are not subject to a separate dispute resolution process) and administered by the Māori Land Court.

24. Mediation will be available for proceedings that are already before the Māori Land Court, as well as disputes for which court proceedings have not been initiated, so long as mediation is likely to be effective.

25. The parties may select a mediator from a list of approved mediators which will be updated and developed over time. The list shall include mediators in different regions and the type of matters in which each mediator has knowledge and experience. In some cases, it may be necessary to appoint more than one

mediator: for instance, to enable different skills sets to be available to the parties during mediation (e.g. kaumātua/kuia alongside dispute resolution experts).

26. The parties may also chose a mediator from outside this list if the appointment is approved by the Chief Executive of the Ministry of Justice, and the Judge or Registrar who referred the matter to mediation. Likewise, if the parties cannot agree on who the mediator should be, the Judge or Registrar will appoint a person to mediate the dispute. If the parties want a judge to mediate, he or she will not be prohibited from doing so. However, that judge may not sit in any potential further proceedings relating to the matter.

27. The mediator would incorporate the tikanga of the parties into the mediation process as appropriate. The mediator will be expected to help the parties resolve the issues in dispute as promptly and effectively as possible.

28. If the mediation is successful, the terms of resolution shall be recorded in a court order, which will become enforceable.

29. Where the mediation of issues arising from court proceedings is unsuccessful, the mediator must report back to the Judge who referred the issue to mediation. The judge may refer the unresolved issues back to mediation or to the court. In the out-of-court process, the parties can choose to withdraw from mediation, take the issues to court, or seek further mediation. Unresolved issues will only be referred back to mediation if the court is satisfied that mediation is the most appropriate way to resolve the dispute.

30. The dispute resolution process is found in new sections 98H to 98S (see clause 19 of the Bill).

Related Matters

Extending the jurisdiction of the Māori Land Court

31. The Māori Land Court does not have jurisdiction to hear certain matters relating to Māori land, even though it is the more appropriate judicial forum to do so.

32. The Bill restores the Māori Land Court's jurisdiction under the Family Protection Act 1955; confers jurisdiction to deal with testamentary promises claims under the Law Reform (Testamentary Promises) Act 1949; and extends the Court's jurisdiction relating to certain matters under the Government Roading Powers Act 1989, the Local Government Act 1974, and the Property Law Act 2007.

33. Allowing the Māori Land Court to hear these matters better utilises the expertise of its judges, who have a close understanding of the dynamics of whānau, the wider Māori community and their engagement with their land.

34. These proposals are set out in new sections 20A and 22B of the TTWM Act (see clauses 7 and 8 of the Bill), and amendments to section 3A of the Family Protection Act 1955, sections 48, 50, 55, 61, 74 and 76 of the Government Roading Powers Act 1989, section 5 of the Law Reform (Testamentary Promises) Act 1949 and section 446 of the Local Government Act 1974 (see clauses 67 to 79 of the Bill).

Expanding the remedies available to enforce a decision

35. Currently, the remedies that a Judge of the Māori Land Court can employ to achieve an adequate outcome of a matter are not as comprehensive as in other jurisdictions. This causes unfairness to aggrieved parties and limits the ability of whānau to protect their Māori land.

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

- When whānau apply for an injunction, the Māori Land Court will now be able to require a person to remove or reinstate any object or structure, or repair any damage to the land (see amendment to section 19, which is contained in clause 6 of the Bill);

- The Māori Land Court will now be able to grant equitable relief if it is satisfied that this is necessary to achieve a just outcome of a dispute, where other remedies would be insufficient to achieve that outcome (see new section 24C, which is contained in clause 9 of the Bill);

- Orders for the recovery of Māori land will now be able to be sent directly to the High Court or District Court for enforcement (see new section 81A, which is contained in clause 16 of the Bill).

37. These changes will ensure that the remedies are practical and effective, as well as better align the Māori Land Court with other courts.

