REPORT

TE TURE WHENUA MĀORI ACT 1993 REVIEW PANEL

POUTŪ-TE-RANGI 2014

Te Kāwanatanga o Aotearoa

Cover : the off-spring of Tāne and Tunarangi, the **nikau** provided a rich array of benefits for Māori including thatching and weaving materials (leaves), storage containers (outer trunk), necklaces (berries) and food (young shoots).

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To the Minister

Hon Christopher Finlayson
Associate Minister of Māori Affairs
Parliament Buildings
WELLINGTON

Tēnā koe e te Minita

We were appointed in May 2012 to review Te Ture Whenua Māori Act 1993 with a view to recommending legislative amendments to assist in unlocking the economic potential of Māori land for its beneficial owners while preserving its cultural significance for future generations.

Our terms of reference required us to consider and make recommendations on what form of legislative intervention might best support the owners of Māori land to achieve their aspirations. We were asked to focus on assisting owner-driven utilisation and to make recommendations in four key areas:

- **Ownership** – what is required to enable Māori land owners to affiliate and engage with their land?
- **Governance** – what is required to ensure there are appropriate structures and trustees with expertise to support effective decision-making?
- **Access to resources** – what resources are available to make and implement decisions?
- **Utilisation** – what is required to enable better utilisation of Māori land?

Executive summary

This report contains our recommendations for reform of the laws relating to Māori land. Our report includes the current statistics relating to Māori land and issues facing owners of Māori land, the process we followed in conducting this review, including the key points in a discussion document that was released for public comment, and an outline of the themes arising from the 20 consultation hui we held and 189 written submissions received from individuals, whānau, hapū, iwi, trusts and incorporations, local authorities, law firms and others.

The tables on the following pages are based on the five propositions on which we sought public comment and feedback. The propositions relate to the key areas of Māori land ownership, governance of Māori land blocks and the institutional framework to support owners of Māori land. The table includes suggestions we made in order to stimulate discussion, summarises key themes from submissions and consultation hui and sets out our recommendations.

Proposition 1: Utilisation of Māori land should be able to be determined by a majority of engaged owners

Proposition	Submissions and feedback
Utilisation of Māori land should be able to be determined by a majority of engaged owners.	Many submitters and hui attendees express support in principle for this proposition and for strengthening the ability of owners to make decisions, themselves, regarding their land. A common theme is the need for greater resourcing, such as a centralised, online 'hub' or database to allow land owners to freely update their contact information. There is a view that people living on the land or in the rohe should be regarded as the "engaged" owners. However, a significant number consider that decisions should be made by those who choose to be actively involved, wherever they might live. A minority consider the principle of rangatiratanga entitles owners to make any decisions they wish, including selling the land, and that restrictions on this right and thresholds for decision-making are things for owners to decide, not the legislation.

Suggestions	Submissions and feedback
An engaged owner is defined as an owner who has actively demonstrated their commitment to their ownership interest by exercising a vote either in person or by proxy or nominee.	Submitters are generally supportive of the engaged owner concept, but consider more work is required to define the term 'engaged owner'.
Where Māori land is alienated by sale or other permanent disposition, Māori Land Court approval should be required to confirm that 75% agreement from all registered owners has been obtained and that those who affiliate to the land have been given the first right to purchase the land.	Submitters agree the Māori Land Court should still be required to confirm that 75% agreement has been obtained from all registered owners to sell or permanently dispose of the land.
All other decisions should require the approval of at least 50% of engaged owners, provided there has been full and timely disclosure of the proposal to all registered owners; and should only be able to be challenged as to whether fair value has been obtained or where there has been a conflict of interest or other breach of duty.	There are mixed views from submitters as to the proposed 50% threshold. Some consider it is too high, others too low. Submitters consider that meeting and voting requirements will require careful design and should take into account the availability of online and social media mechanisms.
Certain significant decisions (e.g. long-term lease) may require the approval of at least 75% of engaged owners.	There are mixed views from submitters. Many of the large incorporations and trusts who submitted consider 75% is too high.

Recommendation

We recommend that reforms to the laws relating to Māori land include provisions to give effect to Proposition 1

The laws relating to Māori land should:

- be changed and clarified to enable engaged owners of Māori land to make governance and utilisation decisions that take effect and bind relevant parties without the need for confirmation, approval or other action by the Māori Land Court or any other supervisory body; and
- continue to include safeguards requiring a high threshold of owner agreement before decisions to dispose of Māori land will have legal and binding effect.

Proposition 2: All Māori land should be capable of utilisation and effective administration

Proposition	Submissions and feedback
All Māori land should be capable of utilisation and effective administration.	There is general support for the appointment of external managers in appropriate circumstances. Submitters consider there should be flexibility as to who is appointed as external administrator. Submitters consider there should be clear rules for external administrators to follow and that their decisions should be closely monitored. Land owners should be able to recover the land at any time. Views are split as to whether the Māori Land Court should approve the appointment and the retention of external administrators of Māori land. A number of submitters make the point that utilisation is not just about farming or forestry or other income generating or economic activities. It is about rangatiratanga and whanaungatanga. Some Māori land is marae, some is urupā, some is wāhi tapu, and some is papakāinga.

Suggestions	Submissions and feedback
Where owners are either not engaged or are unable to be located, an external manager or administrator may be appointed to manage Māori land titles.	There is general support for the ability to appoint an external manager or administrator, with appropriate safeguards.
Certain Māori entities in addition to Te Tumu Paeroa (formerly the Māori Trustee); such as Post Settlement Governance Entities, Māori trusts and incorporations with hapū or iwi affiliation to the particular Māori land; may be eligible to undertake the role of external administrator or manager.	Submitters are strongly against the default option being Te Tumu Paeroa and support the use of a wider range of organisations to be eligible for appointment as external managers.
The Māori Land Court should approve the appointment and retain oversight of external administrators of Māori land.	There is general support for some form of oversight in approving the appointment and retaining oversight of external administrators.
Rules governing the external administration of Māori land should include: the powers of external administrators; the rights of registered owners to resume administration of Māori land for their own use and management; processes for appointing external administrators; obligations of reporting and accountability for actions taken by the external administrators; and requirements for profits and distributions to be held in trust for owners where they are unable to be located.	There is agreement from submitters that there should be clear and stringent rules governing the external administration of Māori land.

