TE TURE WHENUA MĀORI REFORM

SUMMARY OF SUBMISSIONS

September 2015

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1.0 Executive Summary

1. This report summarises submissions made on the exposure draft of Te Ture Whenua Māori Bill (the Bill).

1.1 Submissions received

2. 392 submissions were made on the exposure draft of the Bill. Submissions were received from members of the public, existing trusts and incorporations, district councils, professional associations, iwi organisations, local and national Māori organisations, and other organisations with an interest in Māori land.

1.2 Overview of comments

3. The reform was seen as the most significant law reform in this area since the enactment of Te Ture Whenua Māori Act 1993 ("the current Act" or "TTWM Act"). There was support for the aims and aspirations of the reform, which was perceived to overcome numerous difficulties of the current Act. The Bill reorganizes the topics in a more logical sequence, uses plain English, and is easy to comprehend.

4. Concerns were raised about the potential for Māori land to be lost. This would likely occur over time through such mechanisms as long-term leases, managing kaiwhakarite and the reduced supervisory role of the Māori Land Court. The need for the Bill was questioned. If changes were required, these should be done by way of amendments to the current Act, not a new statute.

Preliminary provisions

5. Unlike the current Act, the Bill does not have a preamble. There was a call for the preamble of TTWM Act to be retained. It was also noted that the wording used in the purpose and principles sections differed to the current Act. The shift in focus from retention to utilisation and economic development was seen as concerning.

6. It was noted that the Bill introduces a new lexicon. While many terms are defined in the interpretation section, some definitions are found in other sections. This was confusing. It was also pointed out that a few important terms were not defined in the Bill.

Ownership Interests in Māori Freehold Land

7. Views on the participating owner model were mixed, with slightly more support than opposition. It was noted that owner participation has always been an issue. Many existing trusts and incorporations face difficulties gaining sufficient participation by owners to meet the threshold requirements under the current Act. The participating owner model would put decision-making back in the hands of owners allowing them to make effective decisions about their land.

8. The potential for minority groups to highjack the decision-making process was seen as a serious issue. This may lead to conflict between owners, disempower some whānau members and alienate them from their whenua.

Disposition of Māori Freehold Land

9. There was a view that Māori land should never be sold. However, if there was a need to do so there had to be a benefit beyond pecuniary gain. The proposals around disposition were seen as easing the ability to sell land, especially when combined with the removal of the Court's ability to consider the merits of the sale and status change, and the shift of power to majority shareholders.

10. Questions were asked about how the process would affect whānau, particularly the preferred recipient model. There were concerns around the use of land management plans. Views on the proposed thresholds for decision making were polarized. Some submitters expressed concern about the proposed thresholds, wanting them increased, while others agreed with them in principle. Concerns were raised about the length of time for which Māori land could be leased. The proposals around land exchange also drew some criticism. There was a call for further clarification over the concept of amalgamation.

Kaiwhakarite

11. Some described the proposals relating to the appointment of kaiwhakarite as patronising and feared these processes would be used to facilitate the alienation of Māori land. Concerns were raised about the powers of kaiwhakarite, which were perceived to be extensive, the lack of judicial oversight, and the length of their appointment.

12. The rationales for appointing kaiwhakarite were questioned, as such appointments did not appear to support, empower or assist Māori to be independent and self-sufficient. Since there were various reasons why owners were not engaged with their land, it was not appropriate to appoint a kaiwhakarite simply on the basis the land is under-utilised. There was a call for the provisions relating to kaiwhakarite to be removed.

The new governance model

13. Submitters thought that moving towards best practice governance structures should be encouraged and the preparation of a governance agreement and sign-off process would support more owners to engage with their whenua.

14. It was noted, however, that the new governance model attempted to apply a 'one size fits all' approach. This was viewed as too assimilatory in nature, did not distinguish between small and large blocks, and did not allow for well-functioning trusts and incorporations who have operated successfully under the current regime.

15. Questions were raised about the need for existing trusts and incorporations to comply with the new regime. Requiring them to comply (especially as some entities are excluded) was seen as unfair and ignored the mana whenua and tino rangatiratanga of those entities. Well-functioning existing trusts and incorporations should either be excluded from the new governance regime or allowed to "grandfather" their current constitutional arrangements.

16. It was unclear how the costs relating to moving to a rangatōpū structure would be meet. There was a view that these costs would have a larger impact on smaller blocks. Many wanted the Crown to cover the cost of transitioning to the new governance model.

Administration of estates

17. While there was support for the succession process, there was a view that the process had the potential to disenfranchise some owners and the "one size fits all" approach may not be appropriate for all situations.

18. Comments were made that the intestacy provisions would undermine the concept of autonomy, especially as the Bill forces whānau trusts upon beneficiaries of an intestate, limiting their ability to self-govern. It was felt that owners should have the ability to decide how their interests should be held. Some submitters wanted the succession process run out of a better resourced Māori Land Court.

Disputes Resolution Process

19. Submitters were generally supportive of the proposal to enable parties to resolve Māori land disputes themselves in a manner that recognises their tikanga. The current process of taking disputes through the Māori Land Court was seen as an unforgiving process. Submitters mentioned their experiences with the current process, noting the strain it places on relationships and the cost implications in terms of time and expense.

20. A number of benefits were identified in terms of cost savings, minimising the Māori Land Court's work load, and seeking to resolve disputes as quickly as possible. Dispute resolution would be more effective at preserving relationships between parties than having a matter heard and determined by a Judge. The parties are in control of the process and can determine their own outcomes. This can lead to more flexible and creative outcomes.

21. Some concerns were raised about the proposed process, particularly in relation to the need for the kaitakawaenga to remain impartial. As a consequence, the Government was encouraged to proceed with caution. Some wanted the Māori Land Court to have a greater role in the proposed process. They pointed out that dispute resolution processes are widely used in the Environment Court, where Judges (not officials) oversee and coordinate the provision of these services. A few submitters were supportive of the current process and wanted the Court to retain its current jurisdiction over disputes.

Reshaping the Māori Land Court

22. Submitters thought the proposals to reshape the Māori Land Court would reduce the administrative burden of the Court, and allow it to focus on matters of law.

23. It was noted, however, that the Court has the capacity, structure and legislative framework to undertake the roles envisaged for the Māori Land Service. Some submitters felt the Court should retain its current role as the judicial forum for Māori land issues. Issues associated with the Court could be addressed with better resourcing, along with improved management and performance monitoring. Although it was acknowledged some minor changes to the current legislation were needed, these measures would be a sufficient and cost efficient alternative to establishing the Māori Land Service.

24. There was a concern that responsibility for holding the Māori Land Court minute books would pass to the Māori Land Service. There was an overwhelming view that such information should be retained by the Court.

Māori Land Service

25. In general, submitters welcomed the establishment of the Māori Land Service, especially as it would provide improved infrastructure support and information for Māori land. It was seen as an important asset for owners as it would make processes easier, cheaper to access and less time-consuming.

26. Questions were raised as to why the Māori Land Service was being established and how it would benefit owners. To many, the services proposed appeared to be no different to those already provided by the Māori Land Court. The case for change had not been made out. They felt that owners could not afford to lose the Court and the protection it offers. There was also a risk that institutional knowledge would be lost.

27. Submitters were unsure about the role Land Information New Zealand and Te Puni Kōkori would have in relation to the Māori Land Service. There was also uncertainty around how the entity would operate and the level of its funding. The structure and establishment of the entity was seen as critical to the implementation of the objectives of the Bill.

28. In terms of the core services offered, submitters considered the Māori Land Service should: assist the decision-making process; offer guidance on options for governance structure; provide dispute resolution services; maintain ownership and title information, ensuring its accessibility, accuracy and management; and keep and make accessible the registers of governance bodies, and owners of Māori land. Submitters considered that it should also provide other services including social support, economic development, legal advice and training and education. There was a call for the Crown to provide these services at no cost to owners.

29. The offices of the Māori Land Service needed to be regionally based and staff had to be willing to travel to marae to attend hui and meet with owners. The public needed to be able to access the services in a variety of ways: on-line, by telephone and face-to-face.

Other Issues

30. A number of submitters commented on matters that are not currently covered in the Bill. These can be divided into issues impacting on to the development of Māori land (such as landlocked land, rating, public works, paper roads and local government); matters relating to the administration of the governance body (such as industry levies) and those having a wider application to Māori (such as the Māori Trustee and the Treaty settlement process).

31. There was a view that undertaking reform in these areas would positively align with the overarching objectives of the proposed Bill and assist with achieving a more productive and innovative Māori economy.

32. Submitters queried the relationship between the Bill and other legislation. They highlighted the tension that existed between Māori land law and these statutes. If the Bill is designed to empower the owners of Māori land to pursue their development aspirations for their land, issues associated with these statutes needed to be addressed.

33. There was a further suggestion for the jurisdiction of the Māori Land Court to be extended, for instance, to enable the court to grant probate or hear family protection claims when based on a claim to Māori land.

2.0 Introduction

34. Māori land is governed by the TTWM Act, which establishes the objectives of the Māori Land Court to promote and assist in the retention and development of Māori land (as well as setting out general objectives in s.17). The Court has an active role in the administration of Māori land and all major transactions, such as long term (more than 52 years) lease and sale, are subject to its approval.

35. There are 1.466 million hectares of Māori land, which is approximately 5.5 percent of New Zealand's land mass. Most of this land is situated in the north, centre and east of the North Island. There are 27,308 separate Māori land titles, with an average size of 53.7 hectares. The total number of ownership interests in all Māori land blocks is 2,710,214 with approximately 100 owners per title on average. There are currently 160 Māori incorporations, 5,582 Ahu Whenua Trusts and 22 Whenua Tōpū Trusts that, in addition to 2,342 Māori reservations, provide governance over Māori land.

36. It is estimated that large tracts of Māori-owned land is under-performing for its owners, with constraints stemming from current legislation being a significant barrier to improvement. Improving the performance and productivity of Māori land will provide significant returns for the economic and cultural benefit of owners, their whānau and hapū, whilst ensuring better guardianship of the whenua.

37. On 9 September 2013, Cabinet agreed in principle to a proposal that aims to increase the utilisation of Māori land by empowering Māori land owners to make decisions themselves, supported by an enabling institutional environment, while maintaining protections for the retention of Māori land. The two components of this work are the development of Te Ture Whenua Māori Bill (the Bill) and the design of a Māori Land Service.

38. The Bill will empower Māori land owners to make and act on their own decisions, and enable them to retain their land for what they determine is its optimum utilisation. The Bill focuses on whenua Māori and ownership matters, including management and governance. On-going access to the Māori Land Court, as a judicial forum, will remain an important part of the institutional framework supporting Māori land owners.

39. The Māori Land Service will provide access to a suite of services led and delivered across multiple agencies. Implementation of the Māori Land Service will mean the provision of some services will shift from the Ministry of Justice to Te Puni Kōkiri and/or Land Information New Zealand, with the Māori Land Court focussing on administration of judicial issues as its core responsibility.

40. To ensure the proposed reforms are workable and achieve the Government's objectives, on 27 May 2015 Te Minita Whanaketanga Māori released an exposure draft of the Bill and an accompanying consultation document: Te Ture Whenua Māori Reform. This document sought feedback on the proposed reform of Māori land law and administration.

41. The consultation paper and online submission form included thirteen key questions to guide submitters' feedback. The questions are included in **Appendix A**.

2.1 Purpose of this report

42. Feedback from this consultation will be used to inform further policy development and to provide advice to Ministers. This report summarises the key themes and feedback from the submissions received by the Te Puni Kōkiri. It presents a summary of submitted views by both thematic area (including clause by clause analysis) and category of submitter. Evidence provided by submitters is also described where relevant. The details of submitter demographics is provided in **Appendix B**.

2.2 Methodology

43. Fifty-one submissions were received in hard copy form, 253 submissions were received in electronic format and 88 submissions were received using the online submission forms. All submissions were coded to a standard coding framework, and entered into a Microsoft Excel database. From this, specific reports by both theme and individual submitter were drawn, gleaned and used to inform this report.

2.3 Summary of submitters

44. A total of 392 submissions were received. 112 submissions were received from trusts and incorporations, 56 submissions were received from organisations, and the remaining 224 submissions were received from individuals.

45. Officials identified three different form submissions. 141 individuals sent in the form submission "Not One Acre More", nine trusts used the same submission to convey their thoughts on the Bill, and three members of a whānau group sent in an identical submission. This means that 239 unique submissions were received. For the purposes of analysis, the different "form" submissions are each counted as one submission.

Organisations

46. The main organisation submission classes and the number of submitters in each class were:

- Local Māori organisations — twenty-nine submitters
- National Māori organisations — six submitters
- Iwi organisations — six submitters
- Professional associations — four submitters
- Councils — eight submitters
- Other organisations — three submitters.

Trusts and incorporations

47. Ninety-six submissions were received from trusts, while a further 16 were received from incorporations.

Individuals

48. 224 submitters identified as individuals. Four of the individual submitters identified further qualifiers about the kinds of areas they operate in:

- Accountant — one submitter
- Lawyer — two submitters
- Education services — one submitter

49. In the consultation document, submitters were asked whether they owned Māori land, and/or had experience with the current Act or the Māori Land Court. 268 replied that they owned Māori land, while 152 had personal experience with the current Act or the Court.

Submission from the Māori Land Court Judges

50. At the request of the Ministerial Advisory Group, the Judges of the Maori Land Court were invited to provide their thoughts on the exposure draft. Their advice is not included in the above figures, and has been summarised separately.

Privacy

51. To protect the privacy of individuals who made a submission, their names and any identifying details have been removed. The report identifies comments made by specific organisations, trusts and incorporations.

3.0 Te Ture Whenua Māori Reforms

52. This section discusses the high-level views on the reform of Te Ture Whenua Māori, explaining the reasons why submitters supported or opposed the reform. A number of submitters commented on the principles underlying the reforms, as well as highlighted tensions between the different cultural perspectives covered in the Bill. This section also summaries concerns raised around potential compliance costs, the roles and responsibilities of the different entities mentioned in the Bill and its compliance with various constitutional instruments. Finally, this section sets out comments that were raised about the reform process.

3.1 Support/Opposition to the Bill

53. The reform was seen as the most significant law reform in this area since the enactment of the current Act. There was support for the aims and aspirations of the reforms, which would empower Māori land owners and improve the governance and management of their land. The reforms were seen as overcoming numerous difficulties with the current Act. The Bill reorganizes the topics in a more logical way, uses plain English throughout, and is more comprehensible. The Raukawa District Māori Council noted that because of its confused history, "Māori land law needs to improve incrementally and owners cannot expect miracles overnight'. However, some of those who expressed support did so with reservations or with a request for further information.

54. Many of those opposed to the reforms wanted the Bill withdrawn and the current Act retained, as it was perceived to be working well for Māori. If changes were made, these should be done by way of amendment to TTWM Act, not a new piece of legislation. The reform process was seen as a waste of time and an unnecessary use of tax-payer money, which could have been better spent on other issues associated with Māori land.

55. The proposed reforms were also seen as being worse than the problems and failed to address key issues, such as those relating to rating. Fragmentation of land and multiple ownership, while important issues, could be managed with robust registration and administration systems. Better resourcing and concentration of existing institutions would provide improved economic efficiency and a better sense of purpose for Māori than a wholesale revision of the system.

56. Submitters felt that the focus of the reforms should be "firmly on unmanaged, unoccupied or unused blocks of land and on those owners who are seeking support and education to assist them to govern and manage their land". The Bill should not focus on effective and functioning existing entities who are already engaged in the management of their land.

