

# Te Ture Whenua Māori Reform

*Consultation Document*

May 2015

# Foreword

## Kupu Whakataki



*Ko te panonitanga o Te Ture Whenua Māori tētahi tūāhuatanga whakahirahira mō Aotearoa.*

*Koinei te panonitanga hirahira rawa o te ture me te whakahaere whenua Māori mai i te whakamanatanga o Te Ture Whenua Māori 1993, ā, koia ko te tōpūtanga o tā te Māori kōkiri i ngā 40 tau kua taha ake mō te tino rangatiratanga i ō rātou whenua.*

*Nā taua kōkiri i whakamaharatia ai tātou he taonga tuku iho te whenua Māori. Ahakoa he rawa ka whakamahia hei painga mō ngā tāngata nō rātou te whenua, me tiaki ka tika te whai pānga o ngā whakatipuranga o nāianeī, o ngā rā kei te heke mai hoki. Waihoki, me noho ārai kore, here kore te whenua Māori ka hua mai ai i te ture.*

*Kua whakaritea tēnei puka whakawhitihwhi kōrero hei āwhina i te hunga pupuri whenua Māori, i ngā tāngata o te hāpori hoki e hiahia ana ki te tuku tono mō te huranga hukihuki o te Pire Whenua Māori*

*Ka tono te Pire kia panonihia ngā tikanga mō te whakamahinga o te whenua Māori, mā tērā e māmā ake ai te whakamahi me te whanake i ō rātou whenua kia tutuki ai ō rātou ake whāinga, me te pupuri anō i ō rātou whenua mō ake tonu atu.*

*Mā te Ratonga Whenua Māori ka whakaratohia hoki te pārongo me ngā ratonga tika.*

*Atu i ngā puka tono ā-tuhi, ka taea e te iwi whānui te tuku tono ā-waha, te whakamōhio i te Kāwanatanga ki ētahi hui whakawhitihwhi kōrero ka whakatūria puta noa i te motu ā te Pipiri 2015.*

*Ka tino whakatenatena au i a koutou kia tae atu ki ēnei hui, kia tuku tono ā-tuhi rānei hei mua mai i te 7 o Pipiri 2015. He mea waiwai te whakarite ka tika i ngā panonitanga kia tika ai.*

*Kei te mihi rawa atu ki ngā ringa raupa arā Te Komiti Tohutohu Ture Whenua mō ngā hua kua puta i roto i tēnei puka.*

*Mā te tautoko o ngā ture whai kiko, ka riro mā tātou tonu te karawhiunga o ō tātou whenua. Mā tō tātou pukumahi, manawanui, mahi tahi hoki tōna whanaketanga, pupuritanga hoki e tutuki ai.*

*Nāku noa nei, nā*

**Hon Te Ururoa Flavell  
Te Minita Whanaketanga Māori**

The reform of Te Ture Whenua Māori is a major landmark for Aotearoa New Zealand.

It is the most significant reform of Māori land law and administration since Te Ture Whenua Māori Act 1993 was passed; and is the culmination of 40 years of advocacy by Māori for greater tino rangatiratanga over their whenua.

That advocacy reminded us that Māori land is a taonga tuku iho. While it is a resource to be used to benefit owners, the interests of current and future generations should also be safeguarded. Furthermore, Māori owned land should be free from obstacles or constraints created by legislation.

This consultation document has been prepared to assist Māori land owners and other members of the public wishing to make submissions on the exposure draft of Te Ture Whenua Māori Bill.

The Bill proposes changes to the rules for the use of Māori land, so it is easier for Māori to use and develop their whenua to meet their own aspirations and retain their land mō ake tonu.

It also provides streamlined access to accurate information and services via the Māori Land Service.

As well as written submissions, the public can deliver oral submissions and make their views known to the Government at a series of consultation hui to be held across the motu in June 2015.

I urge you to attend these hui or make a written submission by 7 August 2015. It is critical that we get the reforms right.

I would like to thank the members of Te Ture Whenua Ministerial Advisory Group as their input into the development of this consultation document was invaluable.

With the support of sound legislation, what happens to our whenua ultimately rests in our own hands. Its development and retention assured only by our own hard work, our commitment and our collective effort.

Nāku noa nei, nā

**Hon Te Ururoa Flavell**  
**Te Minita Whanaketanga Māori**

# Chair's Foreword

## Kupu whakataki a te Heamana



E koa ana Te Komiti Tohutohu Ture Whenua (Te Ture Whenua Māori Ministerial Advisory Group) ki te whakapuaki i tēnei whakawhitinga kōrero mō te tauira whakaputa e pā ana ki te Pire e whakahou ana i Te Ture Whenua Māori.

Ko te tino rerekētanga i roto i te whakahoutanga nei, ko te āheinga o ngā kaupupuri whenua Māori ki te whakawhanake me te whakaū i ā rātou ake kaupapa whakahaere me te whakatū Kaitiaki i runga i tō rātou ake mana, arā, kāore he wāhi ki te Kōti Whenua Māori hei whakatūturu i ngā whakahaere. Nō te whakatūnga o Te Ture Whenua Māori i te tau 1993, i riro i ngā Kaporeihana Māori te mana whakaae ki ēnei āhuatanga, heoi, ā muri mai i te whakatūnga o tēnei ture hou, ka whai wāhi mai ngā hinonga whakahaere katoa o ngā whenua Māori.

Ko te whakatinanatanga tēnei a te whakatauki i kapohia ake e te Minita Whanaketanga Māori, arā, “He Kai Kei Aku Ringa”. Kei a tātou anō, kei ngā kaupupuri whenua Māori tonu ngā rangatira, ngā pūkenga, ngā mātauranga me ngā tikanga e whai hua ai o tātou whānau me ngā uri whakaheke i o tātou whenua. Mā reira anō e angitū ai ēnei whakahoutanga.

Otirā, tērā ngā raruraru ka heipū mai. Ka whakamātauria tō tātou kaha ki te whakarite i a tātou anō.

Me matua tuku mai te Kāwantanga ngā rauemi e tika ana mā ngā kaupupuri whenua Māori me te whakatūnga o te Ratonga Whenua Māori, kia māmā ake ai te taha whakahaere o ēnei whakahoutanga. E whakahau ana hoki mātou i ngā kaimahi Kāwanatanga ki te whakaterere ake i te whakatutukinga o te hōtaka mahi nei kia puta wawe mai tētahi whakatau e pā ana ki ngā raruraru nui o ngā whenua Māori pērā i ngā whenua urunga-kore, i ngā reiti whenua me ngā wāriutanga.

E tatari ana Te Komiti Tohutohu Ture Whenua kia tukuna mai ngā urupare mō ngā whakahoutanga. He whakaaro o mātou e pā ana ki ēnei whakahoutanga, heoi, e pīrangī ana mātou ki te rongō i o whakaaro.

He hōnore nui tēnei āhuatanga, te noho mai ki te Te Komiti Tohutohu Ture Whenua. E mihi ana mātou ki te Minita, ki a Hōnore Te Ururoa Flavell rātou ko āna kaimahi, nō rātou te kitenga nui me te kaha ki te whakapuaki mai i tēnei tauira whakaputa mō te Pire e pā ana ki Te Ture Whenua Māori hei arotake mā te Māori i mua tonu i te whakapuakitanga ki te Whare Pāremata. He tuatahitanga tēnei. Nāku noa, nā

**Kingi Smiler**

**Heamana**

**Te Komiti Tohutohu Ture Whenua**

Te Ture Whenua Ministerial Advisory Group is pleased to consult on the exposure draft of the Bill to reform Te Ture Whenua Māori.

The most significant change of these reforms is that Māori land owners will now be able to develop and approve their own governance constitution and the appointment of Kaitiaki without requiring confirmation by the Māori Land Court. This has been possible for Māori Incorporations since Te Ture Whenua Māori Act 1993 and these powers will now be extended to all governance entities of Māori freehold land, on the passing of the legislation.

This change encapsulates the Minister for Māori Development's message of "He Kai Kei Aku Ringa" (providing the food you need with your own hands). The ultimate success of these reforms, will always be dependent on our ability as Māori land owners to provide the leadership, skills, knowledge and discipline to develop our taonga tuku iho in a way that will sustain our whānau for future generations. Inevitably, change causes disruption and our ability to adapt will be

challenged. It will be critical that the Government provides appropriate resources to both the Māori land owners and for the establishment of the Māori Land Service, to ensure that the transition is managed with least disruption. We also encourage Government officials to accelerate the reform program to resolve the vexed issues relating to landlocked Māori land and Māori land rating and valuation.

The Minister's Advisory Group looks forward to receiving feedback on the reforms. We have our own views on these reforms but are keen to receive your thoughts.

It's been a privilege to be part of the Minister's Advisory Group and acknowledge the foresight and diligence of the Minister, Hon Te Ururoa Flavell, and his officials to have the first ever exposure draft on Te Ture Whenua Māori Bill available for review by Māori, prior to its introduction into the House of Parliament.

Nāku noa, nā

**Kingi Smiler**

**Chair**

**Te Ture Whenua Māori**

**Ministerial Advisory Group**



© Te Puni Kōkiri May 2015 ISBN: 978-0-478-34557 May 2015

**DISCLAIMER** This publication is intended to provide information on the matters contained herein. It has been written, edited and published and made available to all persons and entities strictly on the basis that its authors, editors and publishers are fully excluded from any liability or responsibility by all or any of them in any way to any person or entity for anything done or omitted to be done by any person or entity in reliance, whether totally or partially, on the contents of this publication for any purposes whatsoever.



Crown copyright ©. This work is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Unported License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-sa/3.0/>. Please note that neither the Te Puni Kōkiri emblem nor the New Zealand Government logo may be used in any way which infringes any provision of the Flags, Emblems, and Names Protection Act 1981 or would infringe such provision if the relevant use occurred within New Zealand. Attribution should be in written form and not by reproduction of the Te Puni Kōkiri emblem or New Zealand government logo.

# Contents

## Ngā Ihirangi

### Forewords

#### 6 Executive Summary

- 6 Aims of the Reform
- 8 Changes made by the Bill

#### 9 Setting the Scene

- 9 Facts about Māori land
- 10 Journey to the reform
- 12 Decisions leading to the reforms

#### 13 Overview of the reform

- 13 Parts to the reform
- 16 Principles underpinning the reform
- 19 Giving effect to the principles

##### 19 *Autonomy*

##### 23 *Utilisation*

##### 26 *Simplicity*

##### 30 *Safeguards*

#### 38 Understanding the exposure draft

- 39 Structure of the Bill
- 40 The New Governance Model
- 43 Disposition of Māori Land
- 46 Transitional arrangements
- 47 Succession
- 48 Dispute resolution process
- 50 Reshaping the Māori Land Court's jurisdiction
- 51 Māori Land Service

#### 56 Frequently asked questions

#### 64 How to have your say

#### 65 Glossary

### Diagrams

- 6 Diagram 1: Better law and better support equals better outcomes
- 11 Diagram 2: The journey to Te Ture Whenua Māori Bill
- 21 Diagram 3: Better Autonomy: Establishing a rangatōpū
- 29 Diagram 4: Increased Simplicity: The succession process
- 34 Diagram 5: Better Safeguards: The disposal process
- 45 Diagram 6: Process for disposing of Māori land
- 46 Diagram 7: Transitional arrangements for Trusts and Incorporations
- 49 Diagram 8: Disputes resolution process

### Tables

- 8 Table 1: Key changes of the reform
- 24 Table 2: The decision making thresholds

# Executive Summary

## Whakarāpopototanga Matua

### Background

Māori land is a taonga tuku iho that connects past, present and future generations. As an inheritance from tīpuna, Māori land has great meaning and significance to Māori. It also has the potential to contribute significantly to the cultural, social and economic advancement of whānau, hapū and iwi.

### Aims of the Reform

Diagram 1: Better law and better support equals better outcomes

## Better law

### A legal framework that:

- supports and promotes the retention and use of Māori land by its owners
  - empowers Māori land owners to pursue their aspirations for the sustainable development of their land
  - respects the intrinsic cultural significance of Māori land.

## Better



Māori land is currently governed by Te Ture Whenua Māori Act 1993, which has been reviewed several times since it was enacted. In all the reviews, Māori identified significant problems with the Act and sought changes to increase land owner autonomy and ability to achieve their aspirations for their whenua.

### **Purpose**

The purpose of this reform of Māori land law and administration is to recognise the significance of Māori land and to create a more workable set of rules and practical supports. These changes respond to the problems Māori have identified.

### **How to provide feedback**

This document explains how key elements of the reform will operate in practice and should be read together with the exposure draft of Te Ture Whenua Māori Bill.

.....  
*You can provide feedback on the aspects of the Bill that interest you at the consultation hui by completing the online submission form or by submitting written comments to [TTWMA@tpk.govt.nz](mailto:TTWMA@tpk.govt.nz) or Te Ture Whenua Māori Bill, c/o Te Puni Kōkiri, PO Box 3943, Wellington by 10am on 7 August 2015.*  
 .....