Recommendation

We recommend that reforms to the laws relating to Māori land include provisions to facilitate Proposition 2

The laws relating to Māori land should:

- provide clear mechanisms for external managers to be appointed to administer under-utilised Māori land blocks when there is no engagement by the owners.

Proposition 3: Māori land should have effective, fit for purpose, governance

Proposition	Submissions and feedback
Māori land should have effective, fit for purpose, governance.	A consistent message throughout submissions is the need for robust, transparent and accountable governance of Māori land. There is general support for the proposition that the role of the Māori Land Court should become narrower and focus on adjudication over breaches of the rules. It is widely considered that owners, not the Māori Land Court, should appoint or elect trustees. There is agreement that trustees and governors should be removed for dishonesty and that they should be removed from all trusts in the same way as company directors are barred from being company directors.
Suggestions	**Submissions and feedback**
The duties and obligations of trustees and other governance bodies who administer or manage Māori land should be aligned with the laws that apply to general land and corporate bodies.	There is general support for aligning the duties and obligations of trustees and other governance bodies with the general law, provided this does not impact on the retention of Māori land.
The management and administration of Māori land should be more clearly the responsibility of the duly appointed governors.	There is general support for this proposition, but submitters consider that, alongside reform, resourcing should be provided to up-skill trustees and governors through training and development.

The duties, responsibilities and required competence of governors of Māori land should be more explicit and should include penalties and possible disqualification from governance roles for breaches of those duties.	Submitters who addressed this issue are wary of requiring specific qualifications for people performing governance roles. They consider competence is the issue, not qualifications.
There should be greater consistency in the rules and processes associated with the various types of governance.	Submitters are largely silent on this suggestion.
Elections and appointments of trustees and other governance entities should be recorded by the Registrar of the Māori Land Court with the Court's power to intervene aligned with the powers of the general courts.	There are mixed views on this proposition with some questioning whether this needs to be dealt with by the Māori Land Court.
The role of the Māori Land Court should be to adjudicate over breaches of the rules.	There is general support for narrowing the Māori Land Court's role, with many submitters stating that Māori Land Court processes are too complex, expensive and time consuming.

Recommendation

We recommend that reforms to the laws relating to Māori land include provisions to give effect to Proposition 3

The laws relating to Māori land should:

- clearly prescribe the duties and obligations of Māori land governance entities, including their trustees, directors or committee members, and aligns those duties and obligations with the general law applying to similar entities; and
- clarify the jurisdiction of the Māori Land Court to consider alleged breaches of duty and make appropriate orders.

Proposition 4: There should be an enabling institutional framework to support owners of Māori land to make decisions and resolve any disputes

Proposition	Submissions and feedback
There should be an enabling institutional framework to support owners of Māori land to make decisions and resolve any disputes.	There is strong support for the proposition that disputes relating to Māori land should be referred in the first instance to mediation. It is generally considered by submitters that a mediation service needs to be staffed by mediators with knowledge of tikanga and Māori land (not just general mediators), and that the mediation service needs to go to the marae. Submitters also consider that the mediation service should be provided free of charge. If not, owners will be deterred from using it.

Suggestions	Submissions and feedback
Disputes relating to Māori land should be referred, in the first instance, to mediation.	Submitters are in agreement that disputes should be referred to mediation in the first instance, adapted appropriately for a Māori context.
The Māori Land Court should be empowered to conduct judicial settlement conferences and refer disputes to mediation.	Submitters agree that the Māori Land Court should be empowered to conduct judicial settlement conferences and refer disputes to mediation.
Where the dispute remains unresolved following mediation, it may be determined by the Māori Land Court.	Submitters agree that where a dispute remains unresolved following mediation, it may be determined by the Māori Land Court.

Recommendation

We recommend that reforms to the laws relating to Māori land include provisions to give effect to Proposition 4

The laws relating to Māori land should:

- require disputes relating to Māori land to be referred, in the first instance, to mediation; and
- contain clear and straightforward provisions and rules to ensure the Māori Land Court remains an accessible judicial forum for resolving disputes that cannot be resolved by mediation and enabling trustees, directors and committee members of governance entities to be held to account for breaches of duty.

Proposition 5: Excessive fragmentation of Māori land should be discouraged

Proposition	Submissions and feedback
Excessive fragmentation of Māori land should be discouraged.	There is general support for the suggestion that succession to Māori land should be simplified. A number of people talk about difficulties with probate and succession and the costs associated with it. There is a view that something needs to be done about fragmentation but no clear consensus about how to deal with it. There is support for the proposal that a Register should be maintained to record the names and whakapapa of all interests in Māori land, regardless of size. Many submitters strongly oppose the concept of limiting decision-making rights to those with a minimum threshold interest.

Suggestions	Submissions and feedback
Succession to Māori land should be simplified.	Submitters are in agreement that succession should be simplified but are unclear as to how this should be resolved.
A register should be maintained to record the names and whakapapa of all interests in Māori land, regardless of size.	There is general agreement with a register of names and whakapapa.
The rights of decision-making in respect of Māori land should be limited to those owners with minimum threshold interests.	Submitters clearly reject the idea that decision making should be limited to those with minimum shareholding interests, on the basis that it contradicts tikanga and goes against the inherent right of all owners to be active participants.