3.2 Te Ture Whenua Māori Act

57. While submitters generally acknowledged that some change was needed to Te Ture Whenua Māori, several noted that the changes that were really needed were not included in the Bill. A lot more work was needed for the Bill to achieve its stated purpose and to ensure that there are no unintended consequences. Only then would it be satisfactory to Māori. Further, many indicated that time would have been better invested in amendments to TTWM Act, or other legislation that hinder the successful functioning of the current Act.

Support for owners was also seen as being more important than implementing legislative changes (e.g., building owner capability to develop land).

58. There was a number of references to the Preamble in TTWM Act, with submitters indicating that they wanted to see the Preamble kept in the Bill. They also expressed fears that the principles in the Preamble had been lost in the current draft of the Bill.

59. Some stated that they could not see the need for any change to the current Act. There were also a number of submitters that indicated a preference to keep the Māori Land Court as it now functioned, with perhaps some streamlining of processes.

3.3 Principles underlying the reform

60. Four key principles were identified underpinning the reforms: autonomy, utilisation, simplicity and safeguards.

Autonomy

61. Twenty-one submitters (8 individuals, 2 trusts, 5 incorporations, 3 national Māori organisations, 1 local Māori organisation, 2 professional associations and 1 other organisation) commented on the principle of autonomy. There was support for the proposition that the reforms would facilitate Māori autonomy and control over their lands. However, submitters also expressed concern around how the reforms could potentially undermine autonomy. This could take place through the transference of decision making to government, rather than leaving it in the hands of Māori. There was also significant concern that the reforms would undermine the aspirations of Māori, with land owners being hindered in using land for their own aims and purposes, particularly if they were in conflict with the idea of land 'utilisation'.

62. Further, some submitters indicated that they were concerned that the power around ownership and decision making would be placed in the hands of a few, at the possible expense of others (e.g., minority land owners, etc.). There was also concern that decisions would be placed in the hands of the courts, rather than left with Māori.

Utilisation

63. Thirty-five submitters (14 individuals, 8 trusts, 4 incorporations, 2 iwi organisations, 2 national Māori organisations, 1 local Māori organisation, 3 councils and 1 professional association) discussed the principle of utilisation. Many submitters supported the broad concept of utilisation and understood the desire amongst Māori to better use their land. However decision-making and management of Māori land should remain with the owners of the land and not the Crown. Some observed that the key driver of the reform appears to be unlocking the economic and other potential of Māori land, particularly land that is unmanaged or under-utilised, in order to meet the government's business growth agenda. However, they saw commercialisation of land as a Pākehā economic value. For Māori, utilisation should be approached by focusing on promoting pride in the land to which a person belongs. This would better recognise that Māori land is a 'taonga tuku iho' and that not all owners want to develop their land, preferring that it remains in its natural state. The value of the land should not be measured in terms of its tangible utility.

64. It was noted that the difficulty with utilisation and development of Māori land stems primarily from the poor quality of much of Māori freehold land, combined with a lack of resourcing and poor governance and business acumen. Some submitters considered the proposed reform do not address these issues. Several felt that in some situations, the Bill would actually exacerbate the situation, making utilisation more difficult and further alienating owners from their whenua.

65. To address these issues, submitters suggested greater access should be provided to governance education for owners and administrators. They considered that adequate resources also need to be provided to enable owners to better achieve their aspirations for their land.

Simplicity

66. The principle of simplicity was directly raised by seven submitters (3 individuals, 3 trusts and 1 national Māori organisation). They all felt that the Bill would require owners to prepare governance agreements, land management plans, allocation schemes and distribution schemes. This will result in more paper work than is currently needed under TTWM Act. In their view, the Bill was far from simple.

Safeguards

67. Forty-four submitters (38 individuals, 2 trusts, 1 incorporation, 1 national Māori organisation, 1 local Māori organisation and 1 council) addressed the safeguard principle. Almost all stressed the need for the legislation to contain sufficient safeguards to protect against alienation. In their view, land retention should be the prevailing principle underlying the reform.

68. The safeguards around use and development of Māori land were viewed as being less clear than those for disposal. Under the Bill, the Māori Land Court must still approve disposal and the thresholds remain the same, except that owners can raise the thresholds, which was seen as a positive change. Clearer procedural safeguards for using Māori land were needed, particularly in relation to changing the status of land. Oversight by the Court was recommended, as was deletion of the ability to hold a second meeting if the required quorum of participating owners was not met. Many felt that the Bill removed protection for minority owners, who would not be able to prevent actions that would be detrimental to their land.

3.4 Land alienation

69. Submitters were concerned about the potential for Māori land to be lost. Some felt the reforms were simply another attempt at ‘land grabbing’. Others suggested that this loss would likely occur over time through such mechanisms such as long-term leases that would see multiple generations locked out of the use of their land for up to 99 years.

70. Fears were expressed that the Bill would see the end of the ground gained through the work and preparation of TTWM Act. There were also concerns that the new Bill takes away many of the current protections found in TTWM Act: in particular, the reduced role of the Māori Land Court to review the merits of decisions made in relation to the land.

3.5 Cultural perspectives

71. The review of the submissions identified significant tensions between cultural perspectives, particularly as they relate to understanding of Māori and their relationships with the land, and the economic drivers behind the reforms. This economic versus cultural tension was prevalent through many of the responses.

72. There was little to no clear support for the reform when considered in terms of a cultural understanding of land. Specific concerns related to:

73. Taonga Tuku Iho: Concerns were expressed that the emphasis on economic drivers was in conflict with the understanding of "whenua as a taonga not a money making asset." This was particularly linked with the importance of holding the land in trust for future generations. As one submitter stated: "52 year leases are a significant period potentially displacing several generations from their tūrangawaewae, papakāinga, wāhi tapu thereby compromising the fundamental concept of mana whenua. The related concept of ahi kaa may also be abandoned or lost and likely reinforce a situation where the land no longer has a cultural or spiritual value for multiple generations of landowners."

74. Concerns about the loss of viewing the land in terms of taonga were often centred on the perspective that land owners are actually caretakers, rather than "owners" as such.

75. Tikanga: While the importance of tikanga Māori was highlighted, concerns were raised that both the process and the reform lacked a tikanga Māori perspective. One submitter commented:

> *"The procedures in the Bill should accommodate tikanga but they do not… It will require uniform procedures as to meetings and voting, and it will require a standard governance agreement for most governance bodies… How can such uniformity and standardisation give effect to tikanga?"*

76. There was a particular concern that the reform was an attempt at legislating tikanga. As one submitter noted:

> *"(The reform) seeks to legislate how we should express our mana motuhake and tikanga. […] Any attempt to institutionalise tikanga as a legal remedy ignores the fact that tikanga is a living, ever evolving set of principles, open to constant debate and practical adaptation[…]."*

77. Comments were made about the risk of whenua becoming a commodity and ngā taonga tuku iho being lost to coming generations. There was also marked tension between the Bill's perspective of the purpose and use of land, and a cultural perspective including aspects such as "enjoying" the land, and seeing the land as something to be utilised. This spoke to the various issues around the problems with perspectives/uses of land, including: cultural connections to whenua versus land utilisation; utilisation being driven by economics/corporatisation; different understandings of land and ownership; and colonisation/assimilation.

3.6 Costs

78. Twenty-two submitters (3 individual, 5 trusts, 8 incorporations, 2 iwi organisations, 2 national Māori organisations, 1 local Māori organisation and 1 council) expressed dissatisfaction at the associated compliance costs (money, time, resources) that would probably result from the reforms, arguing that for many these costs would be prohibitive. Further, they were concerned that these costs could in fact lead to currently well-functioning entities losing good ground gained. Some submitters were not clear on how these costs were justified. Examples of the prohibitive costs included compliance costs, legal fees, professional advice, and administration fees.

79. Submitters wanted to see adequate resourcing/funding supplied if these changes were to be implemented (e.g., access to development funding).

3.7 Roles & Responsibilities

80. Clarification was sought around the roles and responsibilities of entities mentioned in the Bill (e.g., Māori Trustee, Māori Land Service, Māori Land Court, Kaitakawaenga, chief executive, government agencies, etc.). Submitters wanted more details about these roles and expressed concern about the breadth, depth, and resourcing of these entities/roles.

3.8 Legality

81. Twelve submitters (3 individuals (including the Not One Acre More submission), 1 trust, 2 incorporations, 1 iwi organisation, 1 local Māori organisation, 3 national Māori organisations and 1 council) suggested that the reforms violated various aspects and principles of the Treaty of Waitangi (e.g., protection, partnership, participation). There was the view that the Bill had not been sought by Māori and as such, it violated Treaty principles. There was also a suggestion that there should be no change to the current Act while there were still claims and settlements before the Waitangi Tribunal.

82. There were also suggestions from twelve submitters that the Bill was contrary to the UN Declaration on the Rights of Indigenous Peoples and was in breach of the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. One submitter suggested the Bill was discriminatory against Māori land owners as it:

> *"…allows others to readjust their property rights in a manner no other property owner in New Zealand must suffer without the full protection of the law that can be enforced in a Court."*

83. Some submitters also stated the Bill as presently drafted was in conflict with other Acts (e.g., Māori Vested Lands Administration Act 1954, and the Protected Objects Act 1975).

3.9 Structure of the Bill

84. The Māori Women's Welfare League and three other submitters were concerned about the length of the Bill, which contained sixty more clauses than the current Act.

85. Other submitters felt that the Bill is difficult to follow and not an exemplar of modern legislative drafting. One submitter stated that, if the decision is made to proceed with the Bill, the version introduced into the House of Representatives needs to be easier to read.

Another submitter felt the current use of cross-referencing was confusing, while two others suggested the insertion of more cross-referencing across the Bill and the Schedules. If this was not done, there was a risk that obligations and processes will be missed, causing Māori entities to be in breach of their obligations under the Bill.

Commercial entities

740 One submitter considered that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Māori entities, and that such entities and their shareholders have the ability to determine their own investment decisions to determine the best use of resources without limitation by the Bill

3.10 The Process

86. Ninety submissions (38 individuals, 23 trusts, 11 incorporations, 3 iwi organisations, 6 local Māori organisations, 4 national Māori organisations, 1 other organisation, 2 professional associations and 2 councils) discussed the consultation process and almost all were critical.

87. Many submitters were concerned about the integrity of the process. They felt that the process was being rushed, which caused them to believe that the government had already made up its mind regarding the reforms. They cited what they considered to be a lack of a proper consultation process as being a violation of the Treaty of Waitangi. Submitters also expressed concerns around accessibility to the Bill, citing its complexity and being too difficult to understand for many land owners.

88. Some submitters considered there is a lack of clarity about the meaning and application of key provisions of the Bill and how these provisions will be interpreted and applied by owners, officials and judges. They felt little thought appears to have been given to how owners, judges and officials may interpret the new law, particularly given new legal entities (rangatōpū) are being proposed.

89. There were also concerns around the fact that the Bill is currently incomplete, thus limiting the degree to which submitters could reasonably comment or provide feedback.

90. Further, other submitters stated that the Bill was insufficiently supported in terms of research, evidence, analysis and support to justify such a large-scale overhaul of the legislation. They indicated that there was much more thinking needed, and more research and evidence provided to justify the level of change proposed. They also stated that more work needed to be done around issues of governance and management.

91. Some submitters also stated that while they may, in some instances, support the principles or purposes of the Bill, they considered the content of the Bill either undermined or opposed these principles or purposes. Thus, they saw the need for further work.

92. Eight submitters (3 individuals and 5 trusts) indicated support for the current Iwi Leaders Group, referencing support for recent resolutions.

4.0 Preliminary Provisions

93. Part 1 of the Bill contains the purpose and principles of the exposure draft of Te Ture Whenua Māori Bill, and the interpretation and related provisions. This section sets out the comments received on this Part.

4.1 Absence of a Preamble

94. Eighteen submitters (9 individuals, 2 trusts, 2 incorporations, 2 iwi organisations, 1 national Māori organisation, 1 professional association and 1 council) commented on the fact that the Bill does not have a Preamble, unlike the current Act. Seventeen considered that the Preamble of TTWM Act should be retained. The remaining submitter did not express a view on its removal, but commented that the principles set out in cl 4 maintained the original intent of TTWM Act, as prescribed in the Preamble.

95. One submitter noted that the wording of cls 3 and 4 ensures that a special relationship exists between Māori and the Crown in relation to Te Tiriti o Waitangi and reaffirms the spirit of the exchange of kāwanatanga for the protection of rangatiratanga. This submitter also recognised that Māori land is a taonga tuku iho. These features reflect those found in the preamble of the current Act. The submitter went on to note:

> *"… the preamble gives context to article two of Te Tiriti o Waitangi by expressing specific principles of rangatiratanga, that is, the retention and occupation of land and the protection of wahi tapu. Whilst development and utilisation also feature within the preamble, these tenets are less based in the principles of rangatiratanga than retention, protection and occupation. They are more the natural result or expectation that follows retention, protection and occupation. Importantly, the preamble outlines who shall directly benefit from these tenets – the owners themselves, their whānau and their hapū. Retaining, protecting and providing occupation for whānau and hapū draws directly from the expectation of the role of rangatiratanga."*

96. In the submitter's view, "the preamble expresses these principles and gives context to them, providing the Court with the appropriate considerations and parameters to explore Māori land philosophy within the context of land ownership and land use".

97. Some submitters considered that the Bill falls well short in capturing and expressing these important guiding principles. They believed replacement of the preamble of the current Act with cls 3 and 4 of the Bill weakens the principles of rangatiratanga in this context. By removing reference to explicit principles of rangatiratanga, drawn from Māori land philosophy and given constitutional context by correlation with Article 2 of Te Tiriti o Waitangi, there is an implication that 'optimum' utilisation and development of land is the priority. One submitter noted that:

> "… *when it was developed, the Preamble was revolutionary for its time entrenching via statute the constitutional significance of Te Tiriti o Waitangi and recognising the fundamental tensions that arise from the competing objectives of development of Māori land for commercial benefit and the need to retain and protect Māori land as a living mechanism for the crystallisation of whakapapa and the enduring uninterrupted assertion of mana rangatiratanga by owners and their whānau. It provided a tūāpapa, the overarching philosophical base from which all other sections in the Act would operate.*"

98. This submitter was concerned that replacing the preamble with cls 3 and 4 would result in a shift in stance which places more importance on "optimum utilisation" rather than the cultural imperative to main continuity of collective ownership and tenure. In her view:

> *"… the Preamble serves an important purpose in dictating how the Act is utilised and should be preserved as a matter of Treaty principle and as a matter of Māori law."*

99. Kaimoho A1 Incorporation and one other submitter noted that if a Bill is introduced without a preamble, one cannot be inserted by way of an amendment to the Bill (although an existing preamble can be amended or omitted). They considered that the omission of the preamble disregards the whakapapa of the journey of Te Ture Whenua Māori, and refocuses the intent of the Bill to utilisation.

4.2 Clause by clause analysis

Cl 3: Aronga/Purpose

100. Clause 3 provides that the purpose of the Act is to empower and assist owners of Māori land to retain their land for what they determine is it optimum utilisation.

101. Five submitters (2 individuals, 1 trust, 1 incorporation and 1 law firm) expressed concern about the language used in the aronga. On submitter considered that the term 'optimum utilisation was a catchy executive phrase that successful businesses may use, but it was meaningless in the context of Māori land use. Taheke 8C Incorporation was concerned that this phrase had replaced the term "economic development" which they said is found in the current Act. They feared this change may cause confusion and greater likelihood of litigation as owners argue about what is the most optimum use of the land. They recommended that economic development should be reinserted at the forefront of the Bill as it would recognise the desire of most owners regarding the management of their land, and would provide direction to both kaitiaki and the courts.