## *support*

### **An institutional framework that:**

- supports owner decision-making and encourages participation
- ensures Māori land ownership and title records are accurate and accessible
- gives Māori land owners the information they need, when they need it
  - provides an effective alternative to litigation to resolve disputes
- makes it simple to register Māori land governance bodies.

## *Better outcomes*

### **Reforms that lead to:**

- Māori land owners making and acting on their own decisions
  - fuller and more effective utilisation of Māori land
- disputes resolved effectively.

## Changes made by the Bill

The Bill addresses a number of issues that have been identified with Te Ture Whenua Māori Act. The most important changes the reform will make include:

Table 1: Key changes of the reform

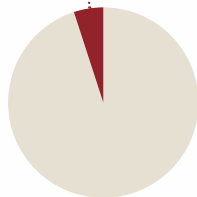
Objectives for Māori land owners	Issues with the current framework	Changes the reform will create
<b>More autonomy over their whenua</b>		
More decision making power	Most decisions about Māori land require approval from the Māori Land Court.	Māori land owners will be able to make more decisions without needing Māori Land Court approval.
Dispute resolution alternatives	Dispute resolution relies on decisions by the court.	A new alternative dispute resolution process is created that enables Māori land owners to use tikanga based mediation and arbitration processes to settle disputes.
<b>Greater ability to utilise their whenua</b>		
Workable decision making	Making decisions about Māori land can be challenging because of multiple and fragmented ownership.	Decisions about using and developing Māori land will become more workable as owners who participate in decision making processes will be able to make binding decisions, with appropriate safeguards to protect the interests of owners who do not participate.
Fit for purpose governance	Governance of Māori land is variable because the rules about governance lack clarity, consistency and accessibility	Māori land owners will be able to design their own rules for the governing bodies of their whenua.
<b>Greater simplicity and efficiency working with Māori land</b>		
Better solutions to address fragmentation	Fragmentation of ownership interests is still occurring.	Land owners will be able to convert land to collective ownership and new processes are included for succession designed to reduce further fragmentation.
Improve access to information	Collecting information on Māori land so that decisions can be made about that land requires Māori land owners to navigate a number of government departments.	A new administrative framework is created called the Māori Land Service, which will provide information on Māori land ownership and governance as well as practical administrative support for Māori land owners.
<b>Safeguarding whenua for current and future generations</b>		
Maintain safeguards	Safeguards around use and development of Māori land are not as clear as those for disposal.	The role of Māori Land Court in approving dispositions is retained; the thresholds for disposal are maintained, although owners have the option of raising these thresholds. In addition, there are now clearer procedural safeguards around the utilisation of Māori land.

# Setting the Scene

## He Whakatakoto Kaupapa

### Facts about Māori land

1.47 million hectares



Māori land makes up approximately 5% of New Zealand's land mass

Most Māori land is situated in the north, centre and east of the North Island

27,308 blocks of Māori land

blocks of Māori land



There is an average of

100 owners per block

53.7 hectares is the average size of each land holding

hectares is the average size of each land holding

2.71 million ownership interests

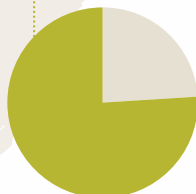
The capital value of Māori land is estimated to be

\$12.1 billion



While the land value is estimated to be \$8.8 billion

76.3% Rural production



Most Māori land is used for rural production

In 2010 Māori land produced

\$6.1 billion in output sales and

\$2.7 billion in Gross Domestic Product

in Gross Domestic Product

In 2010



63,000 people were employed from interests in Māori land

people were employed from interests in Māori land

## Journey to the reform

Over the last 40 years, Māori have continued to seek both philosophical and practical changes to Māori land law.

The philosophical objectives have been to:

- rectify the historical legacy of Māori land law as a tool for the alienation of Māori land;
- acknowledge the cultural associations Māori land owners have with their land as a taonga tuku iho; and

- recognise the autonomy owners of Māori land have over the use of their land.

The practical changes have focussed on:

- designing decision-making processes that are appropriate for collective ownership where some owners cannot be located;

Diagram 2: The journey to Te Ture Whenua Māori Bill



- creating an enabling framework for people who want to use and develop land;
- safeguarding the interests of current and future generations.

In addition, during the past two decades, a number of projects have improved the accessibility and accuracy of Māori land records.

These projects have endeavoured to balance aspirations for Māori land records to be accessible to Māori land owners, while recognising that these records contain whakapapa which bring ethical and cultural sensitivities regarding publication.

This reform has been shaped by the views of Māori, as expressed through the political processes and reviews depicted below:



## *Decisions leading to the reforms*

The intent of the reform is to improve the utilisation of Māori land by empowering Māori land owners to make decisions themselves, provide an enabling institutional environment, and maintain protections to ensure the retention of Māori land.

There are two streams of work associated with this reform:

- Developing Te Ture Whenua Māori Bill; and
- Designing a Māori Land Service

### **Cabinet decisions**

In 2013, Cabinet agreed to the following recommendations from the 2012 review panel for the reform of Māori land law and administration:

- Use and development of Māori land should become easier by

changing the processes and thresholds for gaining owner agreement;

- The governance bodies for Māori land should have clearer duties and obligations that are consistent with general law applying to similar entities;
- Processes relating to Māori land should become easier by making them administrative rather than requiring court approval; and
- Disputes relating to Māori land should, in the first instance, be resolved through mediation rather than through the Māori Land Court.

### **Māori Land Owner Feedback**

These recommendations form the basis of Te Ture Whenua Māori Bill, and were discussed as part of a 2014 nationwide consultation process.

There was general support among hui participants for the overall direction of the reforms. Participants considered the reforms needed to promote the exercise of rangatiratanga by Māori land owners while retaining a high threshold for the sale of Māori land.

There was also a strong expectation that more detail would be provided on the specifics of the Bill and the supporting institutional arrangements.

### **Recent decisions**

In light of these recommendations, Cabinet decided to release an exposure draft of the Bill and agreed to establish Te Ture Whenua Māori Ministerial Advisory Group to provide independent advice on the exposure draft and Māori Land Service from the perspective of those who operate within the Māori land regime.

## Overview of the reform

### *He tirohanga whānui o te whakahoutanga*

The reform of Te Ture Whenua Māori Act 1993 seeks to ensure that the Crown upholds its responsibilities to the owners of Māori land and to provide legislation and administration that enables Māori land owners to achieve their objectives without unreasonable restriction.

The Crown has responsibilities to ensure that:

- The law that applies to Māori land is good law that is practical, fit for purpose and future focussed; and
- Information held by the Crown relevant to Māori land is accurate, comprehensive and accessible.

### *Parts to the reform*

The reform package has two key parts:

*Better law* + *Better support*

Changes to the rules for the use of Māori land that make it easier for Māori land owners to use and develop the land according to their aspirations, while ensuring appropriate safeguards for the retention of Māori land as a taonga tuku iho.

Improvements to how government supports Māori land by creating a new administrative framework, called the Māori Land Service. This includes support and streamlined access to Māori land ownership and governance information.



# Whatungarongaro te



An aerial photograph of a vast, rolling landscape. The terrain is covered in lush green grass, with numerous hills and valleys. A small town or village is visible in the middle distance, nestled in a valley. The sky is filled with large, dramatic clouds, some dark and some bright, suggesting a partly cloudy day. The overall tone is natural and scenic.

**tangata toitū te whenua.**

## *Principles underpinning the reform*

### autonomy

Increasing Māori land owner autonomy over their whenua.

### utilisation

Making it easier for Māori land owners to make decisions about using and developing their land.

### simplicity

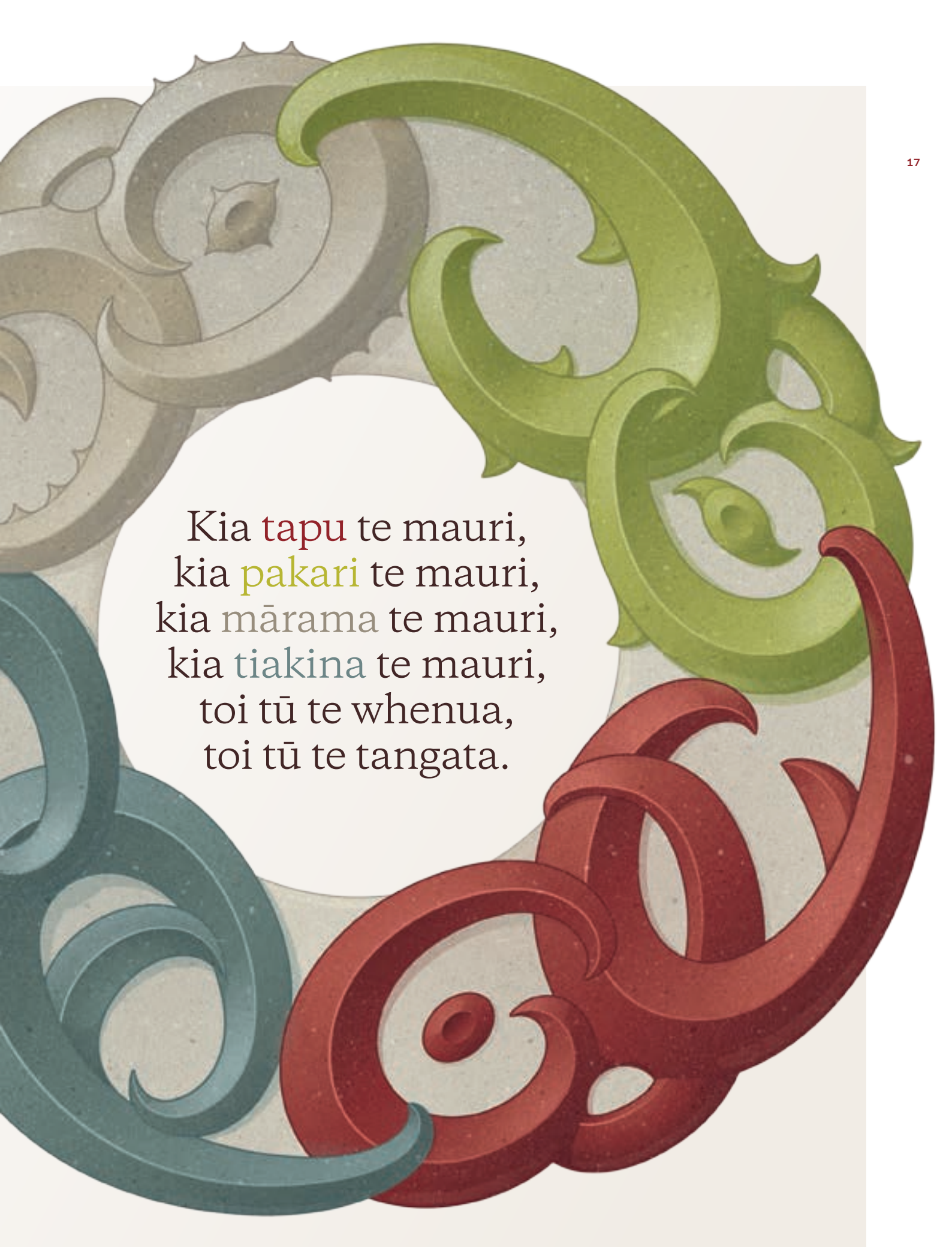
Removing red tape to create standard processes about Māori land that are easier to complete.

