

Terms of Reference

Te Ture Whenua Māori Ministerial Advisory Group

Purpose

These Terms of Reference describe the objective and tasks of Te Ture Whenua Māori Ministerial Advisory Group (the Ministerial Advisory Group), being an independent advisory group appointed by Te Minita Whanaketanga Māori.

Background

The recommendations of the review panel who examined and reported on Te Ture Whenua Māori Act 1993 and a summary of key Cabinet decisions are set out in the appendix to these Terms of Reference.

In summary, the aim of the reform is to achieve:

Better law – a legal framework that:

- (a) supports and promotes the retention and use of Māori land by its owners;
- (b) empowers owners of Māori land to pursue their aspirations and to realise the economic potential of their land;
- (c) respects the intrinsic cultural significance of Māori land;

Better services – an institutional framework that:

- (a) provides an effective alternative to litigation to resolve disputes;
- (b) supports owner decision-making and encourages participation;
- (c) ensures Māori land ownership and title records are accurate and accessible;
- (d) gives owners of Māori land the information they need, when they need it;
- (e) makes it simple to register Māori land governance bodies;

Better outcomes – reforms that lead to:

- (a) Māori land owners making and acting on their own decisions;
- (b) fuller and more effective utilisation of Māori land;
- (c) disputes resolved effectively with less relationship damage; and
- (d) enhanced standing of the Māori Land Court as a judicial forum.

Objective

The objective of the Ministerial Advisory Group is to provide independent advice to Te Minita Whanaketanga Māori on the development of an exposure draft of Te Ture Whenua Māori Bill and the Māori Land Service from the perspective of those who operate within the Māori land regime.

Accountability and relationships with other agencies

The Ministerial Advisory Group is accountable to Te Minita Whanaketanga Māori for the quality and timeliness of its advice.

The Ministerial Advisory Group will provide advice to Te Minita Whanaketanga Māori on the development of an exposure draft of Te Ture Whenua Māori Bill and the Māori Land Service.

The Ministerial Advisory Group's advice will be constructive and evaluative in nature rather than a monitoring and compliance focus.

The Ministerial Advisory Group will not undertake a formal monitoring function and will not duplicate departmental reporting or monitoring roles.

Te Puni Kōkiri will resource the Ministerial Advisory Group and provide administrative support.

Key Tasks

The Ministerial Advisory Group will provide advice to Te Minita Whanaketanga Māori on the development of an exposure draft of Te Ture Whenua Māori Bill and the proposed Māori Land Service having regard to:

- (a) consistency with the aims of the reform; and
- (b) any major issues that the Ministerial Advisory Group considers should be addressed.

Authority

The Ministerial Advisory Group cannot direct any Government department or agency, employ staff, enter into contracts, or make commitments or undertakings on behalf of any Minister or chief executive.

Te Puni Kōkiri will respond to reasonable requests from the Ministerial Advisory Group for information on progress with the development of Te Ture Whenua Māori Bill and the Māori Land Service.

The Ministerial Advisory Group's advice to Te Minita Whanaketanga Māori belongs to the Minister. Control of and decision rights over the use and distribution of that advice rests with Te Minita Whanaketanga Māori.

The Ministerial Advisory Group's advice to Te Minita Whanaketanga Māori is subject to the provisions of the Official Information Act 1982.

Members of the Ministerial Advisory Group are not authorised to communicate with the media.

Timelines

The duration of the Ministerial Advisory Group's existence will be at the discretion of Te Minita Whanaketanga Māori but will end at the introduction of the of Te Ture Whenua Māori Bill to the House.

Reporting

The Ministerial Advisory Group will report on request to Te Minita Whanaketanga Māori.

The Ministerial Advisory Group will meet with Te Minita Whanaketanga Māori from time to time as requested as work on the development of an exposure draft of Te Ture Whenua Māori Bill and the Māori Land Service progresses.

Fees and expenses

Fees are determined under the fees framework set out in Cabinet Office Circular CO (12) 6.

Members will be reimbursed for actual and reasonable expenses incurred in fulfilling their advisory role, including for travel required to attend meetings of the Ministerial Advisory Group and Ministerial Advisory Group meetings with Te Minita Whanaketanga Māori.