102. One submitter recalled that one of the primary focuses of the current Act is land retention. While this concept is referred to in the aronga, in their view it is watered down. In the submitter's view, the overarching intention of the Bill is for Māori to be the decision makers on their whenua.

103. Clause 3(3) provides the purpose of the Bill in Māori and English, and clarifies that the English version is merely an explanation and the Māori version prevails. Four submitters (1 individual and 3 trusts) expressed support for the Māori version of the purpose prevailing over the English version.

Cl 4: Achieving purpose and recognising principles of Act

104. Clause 4 sets out the four principles of the Bill. Submitters commented on these principles with most expressing concern about the shift in focus from retention to utilisation and economic development. They felt this watered down the purpose of the current Act and has the potential to dispossess the remnants of interests Māori currently own.

105. Clause 4(1) states that a person who exercises a power or performs a function or a duty under this Act must do so, as far as possible, to achieve the purpose of this Act. One

submitter considered that the words "as far as possible" is far too general and could be ambiguously read. The submitter suggested these words be deleted.

106. Clause 4(4)(a) provides that the Treaty of Waitangi establishes a special relationship between Māori and the Crown and embodies the spirit of exchanges of kāwanatanga for the protection of rangatiratanga.

107. The Bay of Plenty Regional Council supports the reference to the Treaty as one of the guiding principles of the Act and considers the proposed wording of this provisions a suitable reflection of the Treaty relationship.

108. The second principle contained in this clause is that tikanga Māori guides matters involving Māori land.

109. Te Rakaupai te Iwi Turoa Trust noted that the current Act does not include a similar reference to tikanga Māori guiding matters involving Māori land, and wanted an example included explaining how tikanga Māori will guide matters involving Māori land under the Bill. Another submitter wanted to know how this principle will guide other legislation that impacts on Māori land (such as the Public Works Act 1981).

110. One of the principles is that Māori land endures as taonga tuku iho by virtue of whakapapa (cl 4(4)(c)).

111. One submitter noted that this provision places a qualification on the underlying principle and kaupapa of Māori land that is not found in the current Act and is so serious it "warrants close and considered examination". The submitter explained that the underlying philosophy in TTWM Act is that Māori land is inherently special in and of itself. This:

> *"… is rightly so because the acknowledgement of Māori retaining property despite British acquiring sovereignty of New Zealand is a defining moment in the making of New Zealand in 1840. While Māori land is a taonga tuku iho by virtue of whakapapa in a literal sense, Māori land is also a taonga in a broader sense for the identity of what makes New Zealand unique and special in comparison to other once British colonies.*"

112. In the submitter's view, the current Act "inherently captures an understanding of this whereas the Bill does not". It elevates the retention of Māori customary and Māori freehold land as important for this country as a whole. The submitter thought that New Zealand would "lose a unique feature of our country if we have simply general land and Crown land, which will be the likely long-term consequence of the reforms."

113. Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust noted that cl 4(4)(c) omits reference to the promotion of the retention of Māori land. They were concerned about the removal of the focus and promotion of land retention.

114. Clause 4(4)(d) provides that owners of Māori land have a right to develop their land and to take advantage of opportunities to develop their land.

115. Te Rakaupai te Iwi Turoa Trust noted the current Act included in the Preamble a reference to "facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whānau, and their hapū". The submitter expressed concern about how the Bill now focuses more on the development of Māori land, although Tauhara North No 2

Trust supported this change of focus. A different submitter criticised the use of the phrases "owners of Māori land" and "have a right" explaining that these terms were "classic colonial hegemony" and did not represent the Māori view of the land.

116. Te Tumu Paeroa noted that the legislation alone will not achieve this principle. For owners to have a real right to develop their land and take advantage of opportunities to develop their land the institutional framework will need to provide meaningful support for them, specifically in the areas of promoting and supporting governance capability and coordinating and supporting access to financial and non-financial resources.

117. Clause 4(5) provides the principles of the Bill in both Māori and English, and clarifies that the Māori version prevails. Five submitters (1 individual, 3 trusts and 1 incorporation) commented on this provision, all expressing support for the Māori version of the principles prevailing over the English version. One of these submitters stressed that the English version should be an exact reference to the Māori version, as this would avoid the potential for litigation over differing translations. If there are differences, these should be explained.

118. Clause 4(6) sets out examples of situations when the principles would be applied. While one submitter supported this and considered these examples provide much needed clarity about how to interpret the Bill in te reo Māori, another submitter wanted to know why these examples were chosen when more contentious examples exist concerning sale or partition, which would have been better highlighted in this section.

Cl 5: Interpretation

119. The Bill introduces a new lexicon. Many of the new terms are defined in cl 5, although some terms are defined in the Parts of the Bill they relate to (these are discussed in the relevant section below). A few terms are not expressly defined in the Bill. Submitters discussed this clause, with most commenting on specific definitions.

120. FOMA noted that typically an interpretation section lists the definitions contained in the legislation, although there may be a few additional sections which contain specific definitions. The definitions in the Bill are contained throughout the Bill, and are inconsistently cross-referenced in places. For example, although the interpretation section provides that the definition for "preferred recipient" is the "meaning given by cl 76", cl 76 also contains the definition of "preferred entity", which is not listed in the interpretation section. This is confusing. In their view, definitions should all be placed in one central place. This would be more useful and make the reforms more accessible and understandable.

121. Two submitters agreed with these concerns, one suggesting that "a comprehensive review of the Bill is undertaken to ensure defined terms are consistent, all necessary terms are defined, and any provision that is confusing or unclear is improved".

122. Asset Base: This term is defined as "the Māori Freehold land, investment land and other assets and liabilities managed by a governance body under a governance agreement." Taheke 8C Incorporation noted that this includes all assets and, consequently, places the same obligations on them as those for Māori land whether they are Māori land or not. They considered this concerning and suggest that the asset base subject to the Bill be limited to Māori land assets.

123. Chief Executive: A number of comments were received on the role of the chief executive and the powers vested within him or her. Four submitters (3 trusts and 1 organisation) stated that there is far too little detail in regard to this new position given that the majority of the activities allocated to this position were judicial functions under the Act. They asked for more detail in regard to the office of the chief executive as the current references in the Bill to the chief executive give rise to uncertainty. For example, how will the chief executive be appointed, what Department will he/she sit within, what is the scope of the role? One of these submitters stated that owners deserve comfort that this role can be performed adequately and that there are sufficiently trained and expert personnel who can complete these tasks.

124. Seven submitters (1 individual, 3 incorporations, 2 national Māori organisation and 1 iwi organisation) noted that the wording used in cl 5 (Interpretation) implied that more than one chief executive may be responsible for different aspects of the Bill. They sought clarification about which chief executive of a Department of State will be responsible for particular provisions.

125. One submitter considered that the Department of State needed to be one that was specifically Māori based.

126. One submitter felt that the chief executive should be regarded as a facilitator only as all other decisions of significance can be decided on by the Court. The Court has the history and the mana to achieve a fair and balanced result. In its view, there is no place for decisions, conditions, appointments to be made by the chief executive as there is a perfectly good Court structure in place to enable these actions; should they be required.

127. It was also suggested that there should be processes for oversight of and limits to the chief executive's powers. The decisions of the chief executive should be subject to review by the Māori Land Court across the board and not just in the limited circumstances outlined in the Bill currently. A pānui of all matters before the chief executive should be made public, to allow for Māori land owners to keep track of what is going through the Māori Land Service and raise any concerns as to abuse of process by applicants.

128. Descendant: Three submitters (3 trusts) noted the definition of "descendant" includes a child, grandchild or other descendant who is related by birth or legal adoption. One commented that the current Act does not include a definition for "descendant". However, the definition of "Māori" in the Act is "a person of the Māori race of New Zealand; and includes a descendant of any such person". There is no specific reference to legally adopted persons being considered "descendants" in that Act. The submitters considered that the interpretation of descendant in the Bill should be tied to whakapapa". The definition of descendant should be amended accordingly. The Māori Land Court has also considered this issue, and has held that a legally adopted person is entitled to succeed to interests in Māori Land on intestacy.

129. Taheke 8C Incorporation noted that the definition includes a whāngai descendant. However, not all hapū or Māori entities provide for whāngai. Imposing it upon them will limit the application of the Bill to such groups. They suggest discretion be provided for the inclusion of whāngai. Other submitters felt that the inclusion of whāngai should be removed.

130. Another submitter disagreed that descendants need to be related by blood. In her view, the proposed wording of this provision was fine.

131. Disposition: Three submitters (3 trusts) noted that the definition of disposition includes amalgamations and aggregations. The current Act uses the term "alienation", rather than disposition. The term "alienation" as currently defined does not expressly refer to an amalgamation or an aggregation, but does refer to "every form of disposition of Māori land or of any legal or equitable interest in Māori land". The submitters wanted to know the rationale for the Bill to treat an amalgamation or an aggregation as a "disposition".

132. Immediate family: The definition of "immediate family" means members of a person's whānau who are in a "close relationship" with the person. Immediate family includes grandparents, parents, aunties and uncles, siblings, children, nieces and nephews and grandchildren. The definition of "immediate family" is inclusive, and the test is whether someone is in a "close relationship" with the relevant person. This may extend to persons who are not related. Three submitters (3 trusts) expressed concern about the definition of "immediate family", particularly the lack of emphasis on whakapapa. In their view, the definition should require a blood relationship.

133. Kaitiaki: The Ngāi Tahu Māori Law Centre felt that the use of the term 'kaitiaki' as akin to 'trustee' was fraught with potential issues. Kaitiaki is widely understood by Māori to mean caretaker. It does not infer legal and fiduciary responsibility to the extent that it ought to when used as the term for trustee and registered proprietor of Māori freehold land. The definition of kaitiaki in cl 6 of the Bill is of little assistance, as it is overridden by the cl 5 definition. If anything, having two definitions makes it more complicated for owners to know what is meant by 'kaitiaki'. They recommended that the term 'trustee' is retained, or if kaitiaki is to be used, that there is only one clear definition of that word. Kaitiaki is already understood within the context of Māori freehold land to refer to the guardian or attorney for person under a disability or a minor. If the term 'trustee' is not considered appropriate, an alternative term which is appropriate and widely understood to infer legal and fiduciary duties should be used.

134. Taheke 8C Incorporation expressed concern about the definition of kaitiaki, commenting that "Māori terms are defined appropriately and not defined beyond their cultural definition."

135. Te Tumu Paeroa noted that the Māori Trustee may be appointed as a governance body. They would like to know why the Māori Trustee, in such circumstances, will also be considered a kaitiaki, and how the relationship between the two is intended to work in practice for assets managed by the Māori Trustee.

136. Land: Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust noted that this definition now includes plants and trees on land. The definition of "land" in the current Act does not refer specifically to plants and trees on land. However, the definition of "land" in the Land Transfer Act 1952 includes "plantations, gardens, and all trees and timber thereon, unless specially excepted". These submitters wanted to know why the definition of "land" has been changed to reflect the definition of "land" in the Land Transfer Act 1952 and whether this would adversely affect trees that are already subject to a separate grant or right (such as a forestry right or profit-a-prendre).

137. One submitter noted that the definition of 'land' does not address whether 'land' within the context of Māori land includes fixtures such as the family home. This is a potential growing issue especially if utilisation is to be encouraged including in the format of building the matrimonial home on Māori land.

138. Māori Trustee: Taheke 8C Incorporation commented that given the emphasis on Māori terms, the Bill should use the Māori name for the Māori trustee.

139. Parcel: Parininihi ki Waitotara Incorporation noted that the Bill covers existing Māori incorporations that become rangatōpū on commencement date. However, the definition of "parcel" includes reference to "a discrete area of land with continuous boundary" which will not describe the Māori freehold land administered by incorporations because they often administer numerous "parcels" of Māori Freehold land over a broad geographical area. In their view, an amendment should be made to either the term "parcel" or to provisions where "parcel" is used to include "Māori freehold land administered under a governance agreement" in order to clarify this situation.

140. Representative entity: The definition of "representative entity" provides that an entity must be "recognised by the members of the hapū or iwi as having authority to represent the hapū or iwi".

141. Six submitters (6 trusts) raised concerns about how someone can determine whether an entity is "recognised …as having authority to represent the hapū or iwi". They would like to know who will determine which representative entity has authority to represent a hapū or iwi and how that determination will be made. They also seeks clarification on the process members of the hapū or iwi may take to challenge such a determination.

142. The Tauhara North No 2 Trust and the form submission from 9 trusts commented on the manner in which a representative entity is appointed. The submitters noted that the first limb of the definition requires an entity to "represent a hapū or an iwi associated with the land in accordance with tikanga Māori". This can be a contentious issue. The second limb requires an entity to be recognised (mandated) by the hapū or iwi it purports to represent. This limb does not refer to the owners of the land. Accordingly, the question of whether a representative entity is representative of the beneficial owners of the block is irrelevant, and instead the question is whether the entity is representative of a hapū or iwi. This will mean that people other than the beneficial owners of a block will have a role in deciding who will be the representative entity for a block. They consider that the definition will perpetuate the difficulties experienced through the Treaty settlement overlapping claims process. That outcome should be avoided. The submitters recommend that any decision to recognise a representative entity for a land block should be made by the owners of the land block, and no one else. The appropriate threshold for such a decision should be a majority of participating owners.

143. Wāhi tapu and Wāhi tupuna: Three submitters (1 individual, 1 trust and 1 incorporation) noted the definitions of these terms are referenced to the Heritage New Zealand Pouhere Taonga Act 2014. Taheke 8C Incorporation was concerned that should those definitions be changed, they will immediately change in the Bill without consideration being given to the potential impact on the owners and entities operating under this Bill. In its view, it was preferable that the definitions are clearly stated without reference to another piece of legislation. The Bill should not subjugated to other legislation and should stand in its own right. These Māori terms if used should be defined appropriately in the Bill.

144. Whāngai descendant: Five submitters (5 trusts) noted the current Act includes a definition of "whāngai", being a person adopted in accordance with tikanga Māori. The Bill uses the term whāngai descendent instead and its definition refers to the tikanga of the relevant iwi, hapū or whānau. These submitters all supported the wording used in this definition.

Cl 6: Explanation of certain Māori terms

145. FOMA questioned whether it is appropriate for a statute to explain terms that are more appropriately and more fully explained by expert evidence and according to tikanga Māori. It needs to be made clear that this clause is only for the benefit of the reader and is not intended to codify the terms. FOMA was also unclear about the legal effect of cl 6. For example, they did not know whether, and if so, how, a judge is to interpret or utilise this clause for the purpose of statutory interpretation.

146. FOMA also noted that some terms have not been 'explained' in this clause. For instance, 'whāngai' and 'whāngai descendant' are not explained. They should be included for the benefit of the reader.

147. Taheke 8C Incorporation questioned the use of Māori terms within the Bill. They noted that the explanation of certain Māori terms is different to their definition of cl 5 (for example, kaitiaki). In their view, this is confusing. Terms should be defined once. More concerning is that the definitions provided for some Māori terms go further than their traditional definition. This creates a further risk of confusion.

148. One submitter also commented that the term "Māori land" should be replaced. In the submitter's view, this term "perpetuates a simplistic belief that the land belongs to Māori because of their race; causes racial tension and prejudice; minimises the fact that the land is ours as an inheritance from our ancestors".

Cl 7: Meaning of individual freehold interest

149. Six submitters (2 individuals and 4 trusts) noted that cl 7(3)(b) refers to a "class of collective owners". This term is used throughout the Bill, as is the term "class of owners". However, neither of these terms are defined and it is unclear whether they have the same meaning. The submitters suggested that the term class of owners should be defined and used consistently throughout the Bill.