### safeguards

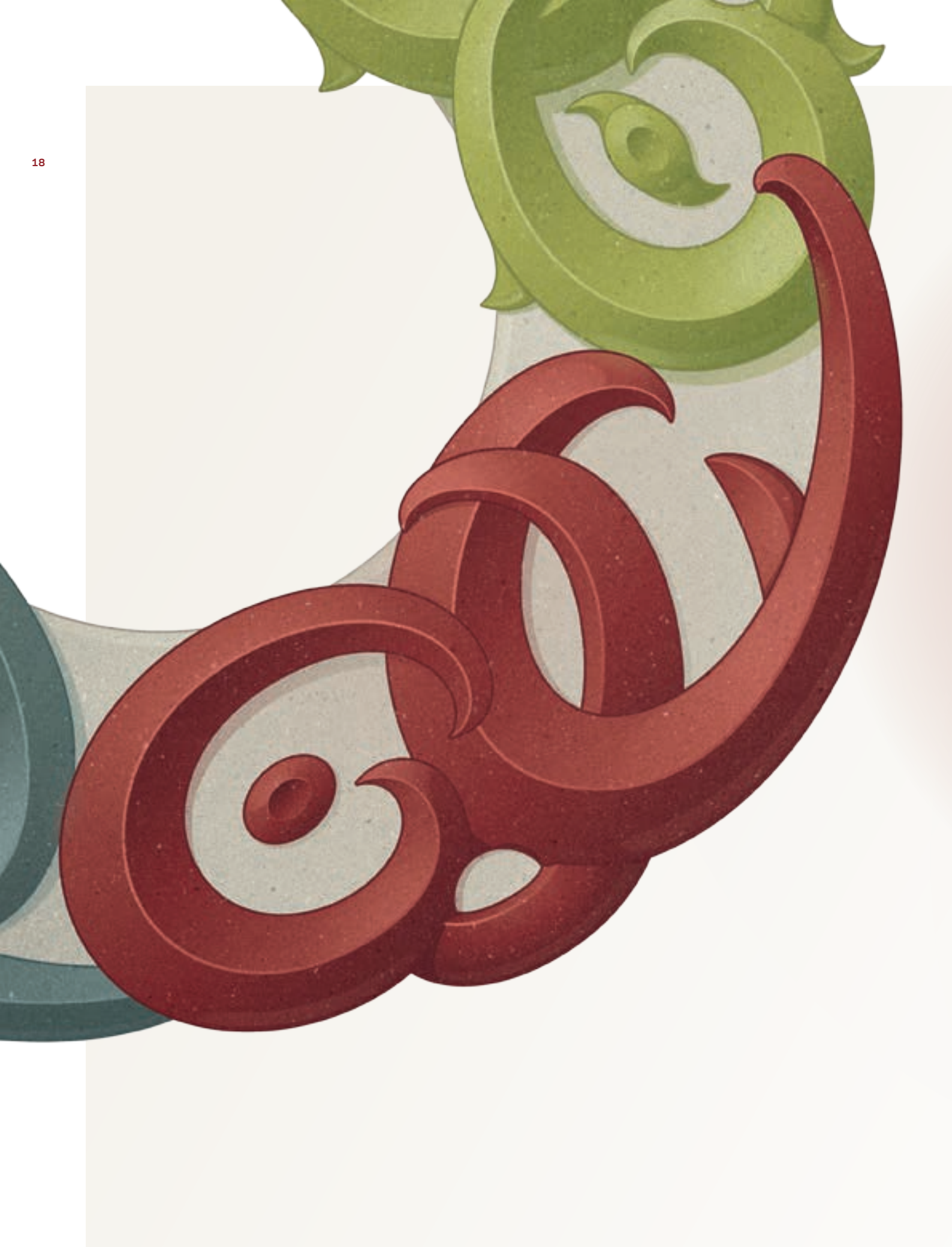
Retaining existing protections to ensure the cultural and economic interests of Māori land owners are maintained.



*He kowhatu, he whatu-kura, he punga, he taunga mauri. This symbol of a carved stone represents the mauri (essence) of the reform of Te Ture Whenua. The manaia adorning the stone are the interconnected elements that together will shape a stronger, more empowered basis for Māori to interact with our whenua.*



Kia **tapu** te mauri,  
kia **pakari** te mauri,  
kia mārama te mauri,  
kia tiakina te mauri,  
toi tū te whenua,  
toi tū te tangata.



## *Better law*

More decisions will be able to be made by Māori land owners without the need for Māori Land Court approval.

Māori land owners will be able to develop their own processes for decision-making that reflects their tikanga.

The new governance model (rangatōpū) gives Māori land owners more choices about what type of legal entity they want to use and more flexibility to ensure Māori land is governed according to their vision and aspirations for the whenua.

The Māori Land Court retains a critical role for safeguarding cultural and economic interests of Māori land owners, but their jurisdiction changes to respect the greater autonomy of Māori land owners.

Giving effect  
to greater  
*autonomy.*

Kia *tapu*  
te mauri o te  
whenua.

## *Better support*

The Māori Land Service will help landowners work out which type of entity best suits their aspirations.

Where there is no governance body in place, the Māori Land Service will help owners understand the types of governance bodies available to them as well as provide administrative support to enable a final decision to be made.

## Increasing Māori land owner control over decision making

One of the underlying principles of the Bill is that Māori land owners should be in control of their destiny. They should not have to apply to the Māori Land Court for permission to do things with their land. Under the current Act, the Māori Land Court has discretion about whether landowner decisions should go ahead. Under the Bill the Māori Land Court will no longer have the final say about whether many decisions are right for landowners.

The Bill also recognises that it is important to have robust safeguards to ensure decisions made about Māori land do not disadvantage some owners. For instance, the Bill ensures that Māori land owners follow good processes when making decisions. At the request of an owner, the Māori Land Court will have the ability to review whether these processes have been followed.

### Applying Tikanga

In future, Māori land owners will be able to make decisions according to their tikanga and

self-define their vision for their whenua. The Bill provides more visible and practical ways to apply tikanga and express vision, including:

- Explicitly recognising tikanga Māori as a guiding matter involving Māori land;
- Enabling Māori land owners to develop their own processes for decision making that reflect their tikanga (with only one condition being that the minimum thresholds of owner agreement for important decisions are met);

Diagram 3: Better Autonomy: Establishing a rangatōpū



Choose what type of entity you want to establish: private trust, limited liability company or body corporate.



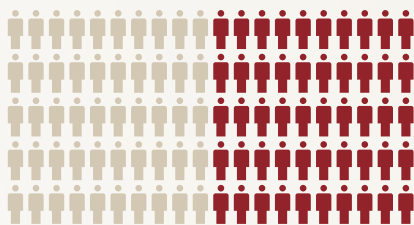
Draft a 'governance agreement', which sets out what whānau want for their whenua and the processes they want the governance body to follow to make decisions.

- Governance bodies over Māori land will be required to give effect to the vision held by landowners for their whenua and follow processes that landowners consider gives effect to their tikanga.

## Process and tools

A range of new processes and tools have been created to increase the control Māori land owners have over their whenua.

- A new governance model (known as a rangatōpū) will provide greater flexibility about the type of legal entity landowners want to apply, including a private trust, limited liability company, statutory trustee or body corporate.
- A governance agreement (the constitutional arrangements for a rangatōpū) will empower the landowners to define the rules and processes that their governance body will have to follow (see diagram below).
- A land management plan will give landowners control over how their Māori land will be managed by the governance body.
- A default decision making process will make it clear what steps landowners need to follow where no governance body exists.
- The Māori Land Service will assist landowners to navigate Māori land law processes.
- The dispute resolution process will make it possible for parties to resolve Māori land disputes themselves in a manner that recognises their tikanga.



Involve landowners in discussion and voting to establish the governance body. The Māori Land Service will provide practical support, if landowners want it.



More than 50% of participating owners must vote for the governance agreement.



The governance body is officially established once the Māori Land Service has registered it. The application to register the new body requires at least three kaitiaki.





# Kia *pakari* te mauri o te whenua.

## *Better support*

The Māori Land Service will support Māori land owners to increase the utilisation of their land. For instance, where there is no governance body, the Māori Land Service will be able to appoint external managers (kaiwhakarite) to assess the potential for Māori land blocks to be utilised or developed pending owner-initiated governance.

## *Better law*

New decision making thresholds are created to make it easier to make decisions about the use and development of Māori land.

Decisions will be able to be made by 'participating owners', meaning those owners who participate in decision making and voting processes.

New tools will help to raise finance and build commercial partnerships, including new ways to create security for loans without putting the land at risk.

# Giving effect to greater *utilisation.*

## Increasing the utilisation of Māori Land

Te Ture Whenua Māori Act has been regularly criticised for being too difficult to use and, in many cases, develop Māori blocks because it is practically impossible to get enough landowners to participate in and approve decisions about the use and development of Māori land. This problem arises from a combination of fragmented

ownership and being unable to locate and encourage landowners to participate in decisions.

The Bill addresses this by establishing a new concept of ‘participating owner’ encompassing those owners who participate in voting processes. There will be a clear process with participation and decision thresholds. For instance, if a block of land has 100 owners, at least 10 owners, who collectively hold 25%

or more of the shareholding, must participate in the decision-making process.

## Decision making thresholds

The table below shows the decisions that must be made by all owners and those that can be made by participating owners and the required threshold levels that must be reached for a decision to be passed:

Table 2: The decision making thresholds

All owners (votes by shares)		Participating owners (votes by shares)	
			
<ul style="list-style-type: none"> <li>Removing status of Māori freehold land</li> <li>Converting to collective ownership</li> <li>Selling Māori freehold land parcel</li> <li>Exchanging Māori freehold land parcel</li> </ul>	<ul style="list-style-type: none"> <li>Agreeing to a partition</li> </ul>	<ul style="list-style-type: none"> <li>Granting a lease of 52 years or more</li> <li>Agreeing to aggregate ownership</li> <li>Agreeing to cancel aggregation</li> <li>Agreeing to land management plan</li> </ul>	<ul style="list-style-type: none"> <li>Establishing a rangatōpū</li> <li>Agreeing to an amalgamation of rangatōpū</li> <li>Approving a governance agreement</li> <li>Joining an existing rangatōpū</li> <li>Appointing other governance body</li> <li>Altering a governance agreement</li> <li>Revoking appointment of a governance body</li> <li>Changing name of land parcel*</li> <li>Establishing a whenua tapui*</li> <li>Change of status to become Māori freehold land*</li> </ul>

\* (NB votes per owner)

### The types of votes required to make decisions

 At least 75% of all owners (votes by shares)
  At least 50% of all owners (votes by shares)
  At least 75% of participating owners (votes by shares)
  At least 50% of participating owners (votes by shares)

## Process and tools

The Bill creates a number of new processes and tools to help Māori land owners develop their land, gain clarity about the treatment of unclaimed dividends, appoint external managers and remove outdated rules.

### Raising finance and attracting commercial partners to develop land

Several tools make it simpler to raise finance and attract commercial partners. These include:

- Ability to leasehold the land — governance bodies are able to create a leasehold interest in the land. This creates a security that a loan can be made against, without putting the land at risk;
- Ability to mortgage against fixtures — removing hurdles and enabling governance bodies to use their buildings and other improvements on the land as security for a mortgage; and

- Greater certainty about legal entities — the rangatōpū model will result in all governance bodies over Māori land having a certificate of registration, like a company under general law. Registration will provide certainty and reassurance to potential lenders and partners.

### External Managers

Where there is no governance arrangement and it is not possible to locate owners to appoint a governance body, the Bill allows external managers (kaiwhakarite) to be appointed by the Māori Land Service over unutilised Māori land to generate return for the owners, but creates clear rules for their appointment and obligations.

### Decluttering the Rule Book

The Bill removes outdated rules that create additional burdens and hurdles for Māori land relative to other land in New Zealand, for example, outdated provisions regarding leases.

## *Better law*

More processes will become administrative rather than requiring an application to the Māori Land Court. This will reduce the time and cost of common processes (eg. succession, establishing a governance body).

Governance bodies for Māori land will come under one clear set of rules, with practical duties and obligations on Māori land owners.

How the reform will increase *simplicity.*

## *Better support*

Māori land owners will be able to obtain practical support via the Māori Land Service, who will assist them to follow good processes.

Kia *mārama*  
te mauri  
ō te whenua.



### Making it easier to do what you need to do

Māori land owners will be able to notify an administrative body of their decisions rather than making an application to the Māori Land Court and undertaking a judicial process. To support this change, an administrative Māori Land Service will be established.

There are a number of processes that will be dealt with administratively under the new framework: including

the registration of governance bodies, whānau trusts, most successions, occupation licences, and easements, and the transfer or exchange of owners' individual interests. This should decrease the time and resource Māori land owners need to spend doing these things.

### Simplifying dispute resolution

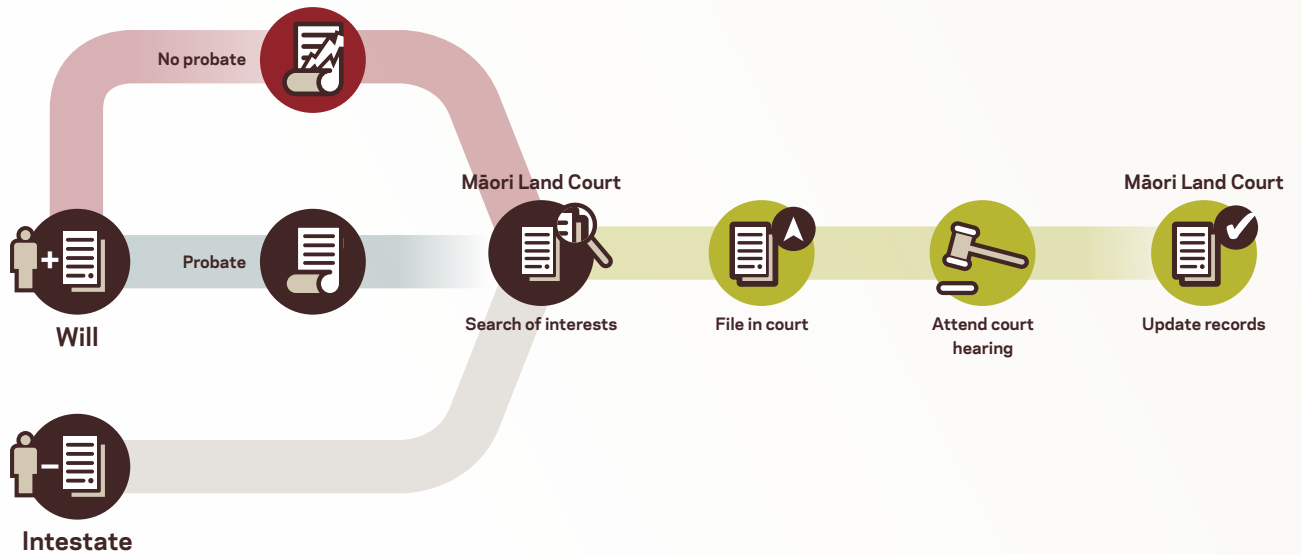
A new process will be established to resolve Māori land disputes. Most contested decisions will be

required to go through the dispute resolution process before going to the Māori Land Court.