Recommendation

We recommend that reforms to the laws relating to Māori land include provisions to facilitate Proposition 5 but the rights of decision-making should remain open to all owners

The laws relating to Māori land should:

- provide transparent registration provisions for Māori land titles and assurance of title to reflect the nature of Māori land tenure as a collectively held taonga tuku iho;
- contain provisions that facilitate succession to Māori land with a minimum of compliance requirements and simple, straightforward administrative, rather than judicial, processes; and
- contain provisions to address barriers caused by excessive fragmentation of Māori land ownership interests.

Māori land

There are approximately 1.466 million hectares of Māori land, which is approximately 5.5 percent of New Zealand's land mass, situated mainly in the north, centre, and east of the North Island.[1]

Māori land by Māori Land Court District as at June 2012

Rohe	# titles	Area (ha)
Taitokerau	5,464	145,686.8561
Waikato Maniapoto	3,821	125,642.7569
Waiariki	5,200	313,964.3235
Tairāwhiti	5,295	262,335.5152
Tākitimu	1,353	87,971.9052
Aotea	3,811	456,985.1624
Te Waipounamu	2,364	68,045.8173
Total	27,308	1,465,917.2885

Source: MLC, 2012

Māori Land Court records indicate that the 1.466 million hectares of Māori freehold land is held in 27,308 titles with over 2.7 million individual ownership interests. The average size of a Māori land title is 53.7 hectares – the smallest 10 percent of titles average 0.79ha and the largest 10 percent of titles average 487 hectares. There are approximately 100 owners per title on average.

For the average owner today, interactions and connections with the land are very different from what was experienced before introduction of the Māori land title tenure system. Changes created by that system, combined with changes in the Māori population, such as urbanisation, have resulted in varying levels of engagement, which can be broadly categorised at five levels:

1. Māori Land Court (2012) Māori Land Update – Ngā Āhuatanga o te Whenua, June 2012, Wellington, New Zealand.

- potential owners are unaware of their ability to succeed;
- potential owners are aware of their interests, but have not succeeded;
- owners have succeeded to their interests, but don't vote;
- owners have succeeded to their interests and vote; and
- owners have succeeded to their interests, vote, and are actively contributing to the development of their land.

The issue of differing degrees of engagement is more significant for larger titles with multiple ownership interests than for titles owned and managed by one person or family.

Data from the Māori Land Court indicates that the number of Māori land titles with a governance structure is less than half the total. While this figure appears low and could indicate a lack of engagement with these titles, there may be a number of reasons why this may not be the case. These include situations where land is used for housing purposes and so no governance structure is needed or where informal arrangements are in place, making a formal structure unnecessary.

It is likely that a significant proportion of titles without governance structures are the smaller titles. This is borne out by evidence that, by area rather than by title, there is more Māori land with a governance entity than without. A focus on greater engagement by owners will facilitate improved governance arrangements for smaller titles as well as larger ones.

The lack of suitable governance experience and training has been identified as a significant issue for trustees and owners of Māori land. This has been attributed, at least in part, to insufficient incentives to encourage participation by skilled trustees and a lack of penalties and sanctions to discourage poor performance.

Process

Māori land issues have been well documented over a long period so we were able to draw on relevant material without having to undertake new research ourselves. We found two reports to be particularly helpful. They are *Owner Aspirations Regarding the Utilisation of Māori Land*, Te Puni Kōkiri (2011) and *Māori Agribusiness in New Zealand: A Study of the Māori Freehold Land Resource*, Ministry of Agriculture and Forestry (2011).

Those reports demonstrate there is:

- a strong view among Māori land owners that Māori land is a taonga tuku iho of special significance to Māori that should be developed and utilised for the benefit of the owners, their whānau and their hapū and retained as a legacy for generations to come; and
- significant scope to increase economic returns from Māori land.

We held initial meetings with selected stakeholders. These included the Judges of the Māori Land Court, Te Tumu Paeroa and representatives from the major trading banks. From the information we obtained, and drawing on the experience of panel members, we developed a discussion document that was released on 3 April 2013 for public consultation.

During the consultation period we held 20 public hui throughout New Zealand. As well as discussion and comments at the hui, we received 189 written submissions.

Location	Date	Venue
Tokomaru Bay	29 April 2013	Pākirikiri Marae
Wairoa	29 April 2013	Taihoa Marae
Wellington	30 April 2013	Pipitea Marae
Whanganui	2 May 2013	Te Ao Hou Marae
Waitara	3 May 2013	Ōwae Marae
Whakatāne	9 May 2013	Taiwhakaea Marae
Rotorua	9 May 2013	The Distinction Hotel
Taupō	10 May 2013	Great Lakes Centre
Te Kūiti	13 May 2013	Te Tokanganui a Noho Marae
Christchurch	14 May 2013	Chateau on the Park
Invercargill	14 May 2013	Te Tōmairangi Marae
Auckland- Māngere	16 May 2013	Te Puea Memorial Marae
Auckland- Ōrātia	16 May 2013	Hoani Waititi Marae
Kaikohe	17 May 2013	Mid North Motor Inn
Kaitāia	17 May 2013	The Main Hall, Te Ahu
Tauranga	6 June 2013	Classic Flyers Conference Centre
Hastings	10 June 2013	Te Taiwhenua o Heretaunga
Gisborne	11 June 2013	Mangatū Incorporation
Hamilton	12 June 2013	Kingsgate Hotel
Whāngārei	13 June 2013	Whāngārei Terenga Parāoa Marae

Through this process we have developed the recommendations contained in our report. We have taken a principle-based approach and asked "what should the law look like" rather than "what is wrong with the current law and how should it be fixed".

The core principles that guided our analysis are as follows :

- Māori land legislation should be consistent with the principles of the Treaty of Waitangi.
- Māori land legislation should empower engaged owners.