150. Two submitters wanted to know what this provision means in terms of voting.

Cl 8: Meaning of owner

151. One submitter noted that the definition of owner does not include parties with undivided interests. Such persons should be included.

Cl 9: Evidence of applicable tikanga Māori

152. Taheke 8C Incorporation noted that the Bill requires the issue of tikanga to be determined on the basis of "evidence". They questioned how the rules of evidence would be applied and strongly opposed placing concepts of tikanga in such fora. In their view, consideration should be given to the Māori terms in the Bill to determine if they are in fact fit for purpose

and appropriate in terms of tikanga. They also suggest that the rules of evidence should not be strictly applied to matters of tikanga.

4.3 Terms not defined in the Bill

153. One submitter noted that there was no definition as to what constitutes "land not being managed effectively". The lack of definition is concerning and is magnified as no distinction is made whatsoever that land can be held purely as a "land bank" and as such can well be considered to be very profitable in the future but can appear to all intents and purposes to be "unproductive".

154. Two submitters suggested the term "land without title" be defined in the Bill.

Minority shareholder

155. Te Hunga Roia Māori o Aotearoa raised concerns about how minority owners are dealt with in the decision making process, noting the concept of minority owner/s is also not defined in the Bill. They noted that the definition of a minority shareholder or owner is self-evident in an individualised shareholding construct - it will be the holder of a share whose shares are lesser in quantum or numerical amount than someone who holds a share greater than 50%. The treatment of minority shareholders is:

> *"A major departure from the status quo. Contrast this with section 2 of the existing Act which emphasises the importance of owners, their whānau, their hapū and their descendants, as well as section 17(2)(d) of the existing Act which expressly provides for the protection of minority interests against an oppressive majority. They considered that the position of the minority owner under the Bill is severely weakened."*

5.0 Whenua Māori/Māori Land and Whenua Tāpui

156. This section outlines the comments received on Part 2 of the Bill, which covers the status of land and provides for the new concept of "whenua tāpui" to replace Māori reservations.

5.1 Māori customary land

157. Five submitters (4 individuals and 1 trust) commented on clauses 12 to 18, which sets out the provisions relating to Māori customary land.

Cl 12: Definition of Māori customary land

158. One submitter noted that this was another philosophical change in the Bill which had the potential to alter the understanding of land in New Zealand. In the submitter's view, the proposed reform undermines the fact that Māori customary land is land held by Māori in accordance with tikanga Māori. While cl 12(a) recognised this, the submitter was concerned about the impact of the definition of "private land" in cl 5, which defines land held in fee simple by a person other than the Crown and includes Māori land. This wording brings Māori customary land into the definition of private land, which was potentially problematic with far reaching consequences.

Cl 13: Māori customary land cannot be disposed of

159. Although cl 13 prohibits the disposition of Māori customary land, there are a number of exceptions contained in cl 13(2) and these attracted comment from three submitters. Whakatohea Māori Trust Borad considered the exceptions should only apply if 75% of owners agreed with the change (they should not be applied by simple majority). Two other submitters felt the exceptions needed to be better explained. In particular, the Bill should clarify whether the Public Works Act 1981 had precedence over the provisions relating to Māori customary land, and explain the implications of s 328 of the Property Law Act 2007 (access to landlocked land).

Cl 14: Court may determine whether land is Māori customary land

160. One submitter recommended that cl 14 include the statement that the Māori Land Court has jurisdiction to determine and declare land to be Māori customary land, as the Bill was silent on this point.

Cl 15: Court may determine class of collective owners of Māori customary land

161. Three submitters discussed cl 15: two recommended that the term "class of collective owners" is replaced with a less "colonial term". The other questioned whether the Court should was the right entity to decide whether to change the status of Māori customary land to Māori freehold land. In her view, this should only be done by those who hold the land, in accordance with tikanga Māori. There was also concern about the compulsive nature of this provision, especially the possibility that administrative kaiwhakarite could be appointed against the wishes of the owners.

Cl 16: Court may change status of Māori customary land to Māori freehold land

162. One submitter was concerned that under cl 16 administrative kaiwhakarite could apply for any order to change the status of Māori customary land to Māori freehold land. This should only be done with the express consent of the owners.

163. One submitter noted that the definition of Māori customary land speaks about the land being held by Māori, whereas the cls 15 and 16 refer to owners of Māori customary land. This is inconsistent with the approach taken in the current Act, which was deliberate.

164. One submitter considered that there was a disconnect with the Court assessing the chief executive's processes (see cl 16(3)(a)). As the chief executive may be of a non-Māori organization, the submitter questioned how will they hold meetings for Māori owners? The submitter suggested that meetings should be co-ordinated though the Court.

165. Under cl 16(6), land that is being changed to Māori freehold land is subject to the Land Transfer Act 1952. One submitter would like to know who bears the cost associated with this change. The submitter notes that Māori customary land is currently exempt from local authority rates. The submitter would like to know whether this will continue under the proposed regime.

5.2 Māori freehold land

166. Provisions relating to Māori freehold land are set out in clauses 19 to 27. Six submitters (1 law firm, 3 trusts and 2 incorporations) discussed this section of the Bill.

Cl 21: Court may determine whether land is Māori freehold land

167. Three submitters (3 trusts) commented on the wording of cl 21(2)(b)(i) which relates to making an application for the Court to determine whether the land is Māori freehold land, noting that the wording differed from s 37 of TTWM Act. The Bill now requires a person to have an interest in the matter, rather than claim an interest. As drafted, any person 'interested in the matter' could include third party developers, local authorities, government departments or other third parties who wish to deal with the land. Although the change is subtle, it is perceived to have major implications for Māori land. They proposed that persons should be able to make an application to determine whether land is Māori freehold land should be limited to exclude third parties.

Cl 22: How land becomes Māori freehold land

168. One submitter would like to know why the Bill makes you "jump through hoops to change status from general to Māori land when the current Act allows a fee free application, you only have to provide evidence you are the owner on the title; and if title has a mortgage, you only have to notify your lender of the proposed status change".

Cl 25: How land ceases to be Māori freehold land

169. Under cl 25(1)(e) land ceases to be Māori freehold land if this is expressly provided for in another Act. One submitter would like to know how this provision provides for the retention of Māori land. In the submitter's view, this Bill should be the only means of changing status. Another submitter wanted this sub-clause deleted.

Cl 26: Land ceases to be Māori freehold land by declaration

170. One submitter expressed concern that the processes in the Bill for changing the status of Māori freehold land to general land are less restrictive than TTWM Act. The submitter noted that the current Act contained a higher threshold to restrain the possibility of the land being mortgaged, changed or sold off once its status is changed. For instance, cl 26(3) states that the Court "must" make an order changing the status of the land if certain requirements are satisfied: whereas s 136 of TTWM Act uses the word "may", which provides a discretion enabling the Court to consider additional important matters before making a decision (such as the land can be managed or utilised more effectively as general land; and that the owners have had adequate opportunity to consider the proposed change of status and a sufficient proportion of owners agree to the change). The submitter suggested that the Bill retains the ability of the Court to inquire into matters other than process associated with changing the status of Māori freehold land to general land. Te Hunga Roia Māori o Aotearoa endorsed these concerns.

171. Under cl 26(5) partitioned land must go through a resource consent process before an order removing Māori freehold land status can be made. Taheke 8C Incorporation noted that many plans prohibit subdivision in rural areas and or the size of the lot is larger. This requirement will in many cases make it impossible to partition blocks for use by owners. This is cost prohibitive. They questioned how this improves things for Māori owners? Requiring the Court to defer to the decision of the local authority in respect of conditions is usurping the Courts power and is not appropriate. Local council should only be able to make recommendations thereby retaining the courts unfettered inherent jurisdiction. In their view, partitioning should not be treated as a sub division and be subject to the RMA.

Cl 27: Process for Māori freehold land partitioned under this Act

172. Taheke 8C Incorporation noted that this provision makes reference to local authorities "deciding" and "determining" conditions on a partition order to be made by the Court. In their view, this is not appropriate and usurps the power of the court. A local authority should only make recommendations to the Court, which will have overall jurisdiction to determine the appropriateness of an application. In their view, the Court should retain its power over activities relating to Māori land and that local councils retain only recommendatory powers.

173. Taheke 8C Incorporation and Ngāti Whakaue Tribal Lands noted that cl 27(6)(b) states that a term that is not defined by the Bill, but is defined by the Resource Management Act 1991, has the meaning given by the RMA. They are concerned about the impact of having RMA definitions referred to in this Bill. In their view, the Bill should be revised to ensure its independence from other legislation.

5.3 Whenua tāpui

174. Clauses 28 to 38 provide for whenua tāpui. This is a new category of land, which replaces Māori reservations, which is provided for in ss 338 to 341 of TTWM Act. Ten submitters (2 individuals, 2 trusts, 1 incorporation, 2 iwi organisations and 3 professional associations) commented on this section of the Bill. There was no opposition to the creation of whenua tāpui, however concerns were raised regarding the scope of what can be included as whenua tāpui, beyond cultural sites (e.g. marae and urupā); and the role, appointment

process and responsibilities of the administering body; and why any lease or licence must be confirmed by the Court.

	Support	No	Concern	Number of Submitters
Whenua Tāpui	50%	10%	40%	10

Cl 28: Meaning of certain purposes

175. The New Zealand Institute of Surveyors commented that the range of reasons to create a whenua tāpui that are set out in cl 28, are quite large, and appear to conflict with how reservations would normally be viewed.

176. This concern was supported by the Taheke 8C Incorporation who questioned the legitimacy of some of these purposes and the lack of limitation upon them (for instance, a catchment area can stretch for significant distances. If a whenua tāpui was placed over a catchment area, this would encompass any Māori freehold land that was located within the catchment area. Conversely, limiting the whenua tāpui to an owners land rights in the catchment area would not protect the other waters in the catchment). They suggest that the definition of whenua tāpui is limited to marae, urupā and similar cultural sites.

Cl 29: Application for court order declaring private land reserved as whenua tāpui

177. The New Zealand Institute of Surveyors noted that one owner could trigger the whenua tāpui process. It is likely that there would be costs associated with organising and facilitating a meeting of other owners to discuss the establishment of a whenua tāpui, which would need to be covered by the governance body for that land. They expressed concern that there were no restrictions on the number of times an owner could instigate the process to declare a new whenua tāpui. Owners could use this process to frustrate the actions of the rangatōpū, who may have made considerable investment in developing resources and entering into commercial arrangements. In their view, existing trusts and incorporations should be excluded from the provisions for whenua tāpui.

Cl 30: Court order declaring private land reserved as whenua tāpui

178. Clause 30 allows whenua tāpui to be reserved over private land. Taheke 8C Incorporation noted that cl 30(2)(a) provides that land that is managed under a governance agreement cannot be declared as a whenua tāpui. They expressed concern that a reference to the provision allowing owners to revoke a governance body's appointment to manage Māori freehold land is included in this provision. This was considered a big red flag promoting removal by owners.

179. Clause 30(2)(c) provides that land that is subject to a lease or license that is inconsistent with the purpose for which the land is to be reserved cannot be declared a whenua tāpui. Taheke 8C Incorporation is concerned that a small group of owners could frustrate the actions of the rangatōpū if the commercial lease was 'consistent' with the purpose of the whenua tāpui, such as a geothermal catchment where the land is leased for geothermal commercial activities. The time and resources that had been spent getting to the point of benefitting from that asset would be wasted. The Incorporation suggested that Corporate

Māori entities should be excluded from the jurisdiction of the whenua tāpui provisions in the Bill.

Cl 31: Court must be satisfied of matters and consider submissions for whenua tāpui on private land

180. One submitter commented on cl 31(3)(b), which provides that a declaration relating to Māori freehold land must be agreed to by a simple majority of participating owners, with owners' votes having equal weight. The submitter considered that this would not protect owners with large shareholdings from the actions of minority shareholders, who could stack the meeting. In the submitter's view this clause would not further the kaupapa of utilising whenua.

181. Clause 31(6) requires the Court to notify a range of people of the order it proposes to make. Taheke 8C Incorporation notes individuals will only be notified and invited to make submissions if they are listed on the application. However, it will not be in the applicant's interest to list people opposed to the application. This was a concern, as was the fact that there was no obligation to notify the rangatōpū responsible for governing the land.

182. Taheke 8C Incorporation also expressed concern that the provision did not include a requirement that the Court hold a hearing to consider the submissions. They suggest the inclusion of a more transparent process to enable all owners to be notified and participate in the process to establish a whenua tāpui; directly notify rangatōpū who have had land removed or are affected by land applicable to a whenua tāpui application; include a threshold for owner support for new whenua tāpui; and conduct a hearing to determine whether a whenua tāpui should be established.

183. It was further noted that cl 31(6)(d) refers to "the pānui of the court", yet in other provisions notification is made by way of the chief executive. The different methods of notification may cause confusion and should be avoided. They considered that the Bill should only have one method of notification to Māori land owners.

Cl 34: Court order of declaration for existing whenua tāpui

Taheke 8C Incorporation considered that the notification requirements in this provision are not clear (for instance, who needs to be notified of the meeting and what is the minimum threshold for participation at that meeting). These matters should be spelt out in the legislation to protect owners who are opposed to the establishment of the whenua tāpui.

Cl 35: Effect of a declaration about whenua tāpui

184. Clause cl 35(3)(c) allows owners the right to enter whenua tāpui at any time subject to certain criteria. Sub-paragraph (iii) allows the administering body to impose "reasonable conditions or restrictions" on the right of entry. Taheke 8C Incorporation considers that this term could be better defined. As an alternative, they suggest that the conditions or restrictions are limited to those prescribed by law. The Incorporation suggests that further consideration be given to this clause and its practical application, especially as there may be a risk under health and safety legislation and therefore liability for the administering body.

185. Clause 35(3)(d) provides that when land is reserved as a whenua tāpui, the land remains affected by any lease, license or easement that affected it immediately before the reservation. The New Zealand Institute of Surveyors note that there would be a conflict of intentions if land was set aside as a whenua tāpui (timber reserve) had a forestry right attached to it, especially if the forestry right was owned by a third party. Taheke 8C Incorporation also raised concerns about this provision and ask whether rules relating to privity of contract have been considered in the drafting of this provision.

Cl 36: Administering bodies

186. Referring to cl 36(1), the PSA notes that whenua tāpui are now only to be managed by body corporates with no option for the reservation to be held by trustees. This differs from the current Act, which allows for a reservation to be vested in either a body corporate or in trustees (see s 338(7)). A similar concern was raised in the Not One Acre More submission.

187. Taheke 8C Incorporation considered that the definition and status of the "administering body" was uncertain. They wanted more clarity around who could be appointed as an administering body. It was also unclear whether it would be a rangatōpū for the purpose of the Act and thereby subject to the same obligations and duties. They considered that the governors should be subject to the same disqualification criteria as kaitiaki (see cl 214(3)). In their view, the Bill should define and clarify the criteria for an administering body to allow for rangatōpū, and ensure the same high threshold for competency as that required for rangatōpū.

188. Whakatohea Māori Trust Board disagreed that a person could be appointed to the board of an administering body until he or she dies (see cl 36(3)). They considered that persons should be elected to the board and their term of appointment is limited to a set period.

189. Te Runanga o Ngāi Tahu claimed that wording of the provisions relating to the powers of an administering body appointed for a whenua tāpui (see cl 36(5)) can be interpreted to provide that only the administering body would be able to bring proceedings in respect of trespass or injury on reserved land. This would prevent whānau bringing such proceedings, which is something that they can currently do.

190. Whakatohea Māori Trust Board disagreed that the administering body should be protected from civil liability (see cl 36(6)).