The Māori Land Service will be responsible for providing the dispute resolution service. This will include kaitakawaenga (mediators) who will be available to work with owners to resolve disputes. Māori land owners will be able to develop a process with the kaitakawaenga that gives effect to their tikanga and expectations.

Diagram 4: Increased Simplicity: The succession process

### Current



## Process and tools

The Bill aims to make succession easier by making it an administrative process when there is a will in place, and creating clearer processes for the more complex cases (see diagram below). For instance:

- **Will in Place** (probate granted) - succession will happen via the Māori Land Service;
- **Will in Place but no administrator** (no probate) - an application will need to be made to the Māori Land Court for succession;

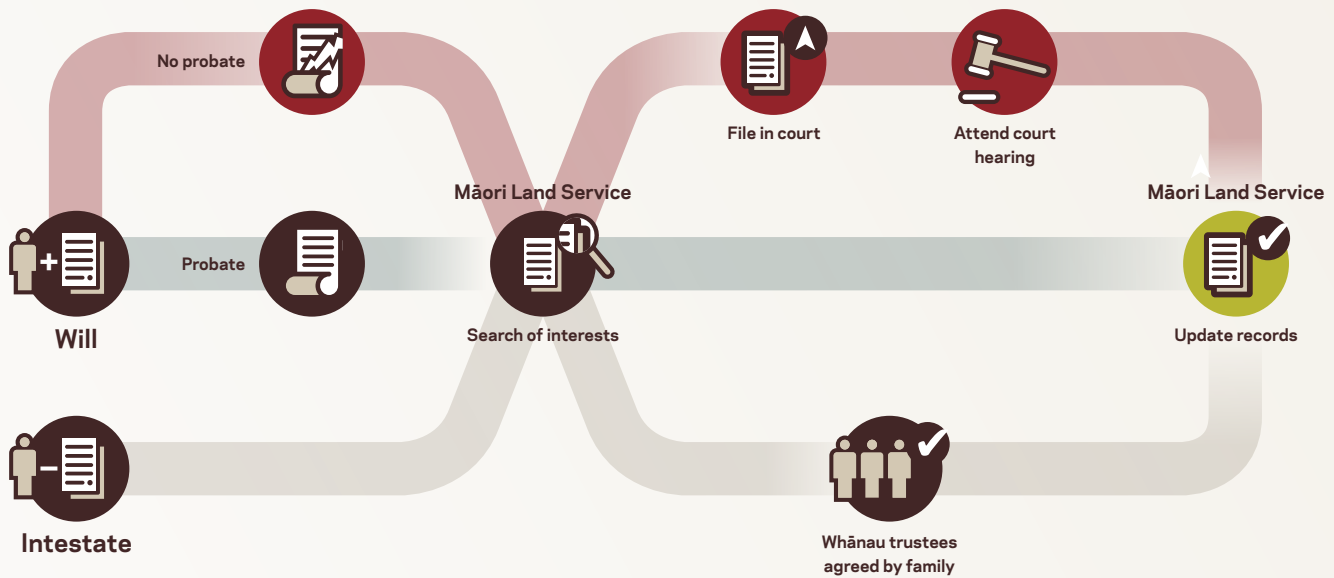
- **No Will in Place** (intestate) - a whānau trust must be created for the descendants of the deceased, resulting in 'whānau succession' to the land interests, rather than individual succession.

Other important changes include:

- If someone wants to live on their multiple-owned land they can obtain and register an occupation licence from the governance body or with the agreement of 75% of participating owners. They do not have to apply to the Māori Land Court for an occupation order.

- Owners will be able to make changes to their land blocks themselves (such as partitions, amalgamations and boundary adjustments) so long as the required thresholds of participating owners are met. The Māori Land Court will confirm whether the decision-making requirements were correctly followed and whether any allocation schemes relating to the owners' individual interests are fair and equitable.

## Future



## *Better law*

The Māori Land Court retains a critical role in safeguarding the cultural and economic interests of Māori land owners.

Procedural safeguards to protect interests of current and future owners include:

- All owners need to be notified about potential decisions
  - More ways for owners to participate in decision making, including by phone and internet
    - Clear decision making thresholds
- Māori Land Court has the jurisdiction to review decisions to make sure good processes were followed
- Greater clarity of obligations on governance bodies and kaitiaki
  - Continued role for Māori Land Court to remove kaitiaki

# Kia *tiakina* te mauri.

## *Better support*

The Māori Land Service will:

- maintain and provide access to governance and ownership information
- provide support to ensure good decision making processes are followed
- ensure appropriately qualified kaiwhakarite (external managers) and kaitakawaenga (mediators) are appointed and supported
- keep confidential information provided during disputes safe and secure.

# Ensuring better *safeguards.*







### **Safeguarding whenua for current and future generations**

The Bill maintains the kaupapa of retention: keeping Māori land in Māori hands. Decision making thresholds for selling Māori land will remain at the same levels as under the current Act.

For Māori land to be sold, gifted, exchanged, or leased for longer than 52 years or converted into collective ownership, 75 percent of all owners (by shares) will need to agree. Partitions can be agreed to by 50 percent of all owners (by shares).

The Māori Land Court will retain its critical role of safeguarding ownership and the cultural connection of landowners through a reshaped jurisdiction that is responsible for approving disposal on the grounds that due process has been followed. The diagram on the next page sets out the disposal process and highlights the additional safeguards that have been applied to ensure the retention of Māori land, such as the requirement for a land management plan and the preferred recipient tender process.

### **Protecting the interests of owners**

Decision making thresholds have been set on the basis that decisions will be in the interests of all owners. There will be safeguards to ensure that decisions about the use and development of Māori land do not damage some landowner interests. These safeguards are a way of balancing greater landowner autonomy (to do as they wish), with greater accountabilities on landowners to act fairly toward one another.



The key safeguards to ensure landowners act fairly toward one another include:

- The requirement for good processes for decision making to be followed, which can either be processes that the landowners define and agree to, or the default processes in the Bill;
- The Māori Land Court being able to make sure that due process has been followed if a decision is challenged; and
- Statutory duties and obligations being placed on governance bodies and on the kaitiaki (governors) of those entities.

### Process and tools

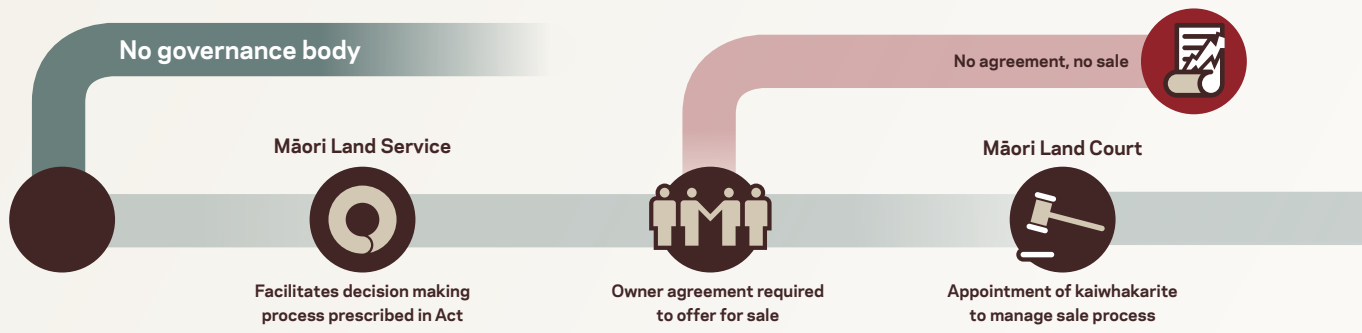
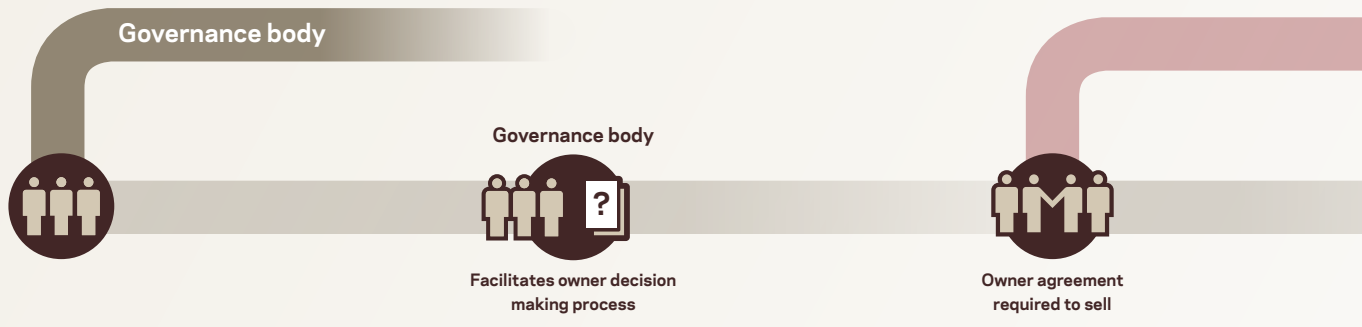
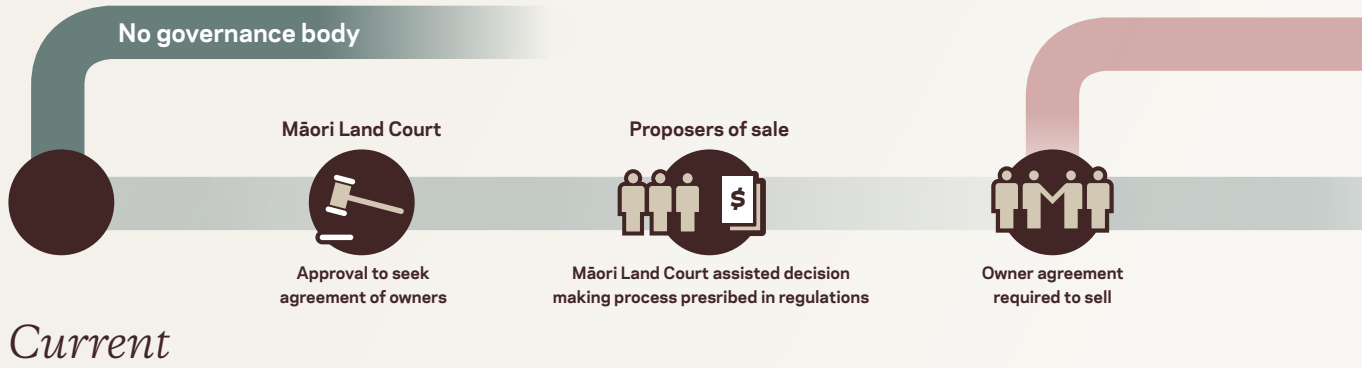
---

The Bill establishes a preferred recipient tender process that will increase the likelihood that land offered for sale will be retained by those with whakapapa connections to it. The preferred recipient tender process is not defined under the current Act.

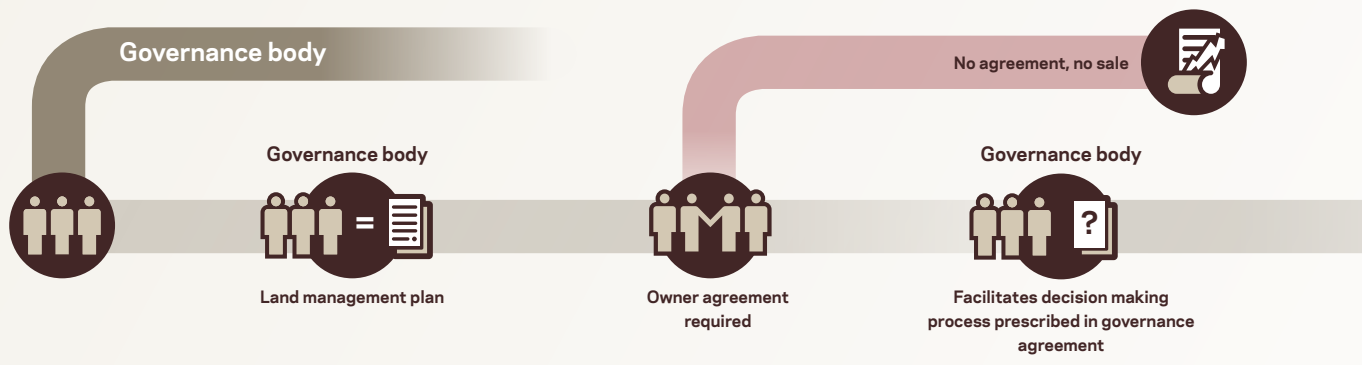
Specific timeframes are created that will make it easier for everyone to know what is going on, when and how they can participate in the process.