APPENDIX TO THE TERMS OF REFERENCE

Review panel's recommendations

The final report of Te Ture Whenua Māori Act 1993 review panel was publicly released in April 2014 with the following recommendations:

- (a) reforms to the laws relating to Māori land should include provisions to give effect to the proposition that utilisation of Māori land should be able to be determined by a majority of engaged owners – in the panel's view the laws relating to Māori land should:
 - (i) be changed and clarified to enable engaged owners of Māori land to make governance and utilisation decisions that take effect and bind relevant parties without the need for confirmation, approval or other action by the Māori Land Court or any other supervisory body;
 - (ii) continue to include safeguards requiring a high threshold of owner agreement before decisions to dispose of Māori land will have legal and binding effect;
- (b) reforms to the laws relating to Māori land should include provisions to give effect to the proposition that all Māori land should be capable of utilisation and effective administration – in the panel's view the laws relating to Māori land should:
 - (i) provide clear mechanisms for external managers to be appointed to administer under-utilised Māori land blocks when there is no engagement by the owners;
- (c) reforms to the laws relating to Māori land should include provisions to give effect to the proposition that Māori land should have effective, fit for purpose, governance – in the panel's view the laws relating to Māori land should:
 - (i) clearly prescribe the duties and obligations of Māori land governance entities, including their trustees, directors or committee members, and align those duties and obligations with the general law applying to similar entities;
 - (ii) clarify the jurisdiction of the Māori Land Court to consider alleged breaches of duty and make appropriate orders;
- (d) the laws relating to Māori land should include provisions to give effect to the proposition that there should be an enabling institutional framework to support owners of Māori land to make decisions and resolve any disputes – in the panel's view the laws relating to Māori land should:

- (i) require disputes relating to Māori land to be referred, in the first instance, to mediation;
 - (ii) contain clear and straightforward provisions and rules to ensure the Māori Land Court remains an accessible judicial forum for resolving disputes that cannot be resolved by mediation and enabling trustees, directors and committee members of governance entities to be held to account for breaches of duty;
- (e) the laws relating to Māori land should include provisions to give effect to the proposition that excessive fragmentation of Māori land should be discouraged – in the panel’s view the laws relating to Māori land should:
- (i) provide transparent registration provisions for Māori land titles and assurance of title to reflect the nature of Māori land tenure as a collectively held taonga tuku iho;
 - (ii) contain provisions that facilitate succession to Māori land with a minimum of compliance requirements and simple, straightforward administrative, rather than judicial, processes; and
 - (iii) contain provisions to address barriers caused by excessive fragmentation of Māori land ownership interests.

Summary of key Cabinet decisions

Ministers accepted the review panel’s recommendations and Cabinet has:

- (a) agreed in principle, subject to Cabinet agreement to an implementation plan, to the final proposal, which includes the following recommendations:
 - (i) enable engaged Māori land owners to make decisions without the need for judicial involvement;
 - (ii) continue to include protections for the retention of Māori land;
 - (iii) improve the mechanisms for the appointment of external managers to administer under-utilised Māori land blocks;
 - (iv) allow Māori land owners to establish governance entities themselves;
 - (v) prescribe the duties and obligations of Māori land governance entities and align these with the general law;

(vi) support Māori land owners with administrative services to be provided or administered by an existing government agency or agencies including:

1. administering a mediation service;
2. appointing and overseeing external managers in appropriate cases;
3. managing decision-making processes for owners to establish governance entities;
4. maintaining the record of Māori land ownership and titles;
5. providing information and registry services;

(vii) refocus the jurisdiction of the Māori Land Court primarily to retention decisions, complex disputes and existing specialised areas;

(viii) ensure Māori land is correctly identified; and

(ix) provide Māori land owners with an option to transition to collective ownership; and

(b) agreed that the proposal be progressed through a Te Ture Whenua Māori Bill.

Cabinet also agreed to the development of a Māori Land Service to be led and delivered by several agencies as follows:

- (a) Te Puni Kōkiri for supporting owner decision-making processes;
- (b) Te Puni Kōkiri for appointing and overseeing external managers;
- (c) Land Information New Zealand for maintaining the record of Māori land ownership and title;
- (d) Land Information New Zealand for providing information services for Māori land ownership and title;
- (e) Land Information New Zealand for providing registry services for Māori land governance entities; and
- (f) Te Puni Kōkiri for administering a mediation service for Māori land owners (including for Māori Land Court ordered mediation).

The Ministry of Justice will continue to provide administrative services to support the Māori Land Court.