Cl 37: Administering body may grant lease or license

191. Taheke 8C Incorporation questions why reserved land may be leased or licensed under cl 37 of the Bill. They note that given the minimal thresholds for seeking and approving a whenua tāpui, a small group of owners would conceivably be able to remove commercially viable sites from rangatōpū control by converting the land to a whenua tāpu. Through the newly established administering body, they would then be able to lease and license the commercial rights, taking advance of any improvements the rangatōpū had made to the land. In their view, if a parcel of land is of sufficient cultural significance to become a whenua tāpui, the administering body should not be permitted to alienate it through lease or license. They want the power to lease or license restricted; and cultural sites such as urupā and marae specifically excluded from this clause.

192. Te Runanga o Ngati Awa note that any lease or license over a whenua tāpui must be less than 14 years in duration (cl 37(2)(a)), comply with the requirements set out in cl 37(2)(b) to (e) and be confirmed by the Court. They question the need for leases and licenses to be confirmed by the Court.

Clause 38: Reservation and disposition of whenua tāpui

193. Clause 38(2) provides that land reserved as whenua tāpui "must not be disposed of" except in certain circumstances listed in paragraphs (a) to (c). Some submitters supported the proposal to prevent the disposal of land reserved as whenua tāpui. For instance, the PSA noted that this provisions offers a lesser protection than is provided in the current Act. The disposal of 'an individual freehold interest' in a whenua tāpui (see cl 38(2)(c)) is not provided in TTWM Act.

194. More importantly, the current Act states that Māori reservations are "inalienable, whether to the Crown or to any other person". This includes a bar to any compulsory alienation by the Crown under the Public Works Act 1981. The PSA noted that the Bill defines 'disposition' as including "an agreement to the acquisition of land under the Public Works Act", but not including "any vesting an estate or interest in land ... by or under any Act" [ref. s. 5]. In its view, this appears to mean that a compulsory requisition under the Public Works Act 1981 is not a 'disposition' under the Bill, and that whenua tāpui can be legally alienated by the Crown.

195. Taheke 8C Incorporation questioned why owners retain individual interests in the land while it is being administered by a third party. In their view, this is not logical.

196. Te Runanga o Ngāi Tahu also commented on this provision, noting the compliance costs that whānau will incur to develop robust constitutional documents that comply with the new arrangements in the Bill.

5.4 Other matters

197. Taheke 8C Incorporation wanted to know whether the exemption to local authority rate payments that are currently provided to Māori reservations would apply to whenua tāpui once the Bill was enactment. They suggested that whenua tāpui should not be subject to local authority rates.

6.0 Ownership Interests in Māori Freehold Land

198. Part 3 addresses ownership interests, provides for a collective ownership model, specifies how Māori land owners make decisions, provides for whānau trusts, and replaces the kaitiaki trust in TTWM Act with the kaiwhakamarumaru model.

6.1 Introductory Provisions

199. Clauses 39 to 41 are “introductory provisions”. A number of comments were made about these provisions.

Cl 39: Example of multiple owners of parcel of Māori freehold land

200. Noting that this provision refers to typical examples, one submitter asked for an example of an atypical example. The submitter also wanted to know how are undivided interests to be dealt with, such as those that existing shareholders have in Māori Incorporations. In their view, all examples including undivided interests should be clearly explained and defined. The submitter proposed that officials clarify and include all examples including undivided interests.

Cl 40: Presumption of tenancy in common and equal sharing where multiple owners

201. One submitter wanted more information about how this provision will work. If a current shareholder in a Māori incorporation has multiple shares how does cl 40(1)(b) affect those shares. Does this provision mean that those shares reduce down to one beneficial interest and therefore one equal share in the land?

Cl 41: Right of Owners

202. One submitter questioned the wording of this provision, noting that it was too loose. For instance, how will owners be informed of "all matters relating to the land"? At what point does the onus fall to the owners to keep informed? Further how is an owner to be "recognised and acknowledged as an owner of the land? Who is to provide that recognition and acknowledgment and what are sufficient to comply with this requirement?

203. One submitter commented that cl 41(2)(b) breaches the laws of natural justice and the right to be heard.

204. Clause 41(3) provides that subsection 1 does not limit or affect other rights that owners may have at law or in accordance with tikanga Māori. One submitter recommended that the Bill specifies the “other rights” envisioned by this provision. They disagreed that with the proposal that subsection 1 should be submissive to this clause.

6.2 Collective Ownership

205. Clauses 42 to 44 set out an optional collective ownership model. Submitters saw this as replacing the whenua tōpū trust model in TTWM Act but it is not exactly the same. The collective ownership model addresses the underlying ownership rather than the beneficiary class of a trust which, under the whenua tōpū model, does not affect the

beneficial ownership of the land and, therefore, does not alter the rights of owners to reclaim the reversion on an individual basis.

206. Twelve submitters commented on these provisions and their responses were somewhat polarised (6 supported the proposals, 4 were opposed and 2 were unclear in their submissions). Those who supported collective ownership generally did so without explanation although one observed collective ownership is the only way that land will not be fragmented. Of those who opposed collective ownership, two submitters argued that these provisions denied shareholder participation in favour of equal sharing. This would mean governance bodies would become the legal owners of the land parcel, a consequence that would continue the alienation of whānau from their whenua. One submitter was opposed on the basis that Māori land owners should have the same proprietary rights as owners of general land.

Cl 42: Conversation to collective ownership of Māori freehold land

207. One submitter agreed that if a title currently held as shareholdings by multiple owners as tenants in common is to become a title held by a certain class of people, a super majority of 75% of the entire shareholding must be required to make that change. The submitter did not support these decisions being made by the majority of engaged owners only or by any other persons.

208. Te Rakaupai te Iwi Turoa Trust and one other submitter wanted to know what will happen to existing trusts and whether they would be extinguished under this process.

Cl 43: Effect of conversion to collective ownership

209. Taheke 8C Incorporation wanted to know how this provision (and, in particular, cl 43(2) which provides that all beneficial interests in the freehold estate in the land are extinguished) would work with respect to undivided interests.

Cl 44: Collective owner has no separate interest

210. Under this provision a collective owner of a parcel of Māori freehold land has no interest in the land that can be dealt with separately from the interests of the other collective owners. Taheke 8C Incorporation seeks confirmation that this provision refers to an undivided interest and the impact of having an undivided interest (i.e. the inability to sell or transfer). They disagree with this provision and suggest that owners in Māori incorporations and trusts retain shares and all rights accorded to them.

6.3 Owner decision-making regime

211. The owner decision-making regime is set out in cls 45 to 51 of the Bill. These provisions, coupled with Schedule 2, set out a system of prescribed processes and agreement thresholds which result in binding decisions on all owners (the participating owner model). Views about the model were mixed, with slightly more support than opposition. Support was higher for larger organisations (councils, national organisations, local Māori organisations and incorporations), compared to individuals and trusts.

Submitter Type	Support	Oppose	Concern	Number of Submissions
Council	100%	0%	0%	2
Incorporation(s)	45%	10%	45%	11
Individual(s)	24%	47%	29%	17
Iwi Organisation(s)	0%	0%	100%	3
Land related professionals	0%	0%	100%	1
Local Māori Organisation(s)	40%	20%	40%	5
National level Māori organisation	25%	0%	75%	4
Other national organisation	50%	0%	50%	2
Trust(s)	27%	36%	36%	22
Overall	32%	27%	41%	67

212. It was noted that owner participation has always been an issue. Many trusts and incorporations face a common problem gaining sufficient participation by owners to meet the threshold requirements under the current Act. One key barrier to participation is distance, where meetings of owners must be held in the area where the lands are located, or in a town located close to the land; both to recognise ahi kā, and to best enable owners to participate in decision making. A related issue is that trusts and incorporations face difficulties tracking down owners to notify them of a meeting as many of them change addresses without informing them. This issue is compounded by the Māori Land Court not collecting contact information when successions and transfers of land interests are processed. One submitter noted that it is also difficult for Māori to find out who administers the various blocks they own.

213. The participating owner model was seen to put the mana of decision-making back in the hands of the people. It would improve the scope for owners to make effective decisions about dealing with their land. Those who supported the model thought the proposals struck the right balance and would not alienate those owners who were not as active in the land or were only minor shareholders. One submitter proposed that there should be regular free education and information sessions on how to engage and participate as an owner run at marae and Māori organisations across the country.

214. Submitters noted that the provisions for engaged/participating owners to make certain decisions by attendance in person or by proxy, notwithstanding that a large majority of the owners is absent, emphasises the principle of the ahi kā in modern setting. However, submitters were concerned that the proposal for participating owners did not adequately reflect Te Ao Māori with full inclusion of owners based on whakapapa.

215. The main concern that submitters made about the model was the potential that minority groups could highjack the decision-making process. This may lead to conflict between owners and has the potential to disempower some whānau members and alienate them from their whenua. There was a view that this would have the greatest impact on urban and poor rural Māori, as they lacked the means to attend meetings (either in person, by proxy, or by some electronic means). These concerns combined with the substantial reduction in the role of the Māori Land Court coupled with the complex nature of the Bill meant that significant questions remain as to whether the proposed reforms would achieve their desired objectives. While there are some safeguards to protect against abuse, the best protection for the rights and interests of shareholders – namely, recourse to the Māori Land Court – is no longer available. There was a view that the participating owner model will disadvantage some owners.

Cl 45: Decisions by specified majority of owners of Māori freehold land

216. Clause 45(1)(b) defines participating owners as "the owners who participate in making the decision". Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust commented that this definition was buried in the text and, consequently, it was unclear whether this term needed to be defined by each rangatōpū by way of their governance agreement. They considered this must be made clearer as much of the proposed legislation relies on the definition.

217. Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust also suggested a small tweak to the definition to specify that participating owners means "owners of the parcel who participate in making the decision".

218. One submitter felt that this was a very complicated process, made worse by referencing other sections and schedules. In the submitter's view, the participation thresholds set out in cl 45(4) should be moved to a separate part for Māori entities and/or the definitions section. This sub-clause sets out a significant set of thresholds for both the Act and governance agreements and should not be lost in the detail of the Bill.

219. There were several comments on the participating thresholds, which are set out in cl 45(4) and repeated in Schedule 2, cl 11(2). Three submitters (2 incorporations and 1 professional association) noted that current quorum requirements were a major stumbling block for owners and prevented them getting their aspirations and plans over the first hurdle. They also cause significant delays and, sometimes, bring projects to a halt.

220. Although the underlying aim of the Bill's participation threshold provisions is to allow engaged owners to make decisions for underutilised Māori land, two submitters were concerned that the proposed thresholds had the potential to allow a minority of landowners to impose their will on the majority. This is exacerbated by the ability to hold a second decision without requiring the participating owner threshold (see cl 45(5)).

221. Some submitters (1 individual, 5 trusts, 1 incorporation, and 1 organisation) suggested that existing Māori incorporations are given the option to adopt the participation threshold provisions in the Bill or retain the quorum requirements for special general meetings as currently provided in the existing Māori incorporations constitution. Others (3 individuals, 1 trust and 1 incorporation) requested that the quorum thresholds be readjusted to enable decisions to be made while avoiding a small group of owners frustrating the process. Ngāti Whakaue Tribal Lands suggested that applications affecting corporate Māori entities should have higher thresholds.

222. Te Tumu Paeroa, however, felt that the proposed participation thresholds were too high and thought that most meetings would fail to reach quorum (with the resultant further time and costs involved with convening a second meeting).

223. To address concerns made about the provisions allowing a second decision to be held when quorum is not reached at the first meeting of participating owners, Ngāi Tahu Māori Law Centre suggested the Māori Land Court becomes involved in the process. If quorum is not reached on two successive occasions, the matter should be referred to the Court, who could determine whether all appropriate efforts to encourage participation had been taken. This would prevent the abuse of process which could take place under the current

proposal. Te Runanga o Ngāi Tahu suggested that cl 45(5) should be deleted as it is important that strict quorum requirements are maintained throughout the decision making process.

Cl 46: Minor cannot vote on decisions and is ignored in calculations about decisions

224. Taheke 8C Incorporation and one other submitter considered it unreasonable that minor's interests are completely ignored. They suggested that the Bill provides mechanisms for court-approved representation where minors have significant interests in land and require those interests to be protected.

Cl 47: Voting for individual freehold interest owned by joint tenants

225. Under this provision, one joint tenant can vote for the other joint tenant who may not be in attendance and may disagree with the vote cast. Such a situation is not covered by the exclusion of vote due to conflict as the other person is not there to state their opposition. Under cl 51 the vote made binds both joint owners. Taheke 8C Incorporation considers this may lead to litigation as normally a non-participating person bound under cl 51 has control of his or her own interest. They have just chosen not to exercise it. In the case of a joint tenancy, someone is exercising their half interest without their agreement and they are not there to protect their interest.

Cl 48: Simple or 75% majority of all owners

226. This provision provides that if a decision must be approved by a specified majority of all owners (75% or some other majority specified in a governance agreement), voting is by reference to all of the shares in the land. Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust noted this provision means that certain votes are determined by reference to all of the beneficial interests in the land, rather than just the beneficial interest of those who vote or one vote per beneficial owner. They would like clarification as to how matters will proceed where persons with beneficial interests in the land fail to vote or engage in voting processes.

Cl 49: Simple or 75% majority of participating owners

227. Clause 49 of the Bill provides that, if a decision must be approved by a specified majority of engaged/participating owners (75% or some other majority specified in a governance agreement), voting is by reference to the shares in the land of those owners who actually participate in the vote. Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust noted this provision means that certain votes are determined by reference to the beneficial interests in the land of those who vote (i.e. engaged/participating owner), rather than by reference to all of the shares or one vote per beneficial owner. The submitters disagreed with relying solely on the votes of those who participate. They would prefer to see an emphasis on engagement with all persons with beneficial interests and all owners rather than engaged/participating owners.

Cl 50: Simple majority of participating owners where votes have equal vote

228. Commenting on cl 50(2), Taheke 8C Incorporation did not think it was appropriate to reference owner making decisions as if they were trustees. In their view, this creates an

agency situation, which will result in the owners owing trust duties for those directions. This provision needs to be amended.

Other issues

229. Ngāi Tahu Māori Law Centre notes that the Bill removes protection for minority owners. Minority owners will not be able to prevent or object to sale of a block if majority owners are able to meet the decision making thresholds in the Bill. The only safeguard for minority owners appears to be the creation of a reservation, as that vote is by show of hands. In their view, this is not an acceptable safeguard as the result of creating a reservation will be a burden on the ability of owners to then utilise and develop that land.

6.4 Whānau trust regime

230. Clauses 52 to 63 change the current whānau trust regime under TTWM Act.

Cl 52: Owner of Māori freehold land may establish whānau trust

231. In one submitter's view, it was not appropriate to define the purpose as a charitable entity. This is a matter that should be left to the court and family discretion.

232. The Not One Acre More submission suggested that this provision would allow land to be sold. This concern was picked up by two other submitters.

Cl 53: Whānau trust (operational while owner living)

233. This provision contains a prescribed list of people who may be included in a whānau trust. Taheke 8C Incorporation suggested that a discretion be included to allow for the establishment of a whānau trust in other circumstances.

Cl 54: Whānau trust (operational on death of owner)

234. This provision contains a prescribed list of people who may be included in a whānau trust. Taheke 8C Incorporation suggested that a discretion be included to allow for the establishment of a whānau trust in other circumstances.

Cl 56: Trustees of whānau trust

235. The PSA asked where these trustees would come from. They pointed out that currently it is:

> *"… difficult to find suitable trustees for whānau trusts. If trustees need to be appointed from outside the whānau, who would pay for their service and what surety would there be that they would act in the best interest of the whānau? Even in the event that trustees were appointed from within the whānau, sometimes whānau members do not all get along, in which case a situation of conflict would arise."*

236. Clause 56(3)(b) requires a trustee to keep, "at all times", beneficiaries informed about the affairs of the trust and any matters affecting the trust property. One submitter wanted to know how it is practically possible for a trustee to keep beneficiaries informed at all times.