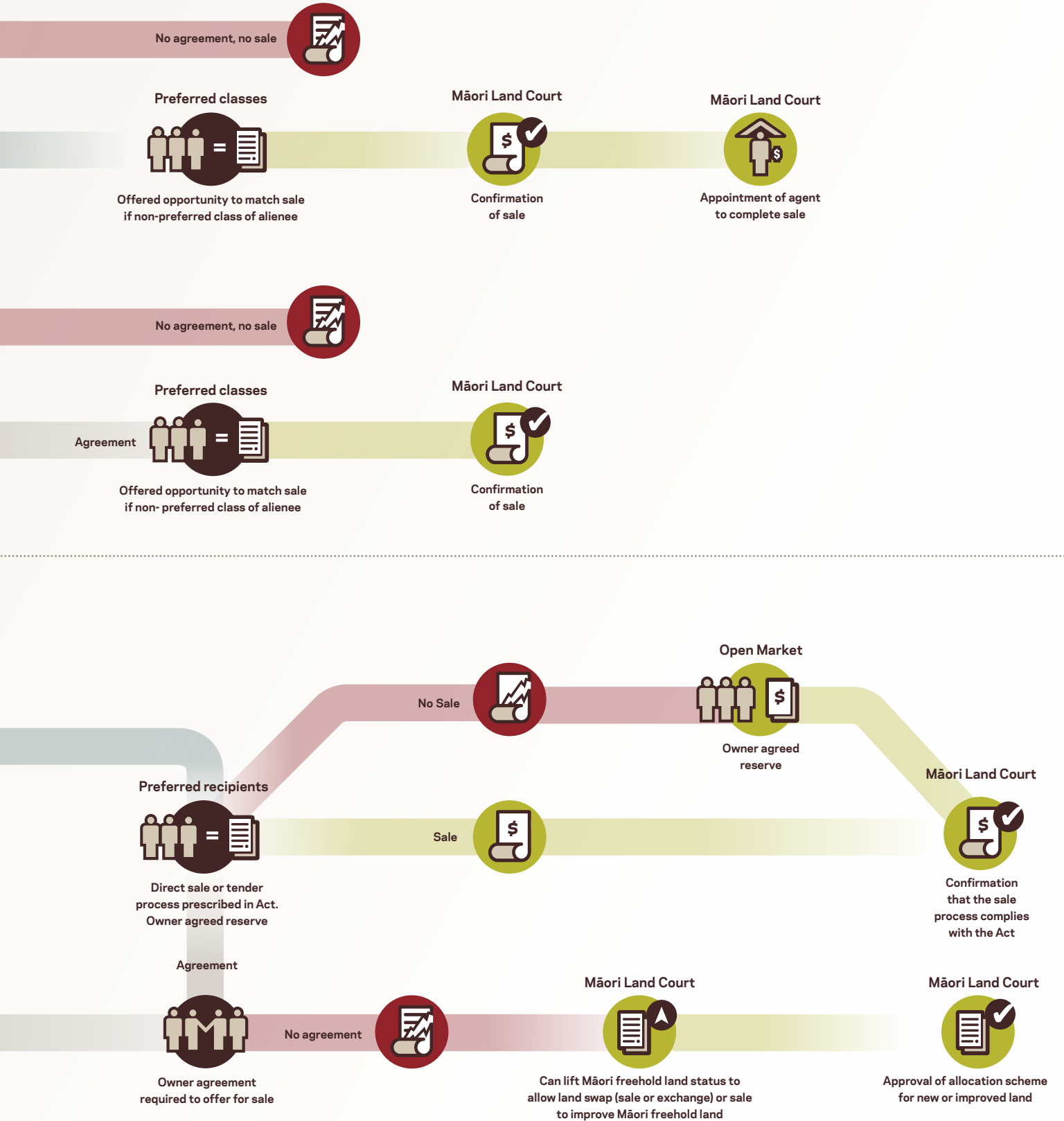
The Bill also creates a second tier of preferred recipient that allows whānau, hapū or iwi groups with whakapapa connections to the land to put in an offer to buy the land through the preferred tender process. They will have a second right of refusal after the preferred recipient.

Diagram 5: Better Safeguards: The disposal process



*Future*





An aerial photograph of a vast, hazy landscape. The foreground shows rolling hills and valleys covered in dense green forest. The middle ground is a wide, flat expanse that fades into a thick mist or haze. The sky is a pale, hazy blue with some wispy clouds. The overall tone is soft and atmospheric.

**Nōku te whenua,**

# o ōku tupuna



# Understanding the exposure draft

## *He whakamāramatanga mō te huranga hukihuki*

### Part 1

#### Preliminary provisions

- Purpose and principles of the legislation
- Terms used in the Parts that will become Te Ture Whenua Māori Bill.

### Part 2

#### Whenua Māori/Māori land and whenua tāpui

- Defines Māori customary and Māori freehold land
- Prohibits the disposition of Māori customary land and restricts the disposition of Māori freehold land
- Allows whenua tāpui to be reserved over private and Crown land.

### Part 3

#### Ownership interests in Māori freehold land

- Rights of beneficial owners of Māori land
- Allows Māori land owners to convert to collective ownership
- Decision-making requirements for Māori land owners
- Provisions for whānau trusts
- Appointment of kaiwhakamarumarū to manage property of persons needing protection.

### Part 4

#### Dispositions of Māori freehold land and other land

- Provisions relating to dispositions and dealings with Māori land
- Role of the Māori Land Court in relation to such transactions
- The preferred recipient tender process
- Allows occupation leases or licenses to be granted.

### Part 9

#### Dispute resolution

- Dispute resolution service for matters relating to Māori land.

### Part 10

#### Repeal, revocations, and consequential amendments

- Repeals and revokes certain enactments and amends certain laws as a consequence of other provisions.

### Part 11

#### Preliminary provisions

- Preliminary provisions for the Parts that are to become Te Kooti Whenua Māori Bill.

### Part 12

#### Māori Land Court

- Continues the Court in its present form and largely with its present jurisdiction
- Carries over the Court's jurisdiction under the Māori Fisheries Act 2004 and Māori Commercial Aquaculture Claims Settlement Act 2004.



## Introduction

The exposure draft of Te Ture Whenua Māori Bill is intended to enable Māori land owners, whānau, hapū and iwi to better understand the main elements of the reforms and how they will operate in practice.

This document focuses on the following key issues:

- The new governance model
- Transitional arrangements
- The disposition of Māori land
- Succession
- The dispute resolution process
- The reshaped jurisdiction of the Māori Land Court
- The Māori Land Service.

## Structure of the Bill

The Bill is structured into sixteen parts. The parts relating to the Māori Land Court and Māori Appellate Court (Parts 11-16) will be divided into a separate bill at the committee stage of the Parliamentary process.

### Part 5

#### Authority to act in relation to Māori freehold land

- Appointment of administrative kaiwhakarite to act on behalf of Māori land owners when there is no governance body
- Appointment of managing kaiwhakarite to manage Māori land on behalf of its owners
- Enables owners to appoint a governance body to manage the land on their behalf and sets out the appointment process
- Transitions existing Māori incorporations, ahu whenua trusts, and whenua tōpū trusts to the new regime.

### Part 6

#### Operation of governance bodies

- Powers, duties and responsibilities of governance bodies and their kaitiaki.

### Part 7

#### Administration of estates

- How beneficial interests in Māori land will be distributed when an owner dies without a will
- How beneficial interests in Māori land that are gifted will become vested in the beneficiaries of the gift.

### Part 8

#### Registers, jurisdiction about land, giving notices, and other provisions

- Registers and record keeping relating to Māori land
- Registration of Māori land under the Land Transfer Act
- Prevents Māori land from vesting in the Crown when it has no owner.

### Part 13

#### Māori Appellate Court

- Continues the Māori Appellate Court in its present form and largely with its present jurisdiction.

### Part 14

#### Provisions applying to both courts

- Provisions applying to both courts including those relating to judicial conferences and directions, use of te reo Māori, representation of parties, stating cases for the High Court, jurisdiction to issue injunctions, costs orders, enforcement of judgments and orders, and appointment of receivers.

### Part 15

#### Appointment of Judges and related provisions

- Carries over provisions relating to the appointment of Judges
- Updates existing provisions to reflect proposed amendments contained in the Judicature Modernisation Bill, including the appointment process.

### Part 16

#### Rules, regulations, judgments, restricting right to commence proceedings

- Carries over provisions relating to the Rules Committee and rules of the court
- Updates existing provisions to reflect proposed amendments contained in the Judicature Modernisation Bill relating to meritless litigation.

## *The New Governance Model*

### **Overview**

Under the Bill, there will be three categories of governance bodies:

- Rangatōpū;
- Statutory bodies (Māori Trust Board, Māori Trustee, Public Trust, trustee companies); and
- Entities representing hapū or iwi associated with the land.

Rangatōpū will be a new category of governance body that covers existing types of legal entities (such as private trusts, boards registered under Te Ture Whenua Māori Act, existing ahu whenua/whenua tōpū trusts, and incorporations, companies other entities registered under other Acts). However, Māori land owners can decide to become a body corporate through registration as a rangatōpū.

This means they do not need to establish a trust or company, they can simply become a rangatōpū and achieve separate legal personality for their entity.

### **Relevant parts of the Bill**

The powers, duties and responsibilities of governance bodies are set out in Part Six of the Bill. This Part should be read alongside Schedule 1 (the process for transitioning an existing Trust or Incorporation into a governance body); and Schedule 4 (the rules about what needs to be in a governance agreement).

## What are the powers of rangatōpū?



### General powers

The governance body has all the powers of acting as the owner of the whenua; they can enter into contracts, raise finance and do anything else permitted by the governance agreement.



### Using money

The governance body can use revenue from the whenua for any purpose that the land owners have agreed to through the governance agreement.



### Treatment of unclaimed money

There are clearer processes for the distribution of unclaimed money that ensure owners will be able to access any money owed to them, while making it easier for the governance body to hold and administer the money in the meantime.

## What are the responsibilities of rangatōpū?



### Rangatōpū responsibilities

All rangatōpū will have clear responsibilities to:

- manage the asset base according to the vision and objectives of the governance agreement;
- not create substantial risk or loss to owners;
- endeavour to keep owners informed about the asset base and activities; and
- endeavour to improve the level of owner participation with the governance body.

Governance bodies will be subject to any restrictions set out in the governance agreement.



### Kaitiaki (governor) responsibilities

The governors (kaitiaki) become subject to statutory responsibilities, including:

- act honestly and in good faith;
- act in accordance with the governance agreement; and
- exercise reasonable degree of care and diligence.

Kaitiaki must meet statutory eligibility criteria (with reference to criminal convictions for fraud or dishonesty within last 5 years, personal insolvency and professional incompetence).

Kaitiaki are appointed for a 3 year term, but can be reappointed for further terms (unlimited by the Bill).



### Transparency and information

Governance bodies will be accountable to owners to ensure transparency and availability of information.



### Matters to think about

1. What do you think about the process set out in the Bill to appoint a governance body (Rangatōpū)?
2. How will the powers and responsibilities of Rangatōpū help Māori land owners use and develop their land?
3. How much involvement should Māori land owners have in decisions about their land if that land is governed by a Rangatōpū?

## What do rangatōpū have to do to make particular decisions?

The Bill provides for governance bodies to develop and have approved three types of

instruments if they want to make particular decisions about the land/ asset base:

- Land management plan.
- Allocation scheme
- Distribution scheme.



### Land Management Plan

Governance body must prepare a land management plan that is approved by 75% of participating owners if it intends to dispose of Māori freehold land. The land management plan must set out:

- how the land will be utilised;
- how the improvements on the land will improve the ability to use the land and meet the objectives of the landowners under the governance agreement;
- set out how proposed improvements will be achieved including financial implications;
- set out the risks of proceeding and not proceeding with the land management plan; and
- if land is proposed to be disposed of, set out why the disposal is necessary and how the proceeds will be used.



### Allocation Scheme

If the governance body intends to change its portfolio of Māori freehold land it must prepare an allocation plan (ie buy more Māori freehold land, exchange parcels of Māori freehold land etc). The purpose of the allocation plan is to maintain equity across ownership interests, despite the physical land changing.

If more land is acquired, the allocation plan must be amended to provide for proportionate allocation. The allocation plan must also specify how any surplus proceeds from any disposals will be used or distributed.

The Māori Land Court can review the allocation scheme to ensure it was fair and followed a proper process.



### Distribution Scheme

In the event that a governance agreement/body is cancelled, the governance body must apply to the Māori Land Court to have a kaiwhakarite appointed.