  Informed and engaged Māori land owners who have actively demonstrated their commitment to their ownership interest are best placed to make decisions about their land. This is consistent with the principle of tino rangatiratanga as well as the property rights protected by statute and common law.
- Māori land legislation should be fit for purpose.

  Māori land has value as taonga tuku iho (a legacy) to be maintained, enriched, and passed on to future generations. This legacy value may sometimes be of more importance to the owners than the economic value or potential of the land. The legislation governing Māori land should protect those essential features that make Māori land unique, including retention.
- Māori land legislation should reflect and encourage best practice.

  Māori land legislation should draw on lessons from other jurisdictions in terms of efficiency and effectiveness.
- Māori land legislation should encourage accountability.

  Māori land legislation should encourage accountability at multiple levels. Owners should be accountable for utilising the land and passing it on to future generations.

Discussion document

For the discussion document we developed an integrated package of five propositions to improve the likelihood of utilisation of Māori land in three key areas: ownership, governance, and institutional framework. Within each key area, we took care to put the issues in their appropriate historical context by informing ourselves how each area has evolved over time to the present day. Based on this context and in keeping with the core principles, we identified problems that need to be addressed and articulated a set of propositions to do so.

The current regime governing Māori land is structured so that a number of decisions cannot be taken by Māori land owners themselves because they are subject to endorsement by the Māori Land Court. Currently, this ranges from sale and long term lease decisions to the establishment of trusts and incorporations to ratifying the decisions

of assembled owners. This serves to disempower owners and makes decision-making processes unnecessarily complex for the majority of the decisions affected.

Some Māori land titles have a majority of owners who cannot or will not succeed to their ownership interest despite attempts to encourage them to succeed. This makes owner-driven utilisation of the land problematic.

Engagement may not be occurring for a number of reasons, including a significant lack of incentive to engage (e.g. the land is unable to be utilised or is extremely marginal) or the presence of a disincentive to engage (e.g. the land is in a significant state of disrepair or subject to large rates arrears). However, this land still needs to be administered as effectively as possible. There may be opportunities for an external administrator to identify potential owners and return the land in its current state or in a more developed state.

The five propositions, with accompanying suggestions, that formed the basis for our consultation process are as follows.

Ownership

Proposition 1: Utilisation of Māori land should be able to be determined by a majority of engaged owners

Suggestions for discussion

- An engaged owner is defined as an owner who has actively demonstrated their commitment to their ownership interest by exercising a vote either in person or by proxy or nominee.
- Where Māori land is alienated by sale or other permanent disposition, Māori Land Court approval should be required to confirm that 75% agreement from all registered owners has been obtained and that those who affiliate to the land have been given the first right to purchase the land.
- All other decisions should require the approval of at least 50% of engaged owners, provided there has been full and timely disclosure of the proposal to all registered owners; and should only be able to be challenged as to whether fair value has been obtained or where there has been a conflict of interest or other breach of duty.
- Certain significant decisions (e.g. long-term lease) may require the approval of at least 75% of engaged owners.

Governance

Proposition 2: All Māori land should be capable of utilisation and effective administration

Suggestions for discussion

- Where owners are either not engaged or are unable to be located, an external manager or administrator may be appointed to manage Māori land titles.
- Certain Māori entities in addition to Te Tumu Paeroa; such as Post Settlement Governance Entities, Māori trusts and incorporations with hapū or iwi affiliation to the particular Māori land; may be eligible to undertake the role of external administrator or manager.
- The Māori Land Court should approve the appointment and retain oversight of external administrators of Māori land.
- Rules governing the external administration of Māori land should include: the powers of external administrators; the rights of registered owners to resume administration of Māori land for their own use and management; processes for appointing external administrators; obligations of reporting and accountability for actions taken by the external administrators; and requirements for profits and distributions to be held in trust for owners where they are unable to be located.

Proposition 3: Māori land should have effective, fit for purpose, governance

Suggestions for discussion

- The duties and obligations of trustees and other governance bodies who administer or manage Māori land should be aligned with the laws that apply to general land and corporate bodies.
- The management and administration of Māori land should be more clearly the responsibility of the duly appointed governors.
- The duties, responsibilities and required competence of governors of Māori land should be more explicit and should include penalties and possible disqualification from governance roles for breaches of those duties.
- There should be greater consistency in the rules and processes associated with the various types of governance.
- Elections and appointments of trustees and other governance entities should be recorded by the Registrar of the Māori Land Court with the Court's power to intervene aligned with the powers of the general courts.
- The role of the Māori Land Court should be to adjudicate over breaches of the rules.

Institutional framework

Proposition 4: There should be an enabling institutional framework to support owners of Māori land to make decisions and resolve any disputes

Suggestions for discussion

- Disputes relating to Māori land should be referred, in the first instance, to mediation.
- The Māori Land Court should be empowered to conduct judicial settlement conferences and refer disputes to mediation.
- Where the dispute remains unresolved following mediation, it may be determined by the Māori Land Court.

