



TE TURE WHENUA MĀORI

DEVELOPING A BILL TO RESTATE AND REFORM THE LAW RELATING TO MĀORI LAND

REVIEW OF TE TURE WHENUA MĀORI ACT 1993

2012: Review panel appointed

Matanuku Mahuika, Dion Tuuta, Toko Kapea, Patsy Reddy

2013: Discussion document and consultation

2014: Final report released by government in April

Key findings

Decisions made by participating owners without needing court approval, retention protections, clear governance and accountability framework, utilisation by managers, mediation, discourage fragmentation

GOVERNMENT RESPONSE

Panel's recommendations accepted

*Te Ture Whenua Māori Act 1993 to be replaced
by new legislation based on the panel's findings*

Technical team to develop new bill

John Grant, Matanuku Mahuika, John Stevens, Linda Te Aho

DEVELOPING TE TURE WHENUA MĀORI BILL

Shifting emphasis from compliance to enablement

Status quo	Reform
Key decisions by owners require Court approval	Participating owners empowered and supported to make key decisions without Court involvement
Court hearing/order necessary to form trusts and incorporations	Governance bodies formed/appointed by registration (court order not needed)
Court makes partition orders, amalgamation, aggregation, easements etc.	Owners themselves partition, amalgamate, etc. Court simply confirms due process
Limited provision for alternative dispute resolution No provision for judicial settlement conferences	New alternative dispute resolution service, Judicial settlement conferences, emphasis on mediation
All successions require Court hearing	Most successions processed administratively
Perpetuates fragmenting of individual shareholding	Provides collective ownership option
Act has the Court as its central focus	Central focus of Act will be the whenua and owners
Not changing	
Threshold for approving sale or gift of block remains at 75% of ownership interests Māori Land Court remains as a key institution but with a shift in its role	

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Purpose of new legislation

*Empower and assist owners of Māori land to retain their land
for what they determine is its optimum utilisation*

Optimum utilisation could be economic, environmental, cultural or other

Principles of new legislation

Tikanga Māori guides matters involving Māori land

Māori land endures as taonga tuku iho by virtue of whakapapa

*Owners of Māori land have a right to develop their land and take advantage of opportunities to
develop their land*

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Shifting emphasis from compliance to enablement

	Now	Proposed
Decision thresholds	Sale or gift <ul style="list-style-type: none">• 75% of all ownership interests Long term lease <ul style="list-style-type: none">• 50% of all ownership interests Remove Māori land status <ul style="list-style-type: none">• “Sufficient proportion” as determined by court Form trust <ul style="list-style-type: none">• “No meritorious objection” and trustees “broadly acceptable”	Sale or gift <ul style="list-style-type: none">• 75% of all ownership interests Long term lease <ul style="list-style-type: none">• 75% of participating owners or as set by owners Remove Māori land status <ul style="list-style-type: none">• 75% of all ownership interests Form Rangatōpū <ul style="list-style-type: none">• 50% of participating owners

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Shifting emphasis from compliance to enablement

	Now	Proposed
Māori land governance	<p>Court —</p> <ul style="list-style-type: none">• Establishes Trusts and Incorporations• Sets terms of trust• Appoints trustees• Can conduct review <p>Owners —</p> <ul style="list-style-type: none">• Hold meeting• Apply to court	<p>Owners —</p> <ul style="list-style-type: none">• Establish Rangatōpū themselves• Decide constitution themselves• Appoint kaitiaki <p>Court —</p> <ul style="list-style-type: none">• Can conduct review• Can still intervene if kaitiaki default

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Shifting emphasis from compliance to enablement

	Now	Proposed
Partition Amalgamation Aggregation Easements	Determined by the Court	Determined by the owners Court confirms due process was followed

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Shifting emphasis from compliance to enablement

	Now	Future
Selling or gifting land	<p>Needs support of 75% of ownership interests</p> <p>Court confirms due process and terms of sale</p> <p>Preferred classes have right of first refusal (but no prescribed process for how the RFR works)</p>	<p>Needs support of 75% of ownership interests</p> <p>Court confirms due process only</p> <p>Preferred classes —</p> <ul style="list-style-type: none">• Must be associated with land through tikanga• Include post settlement governance entities <p>Sales —</p> <ul style="list-style-type: none">• To preferred class directly or by closed tender• On open market at/over reserve if tender fails <p>Gifts —</p> <ul style="list-style-type: none">• To preferred class only

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Shifting emphasis from compliance to enablement

	Now	Proposed
Dispute resolution	<p>Māori land disputes —</p> <ul style="list-style-type: none">• Court adjudication only option <p>Mediation —</p> <ul style="list-style-type: none">• Court managed mediation only for representation, fisheries/aquaculture issues <p>No legislative authority for judicial settlement conferences</p>	<p>Māori land disputes —</p> <ul style="list-style-type: none">• Independent tikanga based dispute resolution service / mediation• Mātauranga takawaenga• Only reaches Court if not resolved <p>Legislative authority for judicial settlement conferences</p>

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Shifting emphasis from compliance to enablement