The kaiwhakarite will be responsible for overseeing the preparation of a full distribution scheme. The distribution scheme must specify how and when the asset base will be distributed to owners (after liabilities addressed).

The Māori Land Court must approve the distribution scheme, and will take into account fairness and equity.

## What role will the Māori Land Court play?

If there are major problems, the Māori Land Court will have jurisdiction to:

- enforce obligations of governance bodies;
- investigate governance bodies;

- disqualify kaitiaki; and
- approve allocation and distribution schemes.

The Court will also retain its jurisdiction under the Trustee Act.

# Disposition of Māori Land

## Overview

The Bill reforms the process for dispositions and dealing with Māori land. This covers sales, gifts, exchanges, easements, leases, licenses, mortgages, partition, amalgamation and aggregation. The reforms include a change in the role of the Māori Land Court from exercising discretion as to whether these transactions should occur to one of confirming that due process has been followed and the transaction is lawful.

## Relevant parts of the Bill

There are a number of parts of the Bill that apply to the disposal of Māori land, including:

- Part 3 (the decision making thresholds for different types of disposal of Māori land);
- Part 4 (the process for different types of disposal of Māori land); and
- Part 6 (the detailed processes governance bodies must follow if they are intending to dispose of Māori land, including the need to prepare specific documents); and
- Schedule 2 (the default decision making processes for when there is no governance body in place, including specifying the types of information that must be supplied to owners if a disposal is being considered).

The way the disposal provisions work together is depicted in the diagrams on the following page.



## What is the process for disposing of Māori land?

Diagram 6: Process for disposing of Māori land

### If a governance body is in place:



Governance body must prepare a land management plan and have it approved by 75% of participating owners.



Must be satisfied that disposal is necessary to achieve land owners' vision and objectives set out in governance agreement.



Must only be intending to use proceeds from sale to acquire or improve another block of Māori freehold land.

### If no governance body is in place:



Must notify intention to dispose of land to all owners, including information on the disposal, valuation of the land.



Must call meeting and hold voting process.



Disposal requires agreement from 75% of all owners.

## How are different types of dispositions dealt with?

### Gifts

Land cannot be gifted where:

- it is held under a class ownership order;
- it is managed under a governance agreement; or
- if it is not managed by a governance agreement, where it has not been agreed to by 75% of all owners.

A gift must be:

- made to a preferred recipient; and
- confirmed by the Māori Land Court (according to procedural grounds).

### Exchanges

Land can be exchanged.

If the land is under a governance agreement, the land management plan must provide for the exchange.

If the land is not under a governance agreement, more than 50% of all owners by shareholding must agree to the exchange.

After the exchange, the beneficial interests of the owners must match the original interests.

The exchange must be confirmed by the Māori Land Court (according to procedural grounds).

### Leases

#### 52 years or less

If the land is managed under a governance agreement, the governance body must agree to the lease.

If the land is not under a governance agreement, the lease must be agreed to by 50% of all owners by shareholding.

#### More than 52 years

If the land is managed under a governance agreement, the governance body must agree to the lease.



Must try to get 75% of all owners agreement (or higher threshold if provided in governance agreement), and if not possible, apply to Māori Land Court for approval to sell on the open market.



Must follow preferential tender process.



Māori Land Court must approve disposal has complied with process in Bill.



Must follow preferential tender process.



Māori Land Court must approve disposal has complied with process in Bill.

If the land is not under a governance agreement, the lease must be agreed to by 75% of all owners by shareholding and be confirmed by the Māori Land Court (according to procedural grounds).

A governance body can grant itself (or subsidiary) a leasehold interest in the land to enable it to raise debt without putting the land at risk. Creating a leasehold interest in this way does not require owner agreement unless the governance agreement says otherwise.

### Occupation licence

The occupation licence must be agreed to by:

- the governance body (if in place); or
- 75% of participating owners by shareholding

An occupation licence can only be granted to an owner of the land or beneficiary of a whānau trust that has an interest in the land.

The term of the licence can be:

- 80 years or less; or
- the life of the person in whose favour it is granted.

If there is time remaining on the licence, it can be gifted by will to a partner, child or grandchild.



### Matters to think about

4. What do you think about the safeguards around the sale of Māori land in ensuring it is retained for current and future generations?
5. How will the preferential tender process affect the ability of preferred recipients to exercise the right of first refusal if Māori land is being sold?

## Transitional arrangements

### Overview

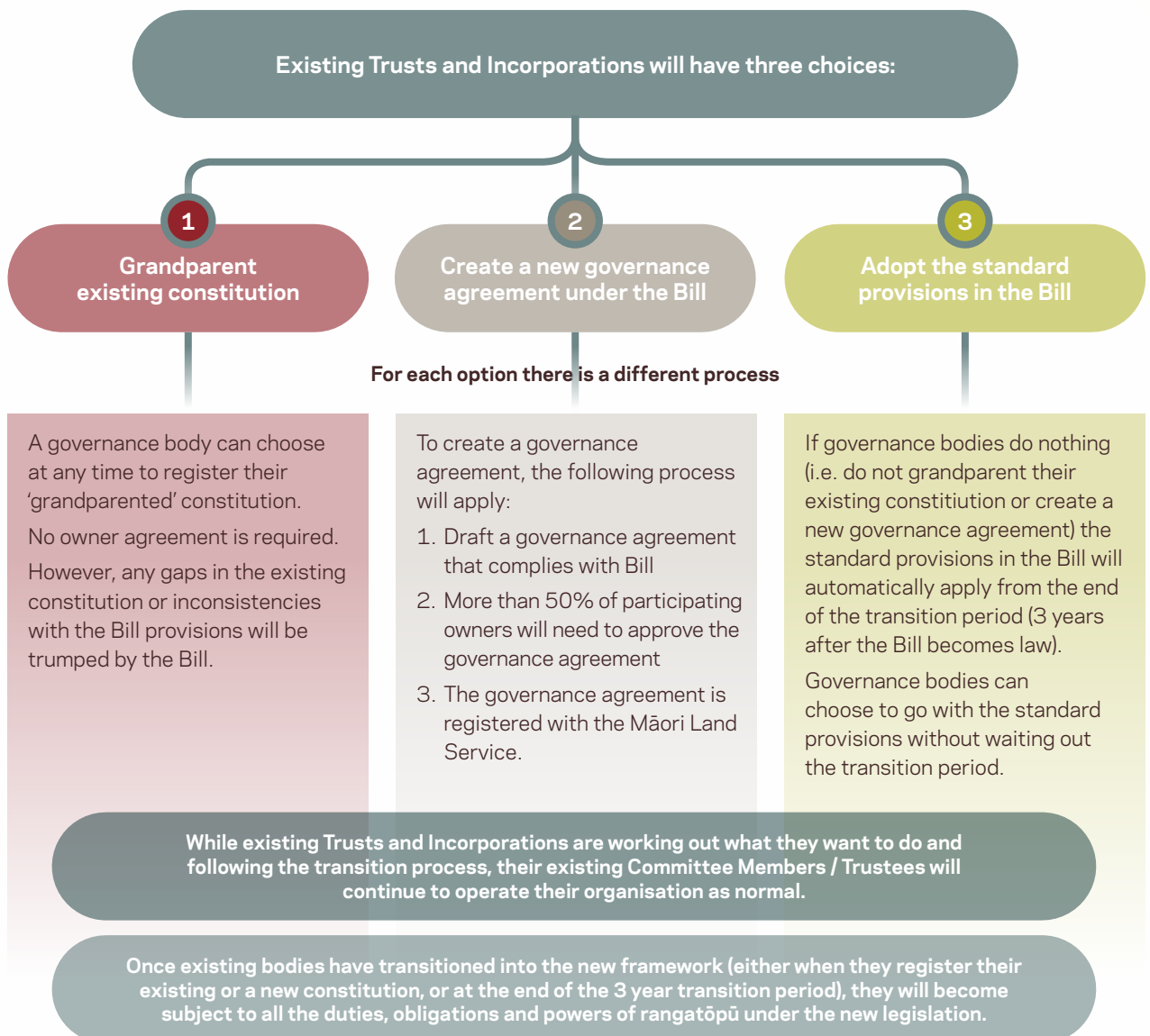
The Bill sets out the processes for existing Trusts and Incorporations to transition into the new framework over a three year transitional

period. This will affect 160 Māori Incorporations, 5,582 existing Ahu Whenua Trusts and 33 Whenua Tōpū Trusts. The transitional processes are set out below.

### Relevant parts of the Bill

Schedule 1 of the Bill sets out the process for transitioning existing Trusts and Incorporations.

Diagram 7: Transitional arrangements for Trusts and Incorporations





# Succession

## Overview

Succession occurs when an interest in land is transferred from a person who has died to the people who are entitled to take their property. Under Te Ture Whenua Māori Act, an order must be obtained from the Māori Land Court to transfer the deceased person's land interests to his or her successors. This requirement applies even if the deceased owner made a will. The Bill aims to make succession simpler by making it an administrative process when there is a will in place, and creating clearer processes for more complex cases.

## Relevant parts of the Bill

The provisions relating to succession are set out in Part 7 of the Bill.

## In the event of a will

If probate has been granted, the administrator or executor of the estate will apply to the Māori Land Service for the land to be vested in the named beneficiaries or, if applicable, whānau trust. The Māori Land Service will then amend the Māori Land Register to record the new ownership details.

If probate has not been applied for, the administrator or executor will need to apply to the Māori Land Court for succession, for veracity purposes. Once the Court has rendered its decision, the Māori Land Service will be able to register the beneficial interests.

## In the event of intestacy

### Who may succeed to interests:

When a person dies intestate (that is, dies without a will) a whānau trust will be automatically created.

The beneficiaries of the trust are the descendants of the owner, or if there are no descendants, surviving siblings and their descendants. If there are no siblings or their descendants, the interests will pass to the parents of the owner or, if the owner's parents are deceased, the descendants of the siblings of the owner's parents. If there are no surviving kin, the land interests will be distributed pro rata amongst the other beneficial owners of the land.

**Application for succession:** After the death of an intestate owner, an eligible beneficiary to the whānau trust, a parent of the owner (if he/she is not an eligible beneficiary) or the administrator of the estate must lodge an application for succession to the Māori Land Service. The application must include the details of the land, the names of the proposed trustees of



## Matters to think about

7. How will the new processes make it easier to succeed to interests in Māori Land?
8. What do you think about the requirement to establish a whānau trust?

the whānau trust, and the beneficiaries of the trust. The Māori Land Service can provide assistance preparing the application.

**Processing of application:** Once they are comfortable the application is full and correct, the Māori Land Service can begin the registration process. However, if the Māori Land Service is concerned the application is inaccurate, they can refer the application to the Māori Land Court.

Before registering the new ownership details, the Māori Land Service must first publish details of the application. If no objections are received, the Māori Land Service can register the new ownership details, including the details relating to any whānau trust and the associated beneficial interests. However, if there are objections, the Māori Land Service must appoint a kaitakawaenga through the dispute resolution process (see next section). If the objection cannot be resolved, it will be referred to the Māori Land Court.



## Matters to think about

6. How easily will existing Trusts and Incorporations be able to move into the new governance framework?

## Dispute resolution process

### Overview

The current regime governing Māori land is structured so that matters relating to Māori land have some sort of judicial involvement, which can be time consuming, expensive and complicated. The Bill sets out a new dispute resolution process that will make it possible for parties to resolve Māori land disputes themselves in a manner that recognises their tikanga.

### Relevant parts of the Bill

Part 9 of the Bill establishes a new process to resolve Māori land disputes.

### Types of disputes

The types of disputes that will go through this process in the first instance are:

- Claims to ownership or interest in Māori land;
- Relative interests of owners in Māori land;
- Recovery of damages for trespass, or breaches of contract or tort to a maximum of \$100,000;
- Determining membership of preferred class;
- Whether land is held in fiduciary capacity;
- Allegations of breach of duty by governors; and
- Changes to the name of the block, partition, amalgamation, aggregation, exchange easement or occupation.

The Māori Land Court will not have jurisdiction over these disputes until the dispute resolution processes have been followed.

### Triggering the dispute resolution processes

The dispute resolution processes are triggered by a party to the dispute lodging a dispute notice with the Māori Land Service or a Judge referring the dispute to the Māori Land Service. The dispute notice must contain information about the nature and background to the dispute.

Once a dispute notice has been received, or where a dispute has been referred, the Māori Land Service must notify all parties to the dispute and invite them to provide written responses within 10 days.

### Kaitakawaenga

The Māori Land Service will appoint one or more kaitakawaenga to work with the parties to the dispute. The role of the kaitakawaenga is to assist the parties to resolve the dispute, guided by the tikanga of the hapū associated with the land.

When appointing the kaitakawaenga, the Māori Land Service must take into account their knowledge of tikanga Māori and ability to act impartially.