Proposition 5: Excessive fragmentation of Māori land should be discouraged

Suggestions for discussion

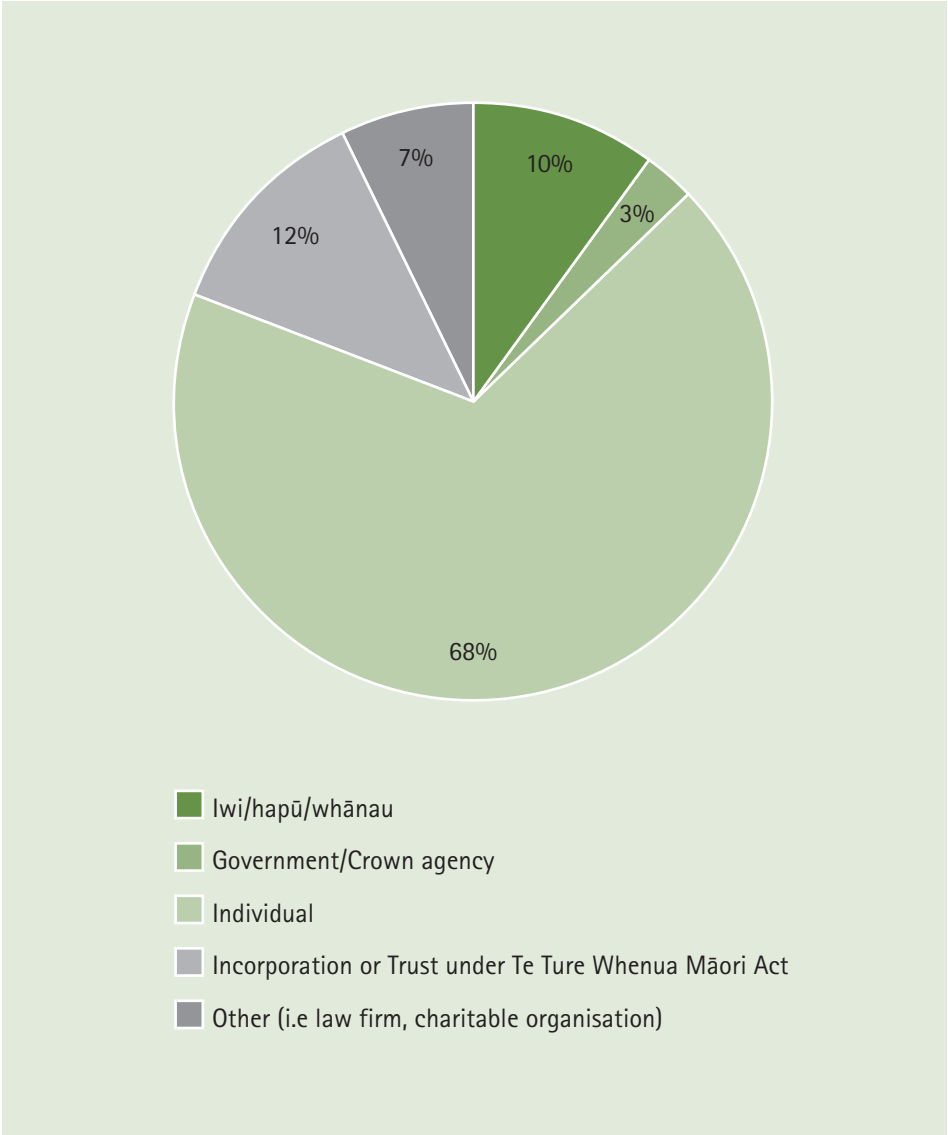
- Succession to Māori land should be simplified.
- A register should be maintained to record the names and whakapapa of all interests in Māori land, regardless of size.
- The rights of decision-making in respect of Māori land should be limited to those owners with minimum threshold interests.

Key themes from consultation

Overview

This section of our report provides an outline of the key themes arising from public submissions and consultation hui. In addition to the oral submissions and comments made at the 20 consultation hui we received 189 written submissions. While some submissions were discursive in nature or focused on individual issues such as historical legal disputes and Waitangi Tribunal claims, most submissions were well structured and focused on the propositions in the discussion document.

The following table provides an indicative summary of the categories of submitters. Please note that these figures are based on the information supplied in the submissions.



Key themes

Proposition 1: Utilisation of Māori land should be able to be determined by a majority of engaged owners

Many submitters and hui attendees express support in principle for this proposition and for strengthening the ability of owners to make decisions, themselves, regarding their land.

A common theme is the need for greater resourcing and capacity for entities and blocks to locate missing owners. Many submitters are in favour of creating a centralised, online 'hub' or database which would allow land owners to freely update their contact information as required.

Many speak of difficulties in locating owners let alone getting the required numbers of owners together, and highlight the fact that this frustrates the ability to make decisions. Some note that for small land trusts with few resources being expected to engage with perhaps 1,000 owners is unrealistic and unaffordable.

There was discussion at the hui about who should be able to make what decisions. Some speakers suggest those maintaining ahi kā should be the primary decision-makers. They suggest that people living on the land or in the rohe should be regarded as the "engaged" owners.

A significant number consider that decisions should be made by those who choose to be actively involved, wherever they might live. Many submitters express the view that an 'engaged owner' should be defined as someone who has actively demonstrated their commitment to their ownership interests by exercising a vote. It is pointed out that the definition overlooks the many and varied reasons why people may abstain from voting (e.g. inter-whānau conflict) notwithstanding that for all other intents and purposes the land owner is actively committed and involved with the management of their lands.

There is reference to modern communications which mean that distance is not the problem it might have been 100 years ago. Focusing on new technologies such as the internet and social media are identified as ways to increase engagement. Many submitters state the review should make it easier for land owners to vote by proxy and through the phone and the internet using technologies such as Skype.

One or two suggest that decision-making is possible under current rules, provided owners are organised and know how to work the system. Although some decisions require voting thresholds to be met, trustees who made efforts to give notice to all owners but only got a low turnout could still get the Māori Land Court to approve a decision. On the other hand, others consider the concept of decision-making by the Māori Land Court to be paternalistic.

A few people express concerns about the engaged owner concept and suggest the need for safeguards. Concerns include a fear that the engaged owner concept would encourage

"stacking" of particular meetings and that small groups of owners might make decisions that open the land up for future alienation (by inappropriate mortgages) or mining. Some suggest that notice of important proposals and an adequate period of notice to all owners provide a safeguard against this because it gives all owners an opportunity to engage.