In the submitter's view, reasonableness should be included in this clause to protect the trustees.

237. One submitter suggested that trustees should be reappointed every three years.

Cl 58: Responsibilities of trustees if whānau trust terminated

238. This provision provides that promptly after a whānau trust is terminated, the trustees must deliver to the chief executive any money, books of account, and records held in their capacity as trustees of the terminated trust. FOMA felt that the rationale or intention behind this provision is not clear. It seems more logical that the assets, which were held on trust for the benefit of the landowners, continue to be held on trust for that purpose.

239. Two submitters wanted to know the rationale for requiring trustees to provide the chief executive with any books of account and any records held in their capacity as trustees of the terminated trust.

Cl 59: Whānau trusts to be entered in Māori land register

240. Two submitters wanted to know whether there are going to be any costs associated with entering the whānau trust in the Māori Land Register.

Cl 60: Entitlements of beneficiaries of whānau trusts

241. Clause 60(2) provides that the chief executive must record the beneficiary's details, if satisfied that the person is a beneficiary of the trust. Two submitters wanted to know how the chief executive will be satisfied. In their view, this process seems subjective. They also noted that it is not apparent what happens if the chief executive declines to record the beneficiary's details in the Māori land register.

242. The submitters also commented on the ability of beneficiaries to attend and speak at meetings of owners of the Māori land in which they have an interest (see cl 60(3)(a)). They felt this ability undermined the role of the trustee, who in their view should be the only person associated with the whānau trust who should be entitled to speak. They sought clarification whether this provision applied to second or third generation beneficiaries of whānau trusts when they have no personal shares in the whenua.

Cl 61: Jurisdiction of the Court

243. Two submitters wanted to know why the Māori Land Court's jurisdiction was limited to the matters described in 61(1)(a) to (d), and why they were not given jurisdiction to de-register a whānau trust.

6.5 Kaiwhakamarumaru model

244. Clauses 63 to 75 set out the kaiwhakamarumaru model. Nine submitters commented on these provisions (4 were opposed and 5 were unclear). Those opposed to the kaiwhakamarumaru model stated it was patronising and recommended that the relevant provisions should be deleted.

Cl 63: Appointment of kaiwhakamarumaru for owner needing protection

245. Two submitters wanted it clarified whether general land owned by Māori is covered by this cl 63(2)(b).

Cl 64: Who may apply for kaiwhakamarumaru order

246. Two submitters noted that an employee of Child, Youth and Families (see cl 64(d)), a doctor (cl 64(e)), and the Māori Trustee (cl 64(f) may apply for an order of the court to appoint a kaiwhakamarumaru. They wanted to know what circumstances would permit these people becoming involved in this process.

Cl 65: Court may appoint lawyer to represent person if kaiwhakamarumaru application made in relation to property

247. Two submitters suggested that persons appointed under this provision should have court expertise. In their view it is not sufficient that they are simply lawyers. The submitters also noted that a lawyer appointed under this provision is entitled to be paid a fee and reimbursed for expenses from the Māori Land Court Special Aid Fund, which is established under cl 413. Given the number of individuals who may potentially draw down on this fund, they observed that substantial funding will need to be allocated to that fund.

Cl 66: Who may be appointed as kaiwhakamarumaru

248. Clause 66(5) allows the kaiwhakamarumaru to charge any expenses they incur in performing or exercising their functions and powers against the property they are appointed to manage. Two submitters noted that there are no codes of conduct or minimal requirements for the Public Trust / Māori Trustee. In their view, no contract allows them to charge outrageously and disenfranchise the owners.

Cl 70: Circumstances in which court may appoint, replace or remove kaiwhakamarumaru

249. Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust noted that this provision appears to be based on s 383 of the Companies Act 1993, which also permits the disqualification of a director who has been prohibited in other jurisdictions to act in a role similar to a director. The submitters suggest that clause 70(2) be amended to also permit the court to disqualify a person from being appointed as a kaiwhakamarumaru if he or she is prohibited under another enactment from acting in a role similar to a kaiwhakamarumaru.

250. Further, given the protective nature of the role, they suggest that the ground for disqualification relating to fraud should not be limited to fraud in relation to property the kaiwhakamarumaru is managing. Any guilty finding of fraud (in relation to any property) should be sufficient grounds for disqualification. This suggestion was endorsed by the Whakatohea Māori Trust Board, who also felt any criminal conviction should be sufficient grounds for disqualification.

Cl 71: Reporting requirements for kaiwhakamarumaru

251. Two submitters noted that the Māori Land Service will need substantial staff capacity to cover the additional bureaucracy associated with the reporting process set out in this provision.

Cl 72: Inspection of kaiwhakamarumaru reports

252. In relation to cl 72(1), two submitters suggested that more discretion is required. This provision should be less open ended and should not permit "any" person to involve themselves in a kaiwhakamarumaru report, especially as many of these reports will relate to the personal interests of those under 18 years. The provision needs to be more specific as to who can view these reports.

7.0 Disposition of Māori freehold land

253. This part of the report outlines the comments received from submitters on the proposed regime for dispositions and dealing with Māori land, which is set out in Part 4 of the Bill.

254. One-third of submitters (132) discussed disposition of Māori land. There were similar levels of support and opposition for the proposals, with trusts and incorporations more likely to support, compared to individuals and local or national Māori organisations opposing. Many concerns were raised over the irreversibly negative consequences, namely permanent loss of their land and mana, as well as specific legal interpretations of the Bill.

	Support	Oppose	Issues	Number
Individual(s)	19%	36%	46%	70
Trust(s)	36%	12%	52%	33
Local Māori Organisation(s)	0%	36%	64%	11
Incorporation(s)	30%	0%	70%	10
National level Māori organisation	33%	67%	0%	3
Land related professionals	0%	0%	100%	2
Iwi Organisation(s)	0%	0%	100%	1
Other national organisation	0%	0%	100%	1
Council	100%	0%	0%	1
Other				0
Overall	23%	27%	51%	132

7.1 General Themes

255. Most of these submitters spoke about the need to protect their lands. Many commented that Māori land should never be sold. However, if there was a need to do so there had to be a benefit beyond mere pecuniary gain. The sale of Māori land to overseas buyers should be prohibited.

256. The proposals around disposition were seen as easing the ability to sell land, especially when combined with the removal of the Māori Land Court's ability to consider the merits of the sale and status change, and the shift of power to majority shareholders. Significant concerns were raised about the potential for the disposition process to be abused.

257. Retention of Māori land for future generations with whakapapa connections was said to be paramount. The disposition process was viewed as undermining the cultural significance of the whenua.

258. Disposition was seen as a threat to the autonomy of the owners of the land as it weakened their ability to manage their own affairs, many citing concerns around loss of control during the disposition process. Concerns were raised about the possibility of potential misuse in land title transitions, undermining the shares and rights of Māori land owners. The safeguards proposed in the Bill were considered inadequate, especially when compared with those found in the current Act. There was a strong view that they would not protect against alienation and created the potential for minority owners to be unfairly disadvantaged.

259. Concerns were raised about the costs associated with the disposition process, and how the process would affect whānau, particularly the preferred recipient model. There were also concerns around the use of land management plans and issues related to

governance. Instead of adopting the proposals around disposition, it was suggested that amendments could be made to TTWM Act that kept aspects of the current system. For example, there was a strong call for the Māori Land Court to continue to play a role into the future.

260. Views on the proposed thresholds for decision making were polarized. Submitters expressed concern about the proposed thresholds while others agreed with them in principle. Increasing the thresholds to ensure decisions over land disposition were made very carefully was suggested. However, the potential impracticality of introducing the thresholds was pointed out.

261. There were strong sentiments regarding the proposed types of dispositions. Submitters pointed to the possibility of potential misuse in land title transactions. There were also concerns regarding the length that Māori land could be leased under the Bill. One iwi organisation outlined the risks associated in entering into long lease contracts, and recommended the inclusion of mandatory safeguards in leasing contracts. The proposals around land exchange also drew some criticism. There was also a call for further clarification over the concept of amalgamation.

262. Submitters discussed the preferred recipient model, expressing concerns about the potential misuse of this model, the costs associated with the proposed process, and the possibility of permanent loss of their lands as a result. Some concerns were also raised about the costs involved and the impact that these costs would have on some whānau, who may feel obliged to purchase Māori land that was offered for sale. Questions were also raised about the robustness of the model, with many submitters referring to past experience to highlight their concerns.

7.2 Clause by clause analysis

Sale of Māori land and the preferred recipient model

Cl 76: Meaning of preferred recipient and preferred entity

263. "Preferred entity" is defined as either a rangatōpū that manages under a governance agreement other Māori freehold land that has one or more owners who are preferred recipients of the land for disposition or a representative entity.

264. Four submitters (4 trusts) noted that there will be a number of "preferred entities" in relation to a particular parcel, as all that is required is for there to be one common owner. However, a preferred entity is only able to purchase a parcel of Māori freehold land through the preferential tender process. They assumed the definition of "preferred entity" attempts to include as many eligible tenderers as possible (so as to ensure that a market exists for the purchase of Māori freehold land), while ensuring that every preferred entity has some connection with the land being sold. Accordingly, the Trusts do not object to the definition of "preferred entity" in the Bill.

265. Ngāi Tahu Māori Law Centre were not in favour of the 'preferred entity' option. This potentially opens up land ownership to organisations that represent people or interests outside of the class of people currently referred to as the preferred class of alienee. They are concerned that land will be lost if preferred entities are able to purchase. Consequently, they would like the "Preferred entity" category removed from the Bill.

However, if this does not happen, they warn that if a 'preferred entity' becomes an owner of any shares for any reason, that entity should never escalate to the level of 'preferred recipient', just because that entity is an owner. 'Preferred recipients' should only ever include the persons identified in cl 76(1) of the Bill.

266. They also opposed the extension of preferred class to provide for hapū and iwi ownership or for ownership by the rangatōpū itself. This last concern was supported by three other submitters (2 individuals and 1 whānau trust), as well as those who signed the Not One Acre More submission.

267. A preferred entity is a rangatōpū or a representative entity. A representative entity is an entity that represents the hapū or iwi associated with the land in accordance with tikanga Māori and is recognised by the hapū or iwi as having the authority to represent the hapū or iwi. Te Hunga Roia Māori o Aotearoa would like to know who decides whether a particular entity has the required mandate.

268. "Preferred recipient" is defined by reference to certain persons who are associated with land in accordance with tikanga Māori. Tauhara North No 2 Trust noted that not all of the persons so listed are related by whakapapa. The Trust considers that only persons who are related by whakapapa should be entitled to be treated as preferred recipients. They consider that the list of preferred recipients should not include persons who are not related by whakapapa.

269. Te Runanga o Ngāi Tahu noted that preferred recipient includes similar individuals as included under the current Act with a further requirement that they must also be associated with the land in accordance with tikanga Māori. In their view, this additional requirement has the potential to give rise to an increase in litigation to determine entitlements and how the associations to land "in accordance with tikanga Māori" is defined.

270. One submitter noted that preferred recipient also includes past owners. In her view, if past owners have sold their rights in the block they should only have limited rights of association, not the right to be a preferred recipient. The submitter would like to know the purpose behind this inclusion. Many of the whānau have sold their lands for various reasons, but a sale is a sale and you cannot take it back.

271. One submitter noted Te Runanga o Ngāi Tahu Act 1996 states Te Runanga o Ngāi Tahu ("TRONT") shall be recognised for all purposes as the representative of Ngāi Tahu Whanui. They felt this would prevent them as owners from arguing TRONT is not an entity that represents them. If they end up in dispute, an adjudicating mediator is likely to find in favour of TRONT. In their view, owners should be able to decide who their representative entity is.

272. Tauhara North No 2 Trust also noted that the Bill does not indicate whether any of the persons mentioned in cl 76(1)(a) take priority over other persons similarly mentioned. The Trust assumes, therefore, that there is no priority (or preference ranking) for the classes of persons set out in this clause. They suggest that the Bill clarifies this point.

<u>Cl 78: Overview of governance body's agreement to disposition</u>

273. One submitter considered that this provision is overly wordy and should be redrafted in plain English.

274. Taheke 8C Incorporation and Parininihi ki Waitotara incorporation noted that the reference in cl 78(2) was missing.

275. One submitter noted that this provision refers to permissive rather than requiring language. The submitter also commented that the default decision process in cl 78(3) appears to be onerous. Two other submitters agreed that this provision was too permissive and suggested that the word "generally" should be deleted.

276. Parininihi ki Waitotara Incorporation thought it was unclear as to whether the default decision process can take precedence over the 75% of all owners provision or even if it is a valid alternative when Schedule 3, cls 5 to 9 spell out specific majorities. The submitter assumed that the current statutory requirement to achieve 75% of all owners to alienate land continues to apply: however, this needs clarification.

Cl 79: Sale of parcel

277. This provision allows for sale under cl 83 where the governance body has no reasonable prospect of obtaining the required level of owner agreement. One submitter would like to know where the governance body can apply for a declaration as well as how is reasonable prospect to be defined. Two other submitters felt that a high threshold of evidence and due care to locate owners should come before the owners had the ability to sell or buy the lease land without notification to owners.

Cl: 80 Sale of parcel in ordinary cases

278. One submitter noted that the preferential tender process is a full tender requiring advertising. This will be cost prohibitive for small owners who wish to sell. For a governance body they must have the expertise to negotiate their own terms of sale or the tender process.

279. Commenting on cl 80(5), one submitter noted that if there is a sale it must be conditional upon either the court making an order confirming it complies with the requirements of the Bill or otherwise be agreed as unconditional within 9 months after the decision is made. The submitter asks whether this means that if an owner does not it done within the 9 months, the owner must go through the whole process again. Two other submitters wanted to know why 9 months was chosen for this timeframe.

280. Two submitters (1 individual and 1 whānau trust) disliked the fact that the Court's role in this process is restricted to confirming that the transaction complies with the requirements of the Bill. They compared this role to that contained in the current Act, which requires the Court to consider all interests. This approach was seen to be better as it protects Māori land against alienation.

281. Commenting on cl 80(6), one submitter noted that if the tender does not produce a sale, then the owner can sell to any other person as long as they do so within the 9 month period. Two others submitters (1 individual and 1 whānau trust) expressed concern that this provision would allow the sale of Māori land to people who do not whakapapa to that land.

Cl 81: Preferential tender process for sale of parcel

282. One submitter referred to the increased costs associated with the preferential tender process for the sale of a parcel of Māori land. They note the preferential tender process requires advertising, even though this may or may not lead to a sale. This will impose significant costs on the owner. In their view there should be allowances for instances where for example: (i) the land is to be sold to a child of the owner; or (ii) the land is so small or the value of the land is such that to undertake the tender process would be more than the property itself is worth. Another submitter agreed that the notice requirements for the preferred tender process are onerous, especially as direct notice to the preferred entities would capture most preferred recipients.

283. Ngāi Tahu Māori Law Centre also did not support the preferential tender process. Firstly, because the process is difficult to follow. Secondly, because advertising that the land is for sale in newspapers is unlikely to reach people who qualify as preferred recipients. They recommend that, as part of sale applications, the Bill require that governance bodies provide extensive submissions as to efforts they have made to notify every owner personally of their intentions, rather than just to tick the box in terms of newspaper advertising. In this regard, they consider newspaper advertising of preferential tender to be an archaic method. Electronic advertising is likely to reach more people. Te Rakaupai te Iwi Turoa Trust expressed similar comments about the preferential tender process.