Improving the way the Māori Land Court functions

38. The Bill makes improvements to the way the Māori Land Court functions. These changes include:

- Enabling the Māori Land Court to appoint experts in tikanga Māori or whakapapa as additional members of the court to assist in cases involving Māori land (see new section 32A and the amendments to sections 32, 34 and 36, which are contained in clauses 10 to 14 of the Bill);

- Providing the Māori Land Court judges with the power to hold judicial settlement conferences, which will enable them to assist parties to resolve an issue without the need for a formal court hearing (see new section 40A, which is contained in clause 15 of the Bill).

Supporting housing aspirations

39. 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 housing purposes. While a trustee of the whānau trust may apply for an occupation order on their behalf, trustees are often reluctant to do so as they would be liable if something goes wrong.

40. The Bill enables the court to grant occupation orders to beneficiaries of a whānau trust (provided the trustees of the whānau trust agree). This should stimulate housing development by enabling beneficiaries of a whānau trust to use their Māori land to achieve their housing aspirations (see amendment to section 328, which is contained in clause 57 of the Bill).

41. Currently, whānau are discouraged from building papakāinga housing on marae and other Māori reservations as a lease or occupation licence may only be granted for a maximum period of 14 years, with no right of renewal. This makes it difficult for whānau to secure a loan to help pay for the housing development.

42. The Bill will allow leases and occupation licences on a Māori reservation to be granted for periods longer than 14 years. This change will remove a potential barrier to obtaining finance for such projects, and support whānau realise their housing aspirations (see amendment to section 338, which is contained in clause 60 of the Bill).

Other targeted amendments

Better alignment with the rules governing other governance bodies

43. The Bill will update the provisions around removing a trustee or a member of the committee of management of a Māori incorporation, and insert a requirement for Māori incorporations to record the details of dividends paid to shareholders. These changes will better align Māori land trusts and Māori incorporations with similar governance entities, reflect recent changes to trust law, and provide greater transparency for Māori land owners. The Bill will also allow simple and uncontested trust matters to be dealt with by a court registrar, without requiring a court hearing. The process for establishing a Māori incorporation will also be easier.

44. These proposals are set out in new sections 235A, 274B and 274C and amendments to sections 240, 247, 259, 269, 272 which are contained in clauses 41, 42, 44 to 48 of the Bill.

Better protection of Māori land

45. Some changes are being made to ensure that Māori land stays in the hands of its rightful owners.

Issue	***Explanation***	***Proposal***
Acquisition of Māori customary land and Māori reservations	It is unclear whether Māori customary land and Māori reservations are fully protected from compulsory acquisition.	The Bill clarifies that Māori customary land and Māori reservations are protected from compulsory acquisition or vesting under another statute. See amendment to section 145 (which is set out in clause 35 of the Bill).
Payment of judgment debts and unpaid fines	It is unclear whether the long-standing protection preventing Māori land interests from being taken for debt recovery would prevent the sale of Māori land to collect overdue fines.	The Bill clarifies that the protection preventing individual ownership interests in Māori land from being taken to pay judgment debts or unpaid fines will continue. See amendment to section 342 (which is set out in clause 65 of the Bill).
Right of first refusal	Members of the preferred classes of alienees are provided a right of first refusal to sale or gift of any Māori land. However, the process for doing so is not specified in the TTWM Act, which has created uncertainty for whānau.	The Bill ensures that the process for the right of first refusal is set out clearly in the TTWM Act so that the right of first refusal is transparent and cannot be circumvented. See amendment to section 147A and consequential amendment to section 152 (which are set out in clauses 36 and 39 of the Bill).
Adverse possession	The doctrine of adverse possession enables a person who has been occupying land continuously for at least 20 years to claim prescriptive rights over that land, including ownership rights and rights of way. While the Land Transfer Act 2017 implies that Māori land cannot be taken in such circumstances, common law principles (as distinct from statute) might still permit Māori land to be claimed under the doctrine of adverse possession.	The Bill removes this uncertainty. This is important as landlocking and the partitioning of titles has exposed Māori land to claims of adverse possession to a much greater extent than other types of land. See new section 150E (which is set out in clause 38 of the Bill).