There are a small number of submitters who are unsure what "mischief" this proposition is trying to address. Some submitters are of the view that the term "engaged owner" is based on Pākehā concepts of ownership, and is not an expression of tino rangatiratanga.

There are diverging views on the issue of owner thresholds. Submitters are broadly split in their support for or opposition to the suggested thresholds. Many of the large entities feel that the suggested 50% for everyday utilisation decisions is too high and will undermine governance. Similarly, the proposed 75% threshold for long-term leases is considered by many as too onerous and likely to inhibit utilisation of lands.

A number of hui participants state that voting should be by one owner one vote (irrespective of who has what shareholding). Others suggest that everyone who can whakapapa to the land should have a right to be involved in decision-making (i.e. all whānau should be involved) not just the current generation who happen to own the shares.

Some owners who have larger shareholdings (and who consider they have a lot at stake) are concerned that the many smaller shareholders (who have not much at stake) could hold up decision-making. Some owners with small shareholdings consider it unfair that large shareholders can just impose decisions on the majority of owners.

There is a high level of support for the panel's proposal to retain the current provisions which require a 75% threshold before land can be alienated. Some state they would prefer an outright ban on any further alienation of Māori land. Some are concerned that a minority who hold large shareholdings could achieve the 75% vote to sell land contrary to the wishes of the majority of owners.

There are widespread and strong views that remaining Māori land should be retained. Some hui participants refer to current processes where a local body or government is pushing to compulsorily acquire Māori land for a road or other public works.

A minority consider the principle of rangatiratanga entitles owners to make any decisions they wish, including selling the land. They say restrictions on this right and thresholds for decision-making are things for owners to decide, not the legislation.

Proposition 2: All Māori land should be capable of utilisation and effective administration

There is general support for the ability to appoint external managers in certain circumstances. However, submitters express the view that there should be some flexibility as to who the external administrator is. Some comment that the range of organisations able to offer land administration and management services should be expanded beyond Te Tumu Paeroa who is not generally favoured as the default administrator.

Suggestions for potential administrators include other nearby land trusts, professional land management companies, Post Settlement Governance Entities, and owners of adjacent land. A small number of speakers express concerns about rūnanga or Post Settlement Governance Entities taking over control of their land and perhaps deciding to sell it.

Submitters emphasise that there should be clear rules for external administrators to follow and that their decisions should be closely monitored. Furthermore, the land owners must be able to recover the land at any time. Views are split as to whether the Māori Land Court should approve the appointment and the retention of external administrators of Māori land.

Some express the view that the ability to appoint an external administrator is a good option for smaller pieces of land and that administration and management of small uneconomic blocks should be provided free of charge.

A number of submitters make the point that utilisation is not just about farming or forestry or other income generating or economic activities. It is about rangatiratanga and whanaungatanga. Economic use is one option and may often be the best option, but some Māori land is marae, some is urupā, some is wāhi tapu, and some is papakāinga.

Some owners speak strongly about land as papakāinga and talk about living together on the land with their parents and their brothers and sisters and each of their whānau. They also make the point that those who are not able to live on the land at various points in their lives have somewhere to return to. And even if they never return, the option is always there for their whānau to return.

Some people express concern that external administrators and managers will take power and control away from owners. They favour government supporting owners to build their own administrative and management capacity. The panel heard widespread concerns about lack of resources, especially from owners involved in small land blocks or blocks that generated little or no income.

Some people express concerns that current rules make it difficult or impossible to raise mortgages to develop the land and this reduces land values. Some consider that 50% of engaged owners should be able to decide to mortgage the land.

Others are very concerned about mortgaging land, because mortgage default can result in alienation of the land. A small number suggest that mortgaging should not be allowed or that high voting thresholds of engaged owners or of all owners should be required for decisions to mortgage land. Some of those concerned about mortgaging land acknowledge that mortgages secured against trees or a crop on the land or a mortgage over a lease on the land does not put the land itself at risk.

Proposition 3: Māori land should have effective, fit for purpose governance

A consistent message throughout submissions is the need for robust, transparent and accountable governance of Māori land. Submitters raise the need to ensure that amendments to the legislation take into account the blocks and entities who are capable of managing their own affairs, and those that aren't.

Strong views come through that the owners, not the Māori Land Court, should appoint or elect trustees. A minority consider the Māori Land Court should retain a vetting role to ensure suitability of trustees.

There is strong agreement that trustees and governors should be removed for dishonesty and that they should be removed from all trusts in the same way as company directors are barred from being company directors. Submitters are less clear on removing people for incompetence. Some say that removing whānau members is difficult. One hui participant suggested that trustees should be appointed for a term of four or five years as it was easier to vote for someone else next time than to remove a trustee.

Most who address this issue are wary of requiring specific qualifications for people performing governance roles. They consider competence is the issue, not qualifications. A number also suggest the need for capacity building and bringing people through, especially given the pool of people prepared to perform governance roles on small landholdings is limited.

Some speakers pointed out that the Trustee Act specified the duties and powers of trustees and that this was a good model.

Many submitters stated that not only did governance of Māori land need to be fit for purpose but also fit for scale (i.e. takes into consideration the size, state and other factors relating to the block).

There is general support for the proposition that the duties and responsibilities of governance bodies and governors who administer or manage Māori land should be aligned with general laws. This support is often couched with caution and the need to ensure that any proposed alignment with general law takes into account the key principle in Te Ture Whenua Māori Act regarding retention of Māori land.

There is support for introducing explicit penalties when breaches occur. Many consider the introduction of such penalties would raise the 'standard' of those applying for governor or trustee roles.

Submitters strongly express the view that adequate resourcing is necessary to better prepare governors and trustees of Māori land. Some even suggest that trustees and governors should be required to undertake specialised training before assuming their duties.

Several submitters are concerned that increased accountability of trustees and governors will lead to increased requests by some governors and trustees for financial reimbursement and it is unclear how land blocks and entities can afford this.