284. One submitter expressed different concerns about the preferential tender process. The submitter felt that it would require owners to go to the preferred class first without having fully tested the market. This could result in sales at prices less than could be obtained on the open market and this would not be in the best interests of the owners.

Cl 82: Exchange of parcel

285. Ngāi Tahu Māori Law Centre noted that there seems to be a mind-set evident in the Bill that, if a block of Māori land is sold and another piece is purchased in replacement, this balances or cancels out the loss of the original block. Such thinking disregards tāonga tuku iho and the connection that owners have with their whenua. Owners may have no connection to a replacement block of land. The replacement land may not have been occupied by previous generations, and may not be the land in which the whenua (afterbirth) or pito (umbilical cord) of the whānau are buried. These could be located on the lands that have been sold or exchanged. For these reasons, they are opposed to the option of Māori land being sold for the purpose of purchasing a replacement block, without extensive investigation as to the history and association with that land.

286. Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust commented that cl 82(10) appears to contain an incorrect cross-reference to itself (i.e. a cross-reference to cl 82(10) in cl 82(10)). This needs to be corrected.

Cl 83: Order declaring that land ceases to be Māori freehold land on sale or exchange by governance body

287. The Ngāi Tahu Māori Law Centre noted that under this provision if there is not sufficient agreement amongst the owners, the Māori Land Court can remove ‘Māori land’ status to allow land swap or sale to improve other Māori freehold land. If there is not sufficient agreement amongst the owners, they are opposed to there even being the option of such

a sale continuing. In their view, governance bodies should never be able to alienate Māori land without owner agreement, particularly by sale. Despite the provision that a 'land management plan' is required as part of a sale (see cl 83(3)(a)), the ability for the governance body to sell land without owner approval is unacceptable. Requiring a land management plan is not a sufficient safeguard, as a land management plan only needs to be approved by 75% of participating owners – making the sale threshold lower.

288. One submitter stated that this was a complicated process, which requires governance bodies to go from one end of the Bill to the other. Further there is an open-ended provision for "any other necessary modification" which leaves open other processes to be required". This will cause confusion and is not clear as to obligations.

289. Two other submitters agreed with this view asking why it was necessary to make the parcel general land before it can be sold. This was backwards thinking and highlighted a mistrust in the behaviour of governance entities.

Cl 84: Other requirements before governance body offers to sell parcel of exchanges parcel

290. One submitter stated that this was a complicated process, especially for smaller entities having a land management plan.

291. There is a requirement under cl 84(3) that if the governance body sells land they must use the proceeds to buy other land and must change status if required to Māori freehold land. One submitter felt that this was counter intuitive to the right of owners to develop their resources. Lands are sold for capital and Māori should not face such limitations, which the exception of what is agreed in the governance agreement. They recommend that the requirement that land asset sale proceeds be used to buy more Māori land be removed for corporate Māori entities.

Cl 85: Gift of parcel

292. Two submitters thought this provision confusing.

Cl 86: Transfer of parcel for settlement on trustees

293. Two submitters would like to know why trustees are prohibited from having land parcels settled on them.

Cl 87: Agreement to certain disposition of parcels under enactments

294. Ngāti Whakaue Tribal Lands and Taheke 8C Incorporation expressed concern about the taking of land through esplanade strips under the Bill. They pointed out that taking Māori land for esplanade strips is not currently allowed under TTWM Act. Clause 87(5) takes that protection away and in fact enables land to be taken via agreement. In their view, councils will look to this clause to enable plans to provide for such arrangements rather than excluding Māori land completely. They suggested that it be deleted. Two other submitters (2 individuals) agreed that this provision formalises the acquisition of more Māori land by the Crown, something they found unacceptable.

295. Referring to the example used, one submitter noted that creating an esplanade strips over land under the Resource Management Act 1991, run contra to what is agreed under the

Rotorua District Council and is a negative for Māori land retention. In their view, cl 85 should be deleted and the status quo of protecting and retention of Māori land from taking by councils for esplanade strips is enshrined.

Boundary adjustment of Māori freehold land

Cl 89: Boundary adjustment of parcel

296. Two submitters considered that this provision was confusing and requested that it be reworded.

Cl 90: Actions required for boundary adjustment

297. Clauses 90(4)(a)(ii) and (iii) apply different voting thresholds to approve a boundary adjustment based on the area of land affected by the boundary adjustment. Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust pointed out that the percentages in these clauses are in the wrong order. It would seem that a boundary adjustment that changes an area by 2% or more should be approved by a 75% majority, rather than a simple majority. Conversely, it would seem that a boundary adjustment that changes an area by less than 2% should be approved by a simple majority, rather than a 75% majority.

Partition of parcel of Māori freehold land

Cl: 92 Partition of parcel

298. Taheke 8C Incorporation raised concerns about the proposed process to partition a parcel of Māori freehold land. Under this process, owners will have to undertake a resource consent process. They noted that partitioning often happens for example where owners wish to be able to put a house on it for one of their children. Partitioning enables the child to apply for mortgage finance as the owner. To treat the partition as a subdivision will be prohibitive as: (i) around the country many councils are enforcing strict rules and conditions on subdivision. For Māori land often with little land value this will be a prohibitive effect; (ii) much of Māori land is in rural areas with set subdivision block sizes. The impact of fragmentation may mean the size of the land that can be partitioned is well below the subdivision rules. This will in effect limit the development of land and opportunities of Māori to use the land for housing; (iii) No local authority is going to undertake this role for free and consents (even non notified) cost thousands for the consent applicant; (iv) it is inappropriate for a local authority to "decide" conditions for a partition order. The court will have no discretion. In their view, local authorities should not in effect have judicial authority. Rather they should have recommendatory powers only.

299. Two submitters disagreed that the mortgagee is entitled to sell Māori land. In their view, this opens up the possibility of more loss of Māori land.

Cl 96: Effect of partition

300. One submitter expressed surprise that following a partition a notation can be put on the title saying that the status of land cannot be changed. While that provision might assist in retaining status, the submitter was concerned that a piece of land that is partitioned could never have its status changed. In her view, such a provision would be “draconian in the extreme and would not meet the purported aims of autonomy and utilisation”. It might not

also protect the interest of Māori land owners as their interests might best be served by change of status.

Amalgamation of parcels of Māori freehold land

Cl 97: Amalgamation of parcels

301. Two submitters felt that cl 97(4) was confusing, and asked for this provision to be reworded and examples provided.

Aggregation of parcels of Māori freehold land

Cl 101: Aggregation of ownership of parcels

302. Two submitters felt that this provision was confusing and imposed more layers of bureaucracy. They want it clarified why only two parcels of land can amalgamate and not more. In their view, this forces individual owners to form a collective ownership in order to amalgamate.

Cl 103: Allocation scheme for parcels on aggregation of ownership

303. Two submitters thought that the term "class of collective owners" was confusing and wanted better terminology used.

Grant of lesser interest over parcel of Māori freehold land

Cl 108: Lease of parcel

304. Clause 108(2) provides that Māori freehold land cannot be leased for more than 99 years. This is a new restriction that is not present in the current Act. Six submitters (2 individuals and 4 trusts) wanted to know why the limit on lease length was introduced. Four submitters (3 individuals and 1 trust) wanted long-term leases done away with, with another submitter noting that they had been used previously and resulted in current owners losing touch with their land. Others supported their inclusion but noted the risk that as owners could enter into terms that might not necessarily be in their best interest, especially as these will be locked in for generations.

305. Te Runanga o Ngāi Tahu pointed out that similar leasing regimes suggest that in the last 10 years prior to return, improvements cease and the land is returned in a poor state. To mitigate this issue, an improvements regime must be included in the lease. They recommend that any 99 year leases (or long term leases) must include 15 year reviews of the terms of the lease as a minimum; and a regular improvements regime should be developed as part of land and infrastructure management and reviewed as part of the 15 year reviews.

306. It was noted that cl 108(3) imposes a higher threshold for the leasing of Māori freehold land than under the current Act. Under TTWM Act, a lease of less than 3 years is not an alienation, such that it is not required to be approved by the owners. Further, under the Act only a long-term lease (a term of more than 52 years) is required to be approved by a simple majority of all owners (noting that a lease of a shorter term is to be approved by trustees or pursuant to a resolution carried at a meeting of assembled owners). Te

Rakaupai te Iwi Turoa Trust and Tuwharetoa Māori Trust Board proposed that the legislation should allow for a shorter term lease approval by Trustees in light of added administration costs.

307. Clause 108(4) provides that any lease of Māori freehold land not managed under a governance agreement for a term exceeding 52 years must be approved by a 75% majority of participating owners. Te Rakaupai te Iwi Turoa Trust and Tuwharetoa Māori Trust Board noted this provision imposes a different threshold to approve long-term leases than the current Act. Under the TTWM Act, a long-term lease must be approved by half of the owners (if shares are not defined) or by persons who together own at least 50% of the beneficial freehold interest in the land. They were concerned about approval by participating owners rather than all owners.

308. Clause 108(5) provides that a governance body can only lease Māori freehold land to itself or an entity controlled by the governance body if it is expressly permitted by the governance agreement. However, if there are already leases in place of this nature, there is currently no express savings provision in the Bill to ensure that leases of this nature agreed to prior to the Bill's enactment not be affected by the Bill. Four submitters (3 trusts and 1 incorporation) opposed the new lease restrictions and suggests that existing leases of this nature be saved.

309. Clause 108(7) provides that a lease granted to a governance body, or to an entity controlled by the governance body, cannot be assigned or subleased. Three submitters (3 trusts) opposed the new lease restrictions and suggested that existing leases of this nature be saved.

Cl 110: Mortgage or charge over parcel

310. Two submitters considered that a leasehold estate should not be mortgaged against the title of the whenua giving banks and lending companies the opportunity to gain control of the whenua. In their view, this is land grabbing.

Cl 111: Occupation lease or licence over parcel

311. Two submitters wanted to know why 80 years was chosen for the length of an occupation lease. Another submitter considered there should be no leases in perpetuity, criticising the inclusion of such leases in cl 111(2)(b).

312. Two submitters considered that given the long-term consequences of the decision decisions to lease should have a higher threshold than that set out in cl 111(3)(b). One submitter agreed that the threshold for occupation orders (75% of participating owners) was too low, and recommended this be changed.

313. Clause 111(5) provides that only owners will be able to get leases or licences for occupation. Ngāi Tahu Māori Law Centre noted that:

> *"… many non-owners of Māori land have long term leases over Māori freehold land for the purpose of occupation, and those non-owners often also own the improvements on the land. If non-owners are unable to get long term leases, lasting at least 10 years with rights of renewal to at least 52 years, the ability of kaitiaki to create revenue will be significantly restricted."*

314. In their view, the decision whether or not to give long term rights of occupation to non-owners is one for owners to make. A provision should be included for non-owners to be able to obtain long term leases or licences for occupation with owner agreement. Two other submitters endorsed the recommendation to open up occupation leases to non-Māori.

315. Two submitters disagreed that an occupation lease or license can be disposed of by will. In their view, this may open things up to abuse by those who do not whakapapa to the land, and may encourage squatting.

316. The Tauhara North No 2 Trust and Lake Rotoaira Trust noted that cl 111(9) provides for a definition of "immediate family" that only applies to this clause. The term is defined in cl 5, but is given an expanded meaning in this clause. The submitters were unclear whether the definition in cl 5 is overridden by the definition in cl 111(9). They would like the clause to state, for the avoidance of doubt, that the definition of "immediate family" in cl 111(9) expands, but does not replace, the definition of "immediate family" in cl 5.

317. Two other submitters commented on the definition of "immediate family" noting that the phrase 'legal responsibility for the grantees welfare and best interests' could mean a local solicitor or home care provider.

Cl 113: Grantee of occupation lease or license may gift unexpired term

318. Three submitters (3 trusts) noted that cl 113(2)(b) and (c) both include references to children of the grantee. Clause 113(2)(c) should only refer to grandchildren, as children are captured by cl 113(2)(b).

Cl 114: Easement over parcel

319. Two submitters disagreed that the Māori Trustee should have preferential rights above others.

Cl 116: Kawenata tiaki whenua over parcel

320. Te Rūnanga o Ngāi Tahu considered the proposed provisions around kawenata tiaki whenua to be a positive approach to preserve or protect sites of cultural or historical interest or sites of special significance. The kawenata tiaki whenua will have the ability to add a further layer of protection by alerting anyone dealing with the land that there are wāhi tapu that exists on the lands through the computer freehold register. However, they raised concerns about the process around how this is undertaken. It is unclear how the process is initiated (via the chief executive or the Māori Land Service) or whether the process is simply via direct dealing with the Registrar General. They suggested that:

> *"The kawenata tiaki whenua provisions should be utilised alongside other protective mechanisms (e.g.: in other legislative regimes) to ensure wāhi tapu are fully protected; and protection of wāhi tapu should be applied to all land not only land managed under a governance agreement."*

Cl 118: Effect and notation of kawenata tiaki whenua

321. Two submitters wanted to know the costs associated with registering a kawenata tiaki whenua.

Sale, gift, exchange, and mortgage of individual freehold interest in Māori freehold land

Cl 119: Disposition of individual freehold interest

322. This provision provides that individual freehold interests in land may be sold or gifted to a preferred recipient or a rangatōpū. A preferred recipient must be associated in accordance with tikanga Māori to the land. Te Hunga Roia Māori o Aotearoa would like to know what this means. In their view, the wording of the provision has the potential to exclude whāngai, adopted children and the children of non-Māori owners.

323. The Raukawa District Māori Council raised the issue of individual share trading. They commented that shares acquired from owners by a governance body entity are normally distributed to the remaining shareholders in proportion to their shareholdings. Such an approach presents a risk that where the controllers of a governance body have major shareholdings or associate with major shareholders, they may embark on a purchase programme that strengthens those holdings and eliminates or compromises the shareholders on other family lines. In their view, the land should be gradually returned for the general benefit of the hapū or whānau customarily associated with the land. They suggested that where the governance entity itself buys shares, as provided for in clause 119 (2)(a)(ii), the shares will be separately held, the income to be applied to the general purposes of the governance body, and ultimately for the general charitable benefit of the whānau or hapū originally associated with the land.

324. Two submitters felt that cl 119(3) was confusing and asked that the provision be rewritten and examples provided.

325. Taheke 8C Incorporation asked where in the Bill is it clear what undivided interests are and whether they can be disposed of. If they cannot be disposed of then this will have a significant impact on shareholders in current Māori incorporations and trusts whose interests will become undivided interests upon the enactment of this Bill. The submitter suggests that owners in Māori incorporations and trusts retain shares and all rights accorded to them.

326. Taheke 8C Incorporation also noted that in cl 119(2)(b) (as well as cl 120(1)), reference is made to exchange for "something else". This is not clear language. They noted that cl 120(2) to (6) makes it clear the something else is land. In their view, the clause should say that.

Cl 120: Exchange of individual freehold interest

327. Two submitters asked whether this provision would apply to a Māori land and general land swap. If so, this defeats the retention of Māori land as the tenet of the current law.

Cl 121: Disposition made by instruments

328. Two submitters commented that this provision underscores the complex diminishment of the Māori Land Court. They are concerned that the mainstreaming of Māori land forces owners to use LINZ instruments, which in their view is inappropriate.

Cl 124: Registering dispositions on land title register

329. Two submitters would like cl 124(2) clarified as to what happens to successions, wills and swap/gifts. They would also like to know the cost associated with the registration process under cl 124(4)

Cl 127: Orders about compliance with enactments after instruments recorded

330. Three submitters (3 trusts) commented on cl 127(2), which provides that an application to the Court for an order as to whether a disposition complied with the requirements of any enactment can be made by any person who considers that the disposition did not comply with the requirements of the enactments. They note that any person may make such an application, even if they are not interested in or affected by it. They recommend that this clause be amended such that only a person with an interest in the matter (e.g. an owner or a beneficiary) can make such an application to the Court.