Esplanade reserve	Partitions of Māori freehold land involving members of the same hapū are currently exempted from the subdivision controls of the Resource Management Act 1991. It is unclear, however, whether other partitions of Māori land are also exempt from esplanade reserve requirements.	The Bill clarifies that on or following a partition of Māori land next to the sea, a river or a lake, an esplanade reserve will not be taken if the owners of each new land block are not members of the same hapū. See amendment to section 301 (which is set out in clause 51 of the Bill).
Survey of Māori land	The Māori Land Court may direct the Chief Surveyor to survey a block of Māori land. In such cases, a charge may be imposed on the block to secure payment of the cost of survey. This may lead to the loss of that land if the owners are not in a position to pay the costs of the survey.	The Bill removes the ability to require a survey of Māori land and thereby avoids the costs of the survey being imposed as a charge on Māori land. See amendment to section 334 and repeal of sections 332, 333 and 336 (which are set out in clauses 58 and 59 of the Bill).
Individualisation of shares	When land is changed from Māori customary land to Māori freehold land, the Māori Land Court is required to determine the relative interests of the owners of the land, which individualises what in reality is collective title.	The Bill prevents ownership interests being individualised when Māori customary land is converted to Māori freehold land. This will ensure that the regime for Māori customary land aligns more closely with traditional forms of Māori land ownership, by recognising the equal ownership of collective lands. See amendment to section 132, and consequential amendments to 128, 141, 150A, 215, 241, 290, 297, 307 and 308 (which are set out in clauses 30, 32, 37, 40, 43, 49, 50, 52 and 53 of the Bill).
Trespass	Māori customary land is deemed to be Crown land for the purposes of preventing trespass. This has led to the loss of Māori land as “deemed” Crown land has been inadvertently treated as being “actual” Crown land when, in fact, it was Māori customary land.	The Bill removes the provision deeming Māori customary land to be Crown land and authorises the Māori Trustee to bring proceedings for trespass, injury or wrongful possession. See amendment to section 144 (which is set out in clause 34 of the Bill).

Better access to landlocked Māori land

46. The Bill broadens the factors the Māori Land Court must have regard to when considering an application for reasonable access to landlocked land. The Court now must also have regard to:

    - the relationship that the applicant has with the land and with any water site, sacred 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 land.

47. This change will improve the likelihood that applications for the granting of reasonable access will succeed.

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

49. These changes are set out in the proposed amendments to sections 326A, 326B, and 326D (which are contained in clauses 54, 55, and 56 of the Bill).

Miscellaneous matters

50. Currently, an order for payment from the Special Aid Fund of the Māori Land Court must be forwarded to the Legal Services Commissioner by post. This requirement is being replaced with an ability to transfer a court order by other means, including electronic transmission. The proposed change will help reduce the costs and delay associated with this requirement (see amendment to section 98, which is contained in clause 18 of the Bill).

51. The process for returning Crown land to its former owners as Māori freehold land is relatively straightforward. However, if the former owners want the land returned as Māori customary land, this can only be done by conferring special jurisdiction on the Māori Land Court, which is complicated and time-consuming. The Bill will make it easier for Crown land to be returned to its former owners (and all of their descendants) as Māori customary land (see new section 131A, which is contained in clause 31 of the Bill).

52. Currently, applications to form Māori reservations need to be heard by the Māori Land Court, who may make a recommendation to the chief executive of Te Puni Kōkiri to set land apart as a Māori reservation. The chief executive may, by notice in the *Gazette*, set that land apart as a Māori reservation. The Bill simplifies this process by allowing for the establishment of a Māori reservation by an order of the court (see amendments to 338 to 341 and new section 341A, which are contained in clauses 60 to 64 of the Bill).