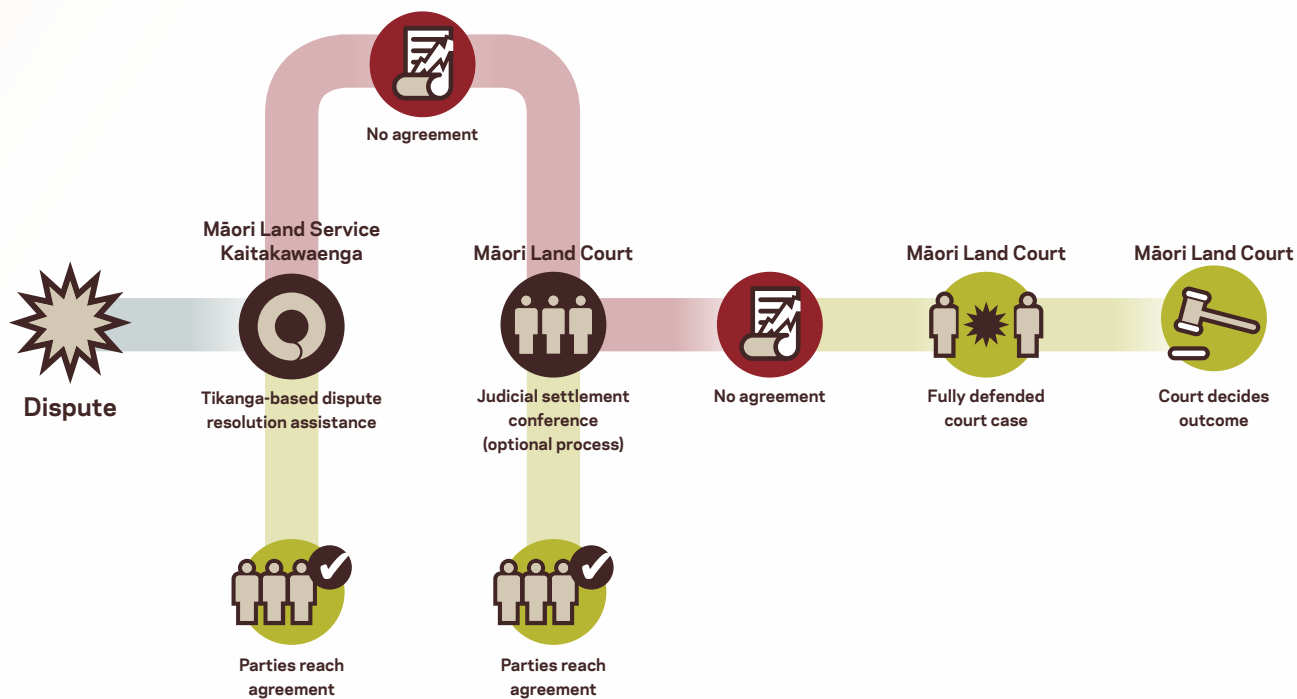
### The process for resolving disputes

The kaitakawaenga must initiate the dispute resolution process with the parties as soon as reasonably practicable after being appointed. The kaitakawaenga has wide flexibility to design the dispute resolution process as they consider appropriate. The parties to the dispute can give the kaitakawaenga powers to make written recommendations or decision making powers over the dispute.

If the dispute is resolved, the kaitakawaenga must record the agreement in writing and have the parties sign the agreement, knowing that the terms of resolution are final, binding and enforceable. This means, a party may not lodge an appeal against the terms of the agreement before a court.

If the dispute is not resolved, the Māori Land Service can refer the parties to further dispute resolution or refer the unresolved issues to the Māori Land Court for hearing and determination.

Diagram 8: Disputes resolution process



### Matters to think about



9. How will a tikanga-based dispute resolution service support Māori land owners?
10. What are your thoughts about the requirement for some disputes to go through the dispute resolution process before they go to the Māori Land Court?

## Reshaping the Māori Land Court's jurisdiction

### Overview

The Bill ensures the Māori Land Court retains its role as the judicial forum for Māori land issues.

However, the jurisdiction of the Court is refocused to core areas.

### Relevant parts of the Bill

The role of the Māori Land Court is set out in Parts 8 and 12 of the Bill.

### General principles

The Māori Land Court will continue to safeguard the ownership interests and cultural connection of Māori land owners with their land, which is an important mechanism in upholding the kaupapa of retention. For example, the Court will be able to review instruments which affect beneficial interest (such as the allocation and distribution schemes) on procedural and substantive grounds.

The Māori Land Court will have a lesser role in respect of decisions that reflect the land owners exercising autonomy. Under the Bill, instruments such as the governance agreement and land management plan are

the key expressions of landowner aspirations and autonomy, and accordingly the Court's jurisdiction is limited to procedural review.

### Jurisdiction in relation to Māori land and Māori land owners

The Bill provides for the Māori Land Court to have a lead role in ensuring that Māori land retention processes are adhered to. This jurisdiction includes:

- determining and changing the status of Māori customary land and Māori freehold land;
- granting access to landlocked Māori freehold land;
- settling claims to ownership or interest in Māori land; and
- making declaratory orders over beneficial interests (to correct inaccuracies in Māori Land Register).

The Bill enables the Māori Land Court to review on procedural grounds decisions to collectivise ownership interests and to dispose of Māori land, as well as partition, amalgamation and aggregation decisions. The Court may also review decisions made by governance bodies and Māori land owners to assess whether they have complied with prescribed process and decision making thresholds, if those decisions are challenged.

The Bill requires the Māori Land Court to approve allocation schemes, and full and partial distribution schemes.

The Māori Land Court is also granted authority to appoint and disqualify kaitiaki in specified circumstances; to appoint managers for owners in need of protection; and, on application, to investigate governance bodies.

### Dispute Resolution

The Bill ensures that the Māori Land Court remains an accessible judicial forum for resolving serious disputes that are unable to be resolved through mediation, including succession disputes and the recovery of damages for trespass, breaches of contract or tort to a maximum of \$100,000.

The Court will have the power to hold trustees, directors and committee members of governance bodies to account for breaches of duty.

The Bill includes an explicit jurisdiction to refer disputes to mediation and conduct judicial settlement conferences.



### Matters to think about

11. What do you think about the way the Māori Land Court's jurisdiction has been re-shaped?

## *Māori Land Service*

### **Overview**

The Māori Land Service will support Māori land owners to strengthen the management and utilisation of their land when operating within the requirements of the legal framework.

### **What will the Māori Land Service do?**

The Māori Land Service will provide the following services to Māori land owners:

- supporting owner decision-making processes;
- providing dispute resolution services, including Court-ordered mediation;
- maintaining the record of Māori land ownership and title;
- providing information services for Māori land ownership and title;
- providing registry services for Māori land governance bodies; and
- appointing and monitoring external managers.

### **What will Māori land owners experience?**

Māori land owners will experience convenient and responsive end-to-end services. This will include:

- options to engage with the services online, face-to-face or over the phone, which will include:
  - a. the opportunity to speak to experienced regionally-based staff
  - b. the ability to access and complete more services online
- availability of online self-help information, tools and guidance; and
- support to understand the types of governance bodies available to Māori land owners and assistance with establishing and registering a governance body.

## What services are proposed?

It is proposed, subject to time and resource constraints for design, development and implementation, that the Māori Land Service provides a range of services that include:

Service	Practical support
<b>Māori land services</b>	
Decision making support	<ul style="list-style-type: none"> <li>▪ Offer guidance and advice to owners on their options for a governance structure and how to establish their preferred governance structure.</li> <li>▪ Provide practical support to Māori land owners where there is no governance structure in place, including supporting Māori land owners to call hui to make decisions on Māori land, and receiving notices of resolutions from Māori land owners.</li> <li>▪ Register any governance bodies formed through decision making processes.</li> <li>▪ Refer any disputes to the dispute resolution service.</li> </ul>
Dispute resolution services	<ul style="list-style-type: none"> <li>▪ Have mediators with appropriate cultural knowledge and practical dispute resolution skills available to be engaged by Māori land owners as required.</li> <li>▪ Provide dispute resolution services for disputes that are required under the new framework to first go to dispute resolution.</li> </ul>
Māori land ownership and title information	<ul style="list-style-type: none"> <li>▪ Maintain systems and services for people to be able to search and have access to Māori land ownership and title records (historical and current) and obtain copies of documents.</li> <li>▪ Promote the use of Māori land ownership and title information as one of the means to stimulate and support increased owner participation and land utilisation.</li> </ul>
Māori land ownership and title records	<ul style="list-style-type: none"> <li>▪ Maintain records relating to:             <ul style="list-style-type: none"> <li>– Māori freehold land title and its beneficial ownership</li> <li>– Interests in Māori freehold land registered under the Land Transfer Act</li> </ul> </li> <li>▪ Hold legal responsibility for the integrity of the record of property rights and interests in Māori freehold land.</li> <li>▪ Provide registry services, including maintaining systems and services to:             <ul style="list-style-type: none"> <li>– Receive and record notices and other transactions affecting the beneficial ownership of, or title to, Māori freehold land</li> <li>– Verify the correctness of dealings or dispositions relating to the beneficial interests in Māori land (eg. succession, transfers etc.)</li> <li>– Register transactions and dealings that affect legal interests and title under the Land Transfer Act</li> </ul> </li> </ul>

Service	Practical support
<b>Māori land services</b>	
Māori land governance registry services	<ul style="list-style-type: none"> <li>▪ Maintain registers of Māori land governance bodies including:               <ul style="list-style-type: none"> <li>- Receive notice of appointment, update records and apply to the Registrar General of Land to record governance body as registered proprietor</li> <li>- If a trust is formed, receive and register deed of trust</li> <li>- Update records and issue notice to the Registrar General of Land when governance body acquires investment land</li> <li>- Receive notice or Māori Land Court order that appointment of governance body is terminated, update register, transmit notice of termination to the Registrar General of Land</li> </ul> </li> <li>▪ Provide systems and services to enable rangatōpū to be incorporated and registered, including:               <ul style="list-style-type: none"> <li>- Receive application and issue certificate of registration</li> <li>- Register constitution</li> <li>- Enter particulars in register</li> <li>- Apply to the Registrar General of Land to record rangatōpū as registered proprietor</li> <li>- Register and record amalgamations of rangatōpū</li> <li>- Update records when rangatōpū wound up.</li> </ul> </li> </ul>
External managers appointment and monitoring	<ul style="list-style-type: none"> <li>▪ Provide or procure services to assess the potential for Māori land blocks to be utilised or developed (pending owner-initiated governance)</li> <li>▪ Maintain systems and processes to appoint and monitor Māori land managers (pending owner-initiated governance)</li> <li>▪ Receive and hold profits and distribute to owners or future governance body</li> <li>▪ Prior to the appointment of an administrator, take reasonable steps to communicate with the owners to ensure that the criteria for appointing an external manager have been met, including:               <ul style="list-style-type: none"> <li>- Insufficient owners located or contacted to meet quorum for appointing governance body</li> <li>- Impractical/not feasible within reasonable timeframe for owners to appoint governance body</li> <li>- Land is not currently occupied/utilised by anyone with a lawful right to do so</li> <li>- No meritorious objection from among the owners</li> <li>- Land has reasonable potential to be managed to generate commercial returns for the owners</li> </ul> </li> </ul>

### Matters to think about



12. What type of services and information should the Māori Land Service provide?
13. How would you like these services to be delivered?



**He urunga tangata he  
he urunga oneone,**





**urunga pāhekeheke,  
mau tonu.**

# Frequently asked questions

## He Pātai Auau

### Background

#### 1. Why is there a whole new Bill and not just amendments to Te Ture Whenua Māori Act 1993?

In the last 150 years, almost 200 different laws and amendments have been passed that have affected Māori land law. As a result, Te Ture Whenua Māori Act inherited a patchwork of complex rules, many of which were designed to serve objectives that are now outdated and no longer relevant. To create the most coherent, durable and principled approach, it was decided that a comprehensive replacement Act should be created.

#### 2. Does the Bill keep the references to The Treaty of Waitangi contained in the current Act?

The references to The Treaty of Waitangi in the preamble of the current Act have been included in the principles of Te Ture Whenua Māori Bill (which are set out in section 4).

### Safeguards

#### 3. How safe are my ownership interests in Māori land under the new framework?

Under the Bill, ownership interests in Māori land can be changed in a number of circumstances, namely: changing to collective ownership; selling, gifting or exchanging the block of land; partitions and amalgamations; and aggregations.

However, the Bill has a number of safeguards to ensure the retention of Māori land. Many of these safeguards are the same as those in the current Act, the most important being:

- Any decisions about selling, gifting, exchanging or long term lease arrangements require a high threshold of owners to agree to those decisions; and
- The Māori Land Court has to approve the sale or gift complies with the Bill.

#### 4. Will the same level of safeguards be applied if Māori land is owned collectively or held by a governance body?

If the owners of Māori land decide to change their individual ownership shares to a collective ownership model, the land cannot be sold or gifted.

If the land is held by a governance body, the decision-making threshold (75%) will protect the interests of Māori land owners although owners can choose to set a higher threshold through the governance agreement.