	Now	Proposed
Succession	<p>All successions require a Court hearing/order</p> <p>Succession with Will to narrow preferred class</p> <p>Succession without Will to whānau members individually</p>	<p>Most successions won't need a Court hearing/order</p> <p>Succession by Will to wider preferred class</p> <p>Succession without Will to whānau as a group</p>

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Shifting emphasis from compliance to enablement

	Now	Proposed
Kaiāwhina	<p>Agents —</p> <ul style="list-style-type: none">• Appointed when needed to receive notices, negotiate entry for public works etc. (Court).	<p>Kaiāwhina —</p> <ul style="list-style-type: none">• Appointed when needed to receive notices, negotiate entry for public works etc. (Court)• Limited appointments to manage land pending owner engagement (chief executive)

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Shifting emphasis from compliance to enablement

	Now	Proposed
Collective ownership Addressing fragmentation	Collective ownership of blocks <ul style="list-style-type: none">• Court can establish whenua tōpū trusts for benefit of group - underlying ownership stays Collective ownership of shares <ul style="list-style-type: none">• Court can establish whānau trusts	Collective ownership of blocks <ul style="list-style-type: none">• Owners can establish Rangatōpū for benefit of group – underlying ownership stays• Option for collective ownership (without individual shares) – 75% threshold Collective ownership of shares <ul style="list-style-type: none">• Owners can establish whānau trusts

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Māori customary land

Should stay under collective customary ownership - no more individualisation

Should only be converted to Māori freehold land if and when owners decide

Should not be deemed Crown land for any purpose

Could be represented by kaiāwhina

Māori freehold land

Restrictions on disposal should be kept – 75% threshold, preferred classes

Option to convert to collective ownership

General land no longer needed as a status of land

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Decisions by owners

Generally, owners should be able to follow their own decision processes

Prescribed process for major decisions – e.g. sale, removal of Māori land status

Thresholds

75% of all ownership interests to sell, gift, remove status, adopt collective ownership option

*75% of participating owners to partition, amalgamate, aggregate,
grant long term lease, approve or amend governance document*

Everything else a simple majority or as set by owners in governance document

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Governance bodies

The framework for governance bodies should, as far as possible, avoid complexity and:

- enable owners to easily appoint governance bodies with compliance measures limited to only those things essential to ensure the process is fair and transparent;*
- provide an option for owners to form their own legal entity and design its constitution to reflect their aspirations and their culture;*
- enable existing trusts and incorporations to transition as simply as possible to the new regime without disrupting their ongoing operations;*
- provide a clear, straightforward legal framework within which to operate and which protects the interests of owners when things go wrong.*

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Governance bodies

Owner appointed without needing court order

Options

Rangatōpū

Post-settlement governance entity

Māori Trust Board, Māori Trustee, Public Trustee, trustee company

Rangatōpū

Body corporate formed by registration

minimum of three kaitiaki, majority resident in NZ

Existing trusts and incorporations become rangatōpū

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Existing trusts and incorporations

Ahu whenua trusts, whenua tōpū trusts and Māori incorporations become rangatōpū

Transition period of three years

Transition steps

Apply for provisional registration

Review trust order or constitution

Apply for full registration

Court may issue directions and make orders if no transition steps taken

After full registration

All rangatōpū have body corporate status

Trustees /committee members referred to as kaitiaki – must be eligible, rotational appointment

Constitution governs operating processes

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Kaitiaki

*Owner appointed trustees, directors, committee members
of governance bodies*

Rotation and eligibility requirements

Kaiāwhina

Court appointed agents to represent owners for specific purposes

Contracted managers in suitable cases pending owner engagement

Court appointed managers when governance body wound up

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Addressing fragmentation

Collective ownership option for Blocks

Owners able to agree to change from individual shares to collective ownership

75% majority needed to make the change

No sale or gifting of collectively owned land

Addressing fragmentation

Collective ownership of shares

Whānau trust option to continue

Shares to pass to whānau collectively when owner dies without a Will

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Mātauranga takawaenga

Dispute Resolution Service

Assist parties to resolve disputes concerning Māori land quickly, effectively and in accordance with principle of mātauranga takawaenga

Mātauranga takawaenga – process to help people or groups resolve disagreements and conflicts in accordance with the tikanga, values and kawa of the hapū associated with the land both as to process and substance

Service can be accessed directly or by referral from court

Most disputed matters must go through dispute resolution before they can be considered by the court

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Whānau trusts

Retained

Created without needing a court order

*Beneficiaries can go on a register, entitled to grants,
entitled to participate in meetings*

Kai tiaki trusts

Retained

Would still need a court order

Succession by Will

*Only to members of preferred class or to whānau trust
Preferred class expanded to include Rangatōpū and PSGEs
No need to go to court if probate granted*

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Confirmation by court

*Sales and gifts of Māori freehold land
Collective ownership option*

Partition, amalgamation etc.

*Decisions to be made by owners not the court
Court to confirm due process and allocation agreements*

Landlocked land

*Court able to grant reasonable access, dispute resolution process
Kaiāwhina may be appointed*

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Next steps

Ongoing work to develop a Bill

Ongoing engagement – Iwi chairs group, FOMA, Māori Trustee

Final draft of Bill by the end of this year

To provide feedback on the draft Bill email TTWMA@tpk.govt.nz