There is general support for the proposition that the role of the Māori Land Court should become narrower and focus on adjudication over breaches of the rules. Some submitters consider Māori Land Court processes are overly complex, expensive and time consuming.

Proposition 4: There should be an enabling institutional framework to support owners of Māori land to make decisions and resolve any disputes

There is strong support for the proposition that disputes relating to Māori land should be referred in the first instance to mediation. Submitters consider mediation will assist and support owners to resolve issues themselves and this is preferable to having the Māori Land Court make a decision.

Some submitters point out that mediation is an inherently Pākehā concept, and other Māori and tikanga systems should be considered. It is generally considered by submitters that a mediation service needs to be staffed by mediators with knowledge of tikanga and Māori land (not just general mediators), and that the mediation service needs to go to the marae.

Submitters also consider that the mediation service should be provided free of charge. If not, owners will be deterred from using it. There is support for the Māori Land Court having the ability to refer matters to mediation. The use of judicial settlement conferences is supported by submitters.

Proposition 5: Excessive fragmentation of Māori land should be discouraged

This is the most controversial proposition. There is general support for the suggestion that succession to Māori land should be simplified, and a view that 'something' needs to be done about fragmentation.

A variety of approaches are proposed for simplifying succession, including:

- a requirement for owners to cluster their shares under the name of a common ancestor from whom those shares derive. Succession to those shares would then cease.
- the imposition of a minimum threshold interest which would prevent the further dilution or fragmentation of shares.
- greater (or compulsory) use of the existing whānau trust model.
- expanding the definition of preferred class of alienee to include hapū, iwi and marae, so that landowners could transfer their interests to these entities.

Some owners make the point that shareholding has become so fragmented they favour putting their interests in land into a whānau trust, and that all whānau and uri have a right to whakapapa to the land by being part of that trust. Many owners comment that it does not really matter how large or small the share or interest in the land. They take the view that the ability to whakapapa to the land is what matters. They place importance on a whānau or hapū connection to the whenua, rather than an individual ownership right.

On the other hand, some take the view that individualised shareholding is a fact and that irrespective of what should or should not have happened in the 1860s, individual shareholders have rights.

There is support for the proposal that a register should be maintained to record the names and whakapapa of all interests in Māori land, regardless of size. It is pointed out that the reduction of involvement of the Māori Land Court in low-level decision-making could free up resources for maintaining a high quality and modern register. Some consider that Land Information New Zealand should house this register. A small number of submitters emphasise the need for the register to be closely aligned with parcel and spatial data.

A number of people talk about difficulties with probate and succession and the costs associated with it. Some refer to having set up whānau trusts to avoid what would over time become an unmanageable process of tracking descendants who are now living across New Zealand and overseas.

Some people voice concerns about whānau trusts because whānau trusts get one vote at a meeting whereas others who have divided their shares amongst their children get many votes and setting up whānau trusts shifts the burden of maintaining an owners' register from the Māori Land Court (which has resources) to the trust (which often has little or no resources).

Many submitters strongly oppose the concept of limiting decision-making rights to those with a minimum threshold interest. They state that the important thing is whakapapa and nobody should be disenfranchised no matter how small their share. It goes against the inherent right of all owners to be active participants in the decision-making process, and is contrary to the concept of taonga tuku iho. The whakataukī "ahakoa he iti, he pounamu" (although it is small, it is precious) is frequently cited by submitters.

Other matters raised by submitters

For completeness we note that, as well as commenting on the five propositions and suggestions we made, a number of submitters raised other interrelated issues including:

- the extent to which the review would impact upon the Tītī Islands.
- landlocked land as a barrier to utilisation, and the need for more work to address this issue.
- the importance of governing Māori land in accordance with tikanga Māori, and not Pākehā or Western concepts.
- the continued reluctance of banks and lending institutions to lend on Māori land.
- the historical and ongoing impact of the Public Works Act on Māori land.
- the use of unclaimed dividends held by Te Tumu Paeroa as a way of paying for rates of Māori land, and for financing capital improvements and developments.
- the importance of upholding the principles of the Treaty of Waitangi.
- requests for legal advice relating to Te Ture Whenua Māori Act.

- concerns that the review and the discussion document was a "land grab" and would result in further loss of land.
- concerns about rating of Māori land. This included a submission from the Far North District Council expressing concern that many Māori land owners were converting General land to Māori Freehold land in order to avoid the payment of rates.
- a concern that Māori land owners face too many processes and are overstretched. In addition to the Te Ture Whenua Māori Act review, there are Waitangi Tribunal hearings on or pending, Resource Management Act processes, local government processes, various government initiatives etc.

For the most part these issues fall outside the scope of our consideration but we have noted them to assist future consideration by those concerned with policy in these areas.

Recommendations

Ownership

We recommend the laws relating to Māori land:

1. be changed and clarified to enable engaged owners of Māori land to make governance and utilisation decisions that take effect and bind relevant parties without the need for confirmation, approval or other action by the Māori Land Court or any other supervisory body; and
2. continue to include safeguards requiring a high threshold of owner agreement before decisions to dispose of Māori land will have legal and binding effect.

These recommendations give effect to Proposition 1 in the discussion document for which we found a broad level of support. The proposed law changes would involve providing for utilisation decisions to be made without the need for endorsement by the Māori Land Court except in the case of sale or other permanent disposition of the land. Decisions relating to sale and permanent disposition would be expected to have more process and oversight given the value of Māori land as taonga tuku iho that generally should be retained. The intent is to provide an appropriate balance between the retention and utilisation of Māori land.

With regard to the suggestions we made in the context of Proposition 1, we found, while some expressed the view that an owner should maintain ahi kā links with their land in order to be considered an "engaged" owner, there is general support for the proposition that engagement is best demonstrated by participation in decision-making processes and exercising a vote. There is also support for making absentee voting easier using modern information technology.