If the sale is part of a land management plan approved by three-quarters of the ownership interests, the proceeds of the sale must be used to replace the land or improve other land held by the governance body.

The Māori Land Court has to agree this should happen.

## Decision making

### 5. How can I have a say in the decisions made about my Māori land?

The Bill tries to ensure decisions about Māori land are made with the support of their owners by setting out clear decision-making processes that allow owners to choose whether or not they want to participate in these decisions. The types of processes that are required depend on whether or not there is a governance body in place.

Where there is a governance body in place, owners may participate in the adoption of the governance agreement and land management plan. Through the governance agreement, owners can make it clear which decisions the governance body must seek further approval from landowners to do. Owners may also set out the processes the governance body must follow when seeking owner approval. The land management plan will set out what the governance body intends to do with the land. This provides owners a further opportunity to set the direction for the use and development of their land.

If no governance body is in place, the decision maker must notify all owners about the proposed decision. The decision maker must also make all information relevant to the decision available and call a meeting to discuss the decision which people can attend in person, or through phone or internet technology.

### 6. Can I challenge a decision relating to my ownership interests?

If an owner wants to challenge a decision relating to their ownership interests they can go through the dispute resolution process under the Bill. If this does not resolve the dispute, they may apply to the Māori Land Court. The Court can set aside the decision if the proper process has not been followed or an allocation decision is unfair: they cannot set aside the decision simply because someone does not like it.

### 7. How will I be able to participate in decision making if I live overseas?

The Bill sets out the process that must be followed when a decision of the owners is required. This process provides that an owner may attend a meeting of owners in person, via a nominated representative, or by telephone or internet-based communication technology. Voting on a proposal may be done at the meeting or by sending in a voting form by post or email, or through an electronic voting system.

If a governance body has been appointed for the land then the owners can determine how they will participate in meetings and in decision-making by adopting the standard approach set out in the Bill or by including their preferred approach in the governance agreement for their land.

## The new framework

### 8. Will the new framework make it easier for me to occupy Māori land, put housing on it and/or create papakainga?

Occupation licences can be issued by governance bodies without needing court approval. If there is no governance body, occupation licences can be issued without court approval if at least 75% of the ownership interests of participating owners agree.

Occupation licences can be cancelled or varied by agreement. The conditions of occupation licences shall be set by agreement, not by regulations. Occupation licences can be for up to 80 years or for life and can be succeeded to by will or on intestacy.

### 9. How will the new framework make it easier to use Māori land for business?

The new framework has three key mechanisms to make it easier to use Māori land for business:

- More achievable decision making process—the creation of the ‘participating owners’ decision making thresholds will make it more achievable for use and development related decisions to be made;

- Increased certainty for third parties—third parties, such as banks and commercial partners, have said that the current framework makes it difficult for them to lend or partner on Māori land based development because the legal structures don't have clear powers and it is difficult to securitise loans. The new framework creates two solutions: (1) stronger legal entity structure and (2) alternative security options without needing to mortgage the freehold in the land;
- Better support—The Māori Land Service will provide registry services for governance bodies which can be relied on by third parties for certainty. Where a governance body does not exist, the Māori Land Service will help Māori land owners navigate the decision making processes so that they may use and develop their land.

## Changes made by the Bill

### 10. How will unclaimed dividends be treated?

The Bill creates clearer rules about the treatment of unclaimed dividends. Dividends that are not claimed after one year will be classed as “unclaimed” and will be recorded in the Māori Land Register. Unclaimed dividends do not need to be set aside by a governance body but, until paid out, the unclaimed amount will remain a liability in the governance body's financial statements.

### 11. Will the tax status of my Māori Authority be impacted?

Te Puni Kōkiri is working with the Inland Revenue Department to ensure that Māori Authority tax status is not affected by the reforms.

### 12. Who will maintain the court records?

The Māori Land Court will continue to be the court of record and will keep the information in the record safe. The Māori Land Court will continue to provide access to information in the Māori Land Court record, including to the Māori Land Service.

### 13. Will I have to pay the fees/ expenses of kaitakawaenga and kaiwhakarite?

Kaitakawaenga (mediators) will be engaged by the Māori Land Service and, as such, will be employees or contractors of the Service. The Māori Land Service will pay their fees and expenses. Kaiwhakarite (external managers) are appointed by the Māori Land Service to manage Māori land on behalf of the owners. Following their appointment, the Māori Land Service and kaiwhakarite will agree on the terms of payment, which could be on the basis of fees paid by the Service or by way of deducting fees and expenses from the income generated by the land. The Bill, however, prevents the land from being charged with any debt.

## Māori Land Service

### 14. Who will deliver the Māori Land Service?

The Māori Land Service will comprise administrative services provided by Land Information New Zealand and Te Puni Kōkiri. In addition, the Ministry of Justice will continue to provide administrative support to the Māori Land Court in the exercise of its refocused jurisdiction.

### 15. Why were Land Information New Zealand and Te Puni Kōkiri chosen to deliver these services?

Land Information New Zealand and Te Puni Kōkiri were chosen because the administrative services that will be provided by the Māori Land Service align with the core business of these agencies. Te Puni Kōkiri represents whānau/hapū/iwi Māori rights and interests, while Land Information New Zealand ensures the integrity of property rights in New Zealand, including land ownership and land information.

### 16. Who will I be dealing with when I use the Māori Land Service?

The Māori Land Service will provide customers with seamless, end-to-end services from multiple agencies. You will be dealing with Te Puni Kōkiri and Land Information New Zealand through the Māori Land Service. The people that you deal with will have the necessary experience and expertise and may come from within those agencies or be specialists appointed for particular roles. The Māori Land Service will ensure that there are opportunities for those currently delivering services to continue to do so.

### 17. What information will be held by the Māori Land Service?

The Māori Land Service will be required to maintain a register, which will be known as the Māori Land Register. The Register will be divided into six parts that contains information relating to:

- Māori customary land: this part will contain sufficient detail to identify blocks of the Māori customary land and the class of collective owners of the land;
- Māori freehold land: this part will include the names of every owner, the names of any trustees or kaiwhakarite associated with the land, details of any mortgage, lease, trust or other encumbrance over the land, information about occupation licenses, and the details of any unpaid distributions;
- Governance agreements: this part will set out general information about governance agreements including information about transitional agreements;
- Rangatōpū: this part will contain the details of rangatōpū to enable the public to find out whether the land is managed by a governance body and access information about that body including names and contact details of kaitiaki;
- Whenua tāpui: this part will set out the name and members of the administering body and include sufficient detail to identify the land the body administers as whenua tāpui; and

- Trusts existing before the commencement of the Act: this part will include information about trusts existing before the commencement of the Act.

### 18. If I have an idea to develop the Māori land I own, how will the new framework make it easier for me to get my idea off the ground?

The Māori Land Service will create and provide administrative services to Māori land owners to support them to operate within the requirements of the legal framework. Advisory services will be available to point people in the right direction to access business development opportunities.

## Time-frame for transition

### 19. When will these changes take effect?

It is proposed that Te Ture Whenua Māori Bill will be introduced in October 2015 and will be enacted in the first half of 2016. The Bill will come into force three months after it is enacted.

The implementation of the Māori Land Service will be phased in over a three to five year period to ensure continuity of services for Māori land owners while systems to support the future state are designed and tested. Consultation with Māori land owners will continue throughout this time to assist with building the Māori Land Service.

## Having your say

### 20. Will I have another opportunity to comment on the reform proposals?

Yes, you will be able to make a written submission on Te Ture Whenua Māori Bill to the Select Committee of Parliament that will be considering the Bill. The Select Committee will be interested in your opinions, observations and recommendations and will ask for submissions following the introduction of the Bill into Parliament.

The Select Committee is likely to ask for public input by advertising in newspapers and online. The advertisement will include the name and contact details for the Select Committee and the timeframe for sending your submission.

You may write your submission in English or Māori. When preparing your submission, we suggest you refer to Making a Submission to a Parliament Select Committee as a guide, which can be found on the New Zealand Parliament website: [www.parliament.nz](http://www.parliament.nz).

In your submission, you may ask to talk to the Select Committee in person. This way, committee members can ask you more detailed questions about your recommendations.

### 21. Can I participate in the engagement process if am currently overseas?

We welcome feedback from anyone who is involved with or affected by Te Ture Whenua Māori Bill, including those living overseas. You may complete the online submission form or send a written submission to [TTWMA@tpk.govt.nz](mailto:TTWMA@tpk.govt.nz) or Te Ture Whenua Māori Bill, c/o Te Puni Kokiri, PO Box 3943, Wellington.

## Related issues


### 22. What about relevant issues that were raised during consultation that impact on other Acts?

As part of the review of Te Ture Whenua Māori Act, a number of issues were raised that are relevant to Māori land, such as:

- The impact of other legislative regimes on the development of Māori land, including local government planning and decision-making, the impact of rates arrears, the Resource Management Act 1991, and the potential loss of multiply-owned Māori land under the Criminal Proceeds (Recovery) Act 2009.
- Resolving historical wrongs that have occurred through other legislation, such as the compulsory purchase of uneconomic interests in Māori land by the Māori Trustee in the 1960s.

These issues are important and we welcome your feedback on how they might be addressed, both within the current reforms and through future reform processes.





Kia **tapu** te mauri,  
kia **pakari** te mauri,  
kia mārama te mauri,  
kia tiakina te mauri,  
toi tū te whenua,  
toi tū te tangata.



**Nāu te rourou, nāku te**



**rourou, ka ora ai te iwi**



# How to have your say

## Te tikanga tuku kōrero

The Government is seeking feedback from as wide a range of stakeholders as possible, including anyone involved with or affected by Te Ture Whenua Māori Bill. Your feedback is important as it will help shape the Bill, ensuring that the proposed reforms are workable and achieve the Government's objectives. Please take the time to make a submission.

A series of consultation hui are being held to obtain feedback, and you can also provide a written submission. You may write in English or Māori and may comment on any aspects of the Bill that interest you.

### Making a Submission

There are three ways you can make a submission:



#### Online submission

Go to <http://surveys.tpk.govt.nz/te-ture-whenua> and fill in the online submission form.



#### Email submission

Electronically prepare your comments and email them to: [TTWMA@tpk.govt.nz](mailto:TTWMA@tpk.govt.nz)  
Please put "Exposure Draft Consultation" in the subject line.



#### Written submission

Make a written submission and forward your comments to:

*Te Ture Whenua Māori Bill  
c/o Te Puni Kōkiri  
PO Box 3943, Wellington*

All submissions are due by **10 am on Friday, 7 August 2015.**

### Official information requests

Your submission may be requested under the Official Information Act 1982. If this happens, Te Puni Kōkiri will normally release your submission to the person who requested it. If you think there are good reasons that your submission should not be released, please indicate those reasons in your submission.

### Key dates <sup>\*</sup>(NB anticipated dates)

#### Consultation Document Available

26 May 2015

#### Consultation Hui

2-18 June 2015

#### Submission Process Closes

7 August 2015

#### Introduction of Bill

October 2015<sup>\*</sup>

#### Select Committee Process

November 2015 to April 2016<sup>\*</sup>

#### Enactment of Bill

June 2016<sup>\*</sup>

#### Entry into Force

September 2016<sup>\*</sup>

# Glossary

## Kupu taka

**Ahu Whenua trust** is a land management trust that administers owner interests in whole land blocks (established under s215 of Te Ture Whenua Māori Act)

**Allocation Scheme** is a scheme that sets out how ownership interests in a block of Māori land are to be allocated following transactions such as a partition, amalgamation, aggregation of ownership, or cancellation of an aggregation.

**Asset base** means the Māori freehold land, investment land and other assets and liabilities managed by a governance body under a governance agreement.

**Distribution Scheme** is a scheme that sets out how the assets of a governance body will be distributed among the owners when a governance agreement for a block of Māori land is cancelled, being the assets remaining after creditors have been paid and unpaid dividends have been accounted for.

**Governance agreement** means an agreement under which a governance body manages an asset base on behalf of the owners of Māori freehold land that is within the asset base.

**Land management plan** is a plan for managing Māori freehold land, administered by a governance body under a governance agreement approved by a 75% majority of participating owners of Māori land.

**Kaitakawaenga** is an intermediary who negotiates with parties to resolve a conflict.

**Kaitiaki** is someone who exercises guardianship or trusteeship.

**Kaiwhakarite** is someone who assists or provides support to another person.

**Māori customary land** is land held in accordance with tikanga Māori.

**Māori freehold land** is land determined to have freehold status by the Māori Land Court.

**Participating Owner** is an owner of an interest in Māori land who, when owners are required to make a decision, takes part in making the decision.

**Rangatiratanga** means Māori sovereignty or independence.

**Rangatōpū** means a representative body.

**Taonga tuku iho** means a legacy of great historical and cultural significance to Māori passed down from one generation to another.

**Tikanga Māori** means Māori customary law, values and practices.

**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.

**Whenua tōpū trust** is a land management trust that administers iwi or hapū interests in whole land blocks (established under s216 of Te Ture Whenua Māori Act).