There is a widely held, but not universal, view that restrictions on permanent alienation should be retained and that the current thresholds are appropriate.

Once a governance entity is in place the entity will make the majority of utilisation decisions and the involvement of owners, such as in the case of a major transaction, will be determined by the rules and constitution of the governance entity.

Governance

We recommend the laws relating to Māori land:

3. clearly prescribe the duties and obligations of Māori land governance entities, including their trustees, directors or committee members, and aligns those duties and obligations with the general law applying to similar entities;
4. clarify the jurisdiction of the Māori Land Court to consider alleged breaches of duty and make appropriate orders; and
5. provide clear mechanisms for external managers to be appointed to administer under-utilised Māori land blocks when there is no engagement by the owners.

These recommendations give effect to Propositions 2 and 3 in the discussion document. While the concept of an external administrator raised some concerns that land might be used for the benefit of third parties rather than the owners and that the viability of external management will depend on the particular characteristics of land blocks, there was broad support for our suggestions provided external management did not become permanent but, rather, operated as a transition to, or catalyst for, owner engagement and owner-driven decisions concerning the governance and utilisation of land blocks.

In our view, implementing these recommendations should involve providing for capable governors with an appropriate level of oversight. Improved governance will drive greater utilisation of Māori land. Improved governance will also increase confidence within the banking and financial sector to provide development support and finance to Māori land governance entities.

We also consider it is desirable to make provision for appointing external administrators who could assume administration responsibility for a Māori land block or blocks in order to maintain or develop the land, identify potential owners, and ready the land for owner-driven governance and utilisation. The intent is to improve utilisation in situations where for practical or other reasons there are barriers making it difficult for owners to engage.

Consideration should also be given to whether there should be a level of differentiation based on the size of a land block and/or the scale of the financial returns the land block is generating.

Institutional framework

We recommend the laws relating to Māori land:

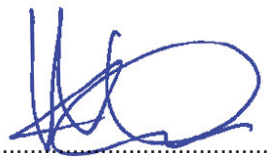
6. require disputes relating to Māori land to be referred, in the first instance, to mediation;
7. contain clear and straightforward provisions and rules to ensure the Māori Land Court remains an accessible judicial forum for resolving serious disputes and enabling trustees, directors and committee members of governance entities to be held to account for breaches of duty;
8. provide transparent registration provisions for Māori land titles and assurance of title to reflect the nature of Māori land tenure as a collectively held taonga tuku iho;
9. contain provisions that facilitate succession to Māori land with a minimum of compliance requirements and simple, straightforward administrative, rather than judicial, processes; and
10. contain provisions to address issues caused by excessive fragmentation of Māori land ownership interests.

We consider a mediation service is a more efficient mechanism than intervention by the Māori Land Court in the first instance. We found strong support for this approach. We recommend the establishment of an independent mediation service as a means of trying to resolve disputes in the first instance before recourse to the Māori Land Court. The Māori Land Court should remain as the ultimate arbiter if parties to a dispute are still unable to agree. It would also be helpful for the Māori Land Court to have clear authority to refer a dispute to mediation if, in working through the hearing process, the parties have narrowed their differences to the point where mediation is possible or the parties are prepared to agree to mediation.

In the discussion document we suggested that rights of decision-making in respect of Māori land should be limited to owners with minimum threshold interests as a means of discouraging excessive fragmentation. This suggestion gained little support and considerable opposition and we do not recommend it be included in provisions to address fragmentation issues.

In our deliberations we chose to take a first principles approach rather than constraining our thinking by focusing on the specific provisions of Te Ture Whenua Māori Act. We have now come to the view that changes to give effect to our recommendations require new legislation rather than amendments to the existing legislation. The structure of Te Ture Whenua Māori Act, with a primary focus on the Māori Land Court and its jurisdiction, does not lend itself well to a new framework in which we consider the focus should very clearly be on Māori land protection and utilisation and empowerment of Māori land owners and their decision-making.

In conclusion, we note that statutes relating to Māori land have long been an integral and important component of the laws of New Zealand. Reform in this area has the potential to contribute to the future wellbeing of Māori, local communities and our wider society and we hope our report will be seen as a positive contribution to this process.



Matanuku Mahuika (chair)

Tokorangi Kapea

Patsy Reddy

Dion Tuuta

Appendix: Glossary of terms

Ahi kā burning fires

Ahi kā roa continuous occupation

Ahu Whenua trust a land management trust that administers owner interests in whole land blocks (established under s.215 of TTWMA)

Hapū sub-tribe

Iwi tribe

Kai tiaki trust a trust established to manage the affairs an individual who is a minor or has a disability and is unable to manage their own affairs (established under s. 217 of TTWMA)

Māori customary land land held in accordance with tikanga Māori

Māori freehold land land determined to have freehold status by the Māori Land Court

Māori incorporation a land management structure, similar in structure to a company, that manages whole land blocks (established under s. 247 of TTWMA)

Post Settlement Governance Entity an entity established and mandated to receive and manage Treaty assets on behalf of an iwi

Pūtea trust a share management trust that allows owners of small and uneconomical land interests to pool their interests together (established under s. 212 of TTWMA)

Taonga tuku iho a legacy or treasure to be passed on through generations

Tikanga Māori traditional custom

Tino rangatiratanga Māori sovereignty or independence

Whakapapa genealogy, genealogical table, lineage, descent

Whānau extended family

Whānau trust a share management trust that enables a whānau to bring together their land interests for the benefit of the whānau and their descendants (established under s. 214 of TTWMA)

Whenua land

Whenua tōpū trust a land management trust that administers iwi or hapū interests in whole land blocks (established under s. 216 of TTWMA)

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ISBN: 978-0-478-34-538-4