Cl 132: Application of Part 3 of Property Law Act 2007 to mortgage of Māori freehold land

331. Two submitters noted that being able to mortgage and gift/sell outside the owners will change the Property Law Act's rates charges. They seek clarification if the land is then able to be seized by council for non-payment of rates and if special dispensation for rates will be negotiated on the owners' behalf. They noted that many Māori are not in the position to pay rates and are in arrears.

7.3 Other issues

Saving provision for existing leases

332. Four submitters (4 trusts) noted that there does not appear to be a savings provision for existing leases, contracts and other agreements that existing entities have in place. This is particularly important where those existing arrangements may not be permitted by the Bill. They suggest the Bill includes a savings provision for existing arrangements to ensure that those arrangements, particularly those not permitted by the Bill, are saved for their life and any renewal term/s in those arrangements.

8.0 Kaiwhakarite

333. Subpart 1 of Part 5 enables the Court to appoint an administrative kaiwhakarite to act on behalf of the owners of Māori freehold land for particular purposes. These purposes are similar to the existing provisions for the appointment of an agent (Part 10 of TTWM Act). Subpart 2 permits the chief executive to appoint a managing kaiwhakarite to manage Māori freehold land where the land is not currently managed under a governance agreement, it would be impracticable for the owners to appoint a governance body within the next 12 months and there is reasonable potential for the land to generate "a net return" for the owners.

8.1 General Themes

334. Forty-eight submitters discussed the kaiwhakarite proposals. While a few submitters expressed support for the proposals, most were opposed to their inclusion.

Kaiwhakarite type	Support	Oppose	Concerns raised	Number of Submissions
Administrative Kaiwhakarite	17%	58%	25%	27
Managing Kaiwhakarite	18%	55%	27%	45

335. The proposals were described as "patronising" and some submitters were reminded of the way agents were used in the past to facilitate the alienation of Māori land. They feared the proposals would result in a similar outcome. While these agents were appointed 'in the best interests of the owners', with the fullness of time it was proven not so. There was also a concern that the kaiwhakarite proposals were the first step in the government taking over decision-making for lands with no governance structure. Submitters raised concerns about the powers of kaiwhakarite which were perceived to be extensive, the lack of judicial oversight, and the length of their appointment.

336. The rationales for appointing kaiwhakarite were questioned. It was noted that the proposed appointment of kaiwhakarite did not support, empower or assist Māori to remain independent and self-sufficient. There were various reasons why owners were not engaged with their land. Some of these were outside an individual and/or whānau control, such as family disputes, lack of education, absence of finance and tikanga (respecting the wishes of your elders to preserve the land in its natural state). It was noted that many blocks of land have historic significance to the whānau or hapū who own them. They may have no wish to disturb the mauri of that land for capital gain. In such circumstances, it was not appropriate to appoint a kaiwhakarite on the basis that the land was under-utilised.

337. There was a call for the provisions relating to kaiwhakarite to be removed from the Bill.

8.2 Clause-by-clause analysis

Administrative kaiwhakarite

338. Twenty-seven submitters (10 individuals, 8, trusts, 2 incorporations, 2 iwi organisations, 1 national Māori organisation, 2 local Māori organisations, 1 other organisation and 1 council) provided comments on the provisions relating to administrative kaiwhakarite that are set out in subpart 1.

Cl 134: Court may appoint administrative kaiwhakarite

339. Clause 134(1)(a) provides that the court may appoint administrative kaiwhakarite to oversee a governance body's preparation and implementation of a full distribution scheme under cl 207. Taheke 8C Incorporation considered it more appropriate to make this appointment at the point of distribution, and suggested the Bill be amended accordingly.

340. Four submitters (2 individuals, 1 trust and 1 national Māori organisation) expressed concern that the Māori Trustee would become the default kaiwhakarite for leasehold land (see cl 134(2)).

341. Te Tumu Paeroa noted that the definition of "administrative kaiwhakarite" (see cl 5) needs amendment as it is the court not the chief executive who appoints under cl 134.

Cl 135: Purposes for which administrative kaiwhakarite may be appointed for land not managed under governance agreement

342. Clause 135 outlines the purposes for which administrative kaiwhakarite may be appointed. One submitter commented that "these appear aimed at making the process for third parties to engage with the land easier, rather than for Māori owners to deal with the land: which was concerning".

343. The submitter noted that under cl 135(2)(a) one of the purposes for which an administrative kaiwhakarite may be appointed is to carry out the decisions of the owners. The submitter was concerned how this will be effected given that administrative kaiwhakarite are not appointed by the owners or may be appointed without their consent; do not have to engage with owners to ascertain what their decisions are; and are not required to report to owners. Moreover, owners do not have the ability to terminate their appointment.

344. Clause 135(2)(j) provides that another purpose is to borrow money to fulfil the purpose for which the administrative kaiwhakarite is appointed and to give security, for repayment of that borrowing, over the land or over any proceeds arising from disposal of the land. Given the risk that such actions may expose the land to forfeiture, two submitters suggested that owner approval should be sought when borrowing money.

345. Te Tumu Paeroa noted that the list of purposes for which administrative kaiwhakarite may be appointed are limited to those specified in this provision. However, it is not possible to envisage all purposes for which an administrative kaiwhakarite may be needed. The section should include a further clause: "any other purpose where the court is satisfied that an appointment of a kaiwhakarite is necessary".

346. However, another submitter expressed concern about the range of purposes for which an administrative kaiwhakarite may be appointed. She believed that this could lead to the disposal of the land, a result that would be in conflict with the owner's right to manage their land as they see fit.

Cl 136: Responsibilities of administrative kaiwhakarite

347. Clause 136(2) sets out the responsibilities administrative kaiwhakarite have to the owners of Māori freehold land that they are acting on behalf of. Two submitters argued the provision was not clear that administrative kaiwhakarite had to listen to the owners. They wanted a threshold, code of contract or contract in place between the owners and the administrative kaiwhakarite.

348. Te Tumu Paeroa, however, did not think that the administrative kaiwhakarite should be required to consult with owners about action proposed to be taken except where directed by the Court (see cl 142(1)(b)). In any other case, it should be left to the judgement of the administrative kaiwhakarite as to whether owner consultation is necessary.

349. Te Tumu Paeroa also commented on cl 136(2)(c), which requires an administrative kaiwhakarite to comply with any directions of the owners given under cl 142(4)(a). This provision includes the proviso that the directions must be consistent with the statutory obligations and terms of appointment of the administrative kaiwhakarite. Te Tumu Paeroa did not consider it tenable to expect an administrative kaiwhakarite to comply with a direction of owners in all cases (for instance, where administrative kaiwhakarite are not satisfied that compliance with the direction will protect the interests of owners in relation to the purpose of their appointment).

350. Ngāi Tahu Māori Law Centre suggested that a process should be established whereby the Māori Land Court records any decisions made by administrative kaiwhakarite, so that this information is on record if owners do succeed and take over the use and management of their land in the future.

Cl 138: Process for appointing administrative kaiwhakarite

351. This clause sets out the process for appointing an administrative kaiwhakarite. Submitters expressed support for the involvement of the Māori Land Court in the process. However, there was concern that the Court could make appointments on its own initiative or on the application of an interested person. One submitter considered this gave considerable power of appointment to the Court without requiring owner authority. Another submitter was concerned that this proposal would be used by third-parties to take over and develop Māori land. They referred to policies under the Māori Affairs Amendment Act 1967, which saw many corporate entities appointed to advance the national agendas of afforestation without securing long-term benefits or protection for the lands or their owners.

352. As part of the appointment process, the chief executive is required to arrange a meeting of the owners of the land. However, under cl 138(3) the chief executive does not need to arrange the meeting in certain circumstances. One of these is if the court is satisfied the matter requiring the appointment is sufficiently urgent (see cl 138(3)(b)). Two submitters expressed concern about the wording used in this provision and requested that it explain what is meant by “sufficiently urgent”.

353. One submitter also commented on the loose language used in this clause. The submitter noted the important role that administrative kaiwhakarite have and the effect their actions could have on Māori land interests. The submitter felt that a meeting of owners should always be held, especially as this would be in line with the principle of autonomy. In the

submitter's view, the court should not be able to make the decision to appoint an administrative kaiwhakarite without any option being put to owners of the land.

354. Te Tumu Paeroa suggested cl 138(5) be amended to make it clear the court has an obligation to send the order appointing an administrative kaiwhakarite to the appointed party.

Cl 142: Court may require administrative kaiwhakarite to report to owners

355. This clause outlines situations when an administrative kaiwhakarite is required to report to the owners. One submitter noted that this obligation is not mandatory. The Court "may" direct the administrative kaiwhakarite to report to owners if an application from the owners or an interest party is received. The submitter argued that "reporting and engaging with owners is a fundamental process as it will help administrative kaiwhakarite ascertain what the owners want to achieve with the land".

Cl 143: Court may make order relating to costs of administrative kaiwhakarite

356. Te Tumu Paeroa suggested that the intention of this provision be clarified. It was unclear whether such costs would include reporting to the court and owners under cl 141 and cl 142 and any associated costs of the proceeding. Otherwise this cost should be treated as a payment for services under cl 140, which should be clarified accordingly.

Cl 144: Termination of appointment of administrative kaiwhakarite

357. Clause 144 sets out the manner in which the appointment of an administrative kaiwhakarite can be terminated. While this provisions sets out various situations in which an appointment may be terminated, one submitter noted that none of these provide the owners with the ability to terminate the appointment unless they appoint a governance body for the land. The closest they get is if a meeting of owners is directed by the Court and at the meeting the owners agree to replace the administrative kaiwhakarite.

Cl 145: Responsibilities of administrative kaiwhakarite if appointment terminated

358. This clause requires a person whose appointment as an administrative kaiwhakarite is terminated to deliver to the court as soon as practicable anything held by the person in their capacity as administrative kaiwhakarite. Te Tumu Paeroa suggested that this requirement should exclude communications and documents subject to a legal professional privilege in favour of the administrative kaiwhakarite.

Managing kaiwhakarite

359. Forty-five submitters (18 individuals, 13, trusts, 1 incorporation, 4 iwi organisations, 3 national Māori organisations, 4 local Māori organisations, 1 other organisation and 1 council) provided comments on the provisions relating to administrative kaiwhakarite that are set out in subpart 1.

Cl 147: Chief executive may appoint managing kaiwhakarite

360. Submitters expressed concern that the chief executive could appoint a managing kaiwhakarite at his or her own initiative (see cl 147(1)). Ngāi Tahu Māori Law Centre

considered this should be done by the Māori Land Court, who should have an oversight role with regard to all kaiwhakarite actions.

361. Te Runanga o Ngāi Tahu was also concerned that the process for appointing a Managing Kaiwhakarite requires no application. The Chief Executive can unilaterally appoint a manager with no consultation with, or consideration of the views of whānau. They suggested that

> *"… whānau or owners should be able to make the decisions of whether an appointment of a Kaiwhakarite is necessary. Where it is deemed that an appointment of a Kaiwhakarite is necessary then mandatory reporting requirements need to be established to ensure whānau are kept informed during the appointment process."*

362. The issue of owner consent was raised in several other submissions. For instance, one submitter spoke of the risk to Māori land blocks if a managing kaiwhakarite was appointed who did not have the full support and genuine goodwill of the owners of the land. In the submitter's view, there need to be "stronger provisions for the review of the kaiwhakarite appointment process so as to ensure that owners have been actively engaged in their appointment".

363. One submitter considered that given the role and responsibilities of a managing kaiwhakarite, the fact that they will be paid from the income of the land and that they will be appointed for a term of 7 years, owner consent should be a requirement.

364. Clause 147(4)(a) sets out who is eligible to be appointed as a managing kaiwhakarite. Such persons include the Māori Trustee. One submitter opposed the Māori Trustee's inclusion.

365. Clause 147(4)(b) sets out the matters the chief executive must consider when determining whether a person is qualified for appointment as a managing kaiwhakarite. This includes the connection between the person and a hapū or whānau associated with the land to be managed (see cl 147(4)(b)(iii)). Ngāi Tahu Māori Law Centre agreed stating that whenever possible "a shareholder in the land with appropriate expertise should be appointed as a managing kaiwhakarite. Alternatively, the managing kaiwhakarite should be based in the area that the land itself is located". Te Tumu Paeroa, however, commented that this consideration should not be a relevant matter when considering whether to appoint the Māori Trustee as a managing kaiwhakarite.

366. Ngāi Tahu Māori Law Centre recommended the inclusion of a provision specifying that managing kaiwhakarite must have

> "… an understanding and acknowledgement of the specific tikanga and spiritual connection that owners have to the whenua in question. Failure to acknowledge this may result in actions taken which are inappropriate or grossly offensive to owners. It is important that they bear in mind that Māori land is tāonga tuku iho. For some whānau, having land bare, accessible and untouched is tika."

<u>Cl 148: Responsibilities of managing kaiwhakarite</u>

367. Clause 148(1)(a) requires managing kaiwhakarite to apply best practice in managing the land and undertaking any activities in respect of the land. Raukawa District Māori Council pointed out that best practice may mean best practice for corporates, but best practice for

Māori may be kaupapa Māori or tikanga. They recommended that this provision be amended to require kaiwhakarite to have proven skills and respect for tikanga and kaupapa Māori. The Bill might also add by way of example that "where employees are needed, it would be tika to engage willing and able employees who whakapapa to the land or are of the hapū associated with it".

368. Managing kaiwhakarite are required to report to the chief executive on their performance within the first 12 months after being appointed and, thereafter, at intervals not exceeding 12 months. The Wahiao Māori Committee considered that the performance of managing kaiwhakarite should be annually reviewed by the Māori Land Court.

Cl 150: Powers of managing kaiwhakarite

369. Cl 150 provides that a managing kaiwhakarite may do anything necessary for the purpose of carrying out the responsibilities of the kaiwhakarite subject to any conditions imposed by the chief executive in the notice of appointment.

370. One submitter recommended that the power of kaiwhakarite to enter into leases be limited so that they are not able to enter into leases longer than 3 years (which may only be extended twice). This will avoid a repeat of the past where land alienated by the Māori Trustee was inaccessible to the owners for several decades.

371. The same submitter suggested that managing kaiwhakarite ensure that any development planning includes a provision that a minimum of 5% of the entire size of the parcel (or an area sufficient for housing/camping/accommodation) be set aside for the exclusive use of the owners. In addition, any area of significance to the owners must not be encumbered by any arrangement the managing kaiwhakarite makes as part of their role.

372. Maniapoto Māori Trust Board and two other submitters suggested that the powers of managing kaiwhakarite should be spelt out fully in the Bill.

373. In this regard, there was a strong view that a managing kaiwhakarite should not have the power of alienation. As Ngāi Tahu Māori Land Centre noted their primary responsibility should not be maximising profit but "to locate shareholders and managing the land in a "holding pattern" until owners are in a position to make their own decisions regarding their land. Any developments should be low density, and easily removed should the owners so wish. There should be no power to designate land as a reservation, or otherwise lock up or encumber the land." They also need to actively and continually seek to engage with all landowners during the course of administrative the land.

Cl 151: Process for appointing managing kaiwhakarite

374. Clause 151 outlines how a managing kaiwhakarite will be appointed. Sub-clause 151(1)(c) lists various conditions the chief executive must be satisfied about before the appointment is made. One of these is that there is reasonable potential for the land to generate a return for its owners (cl 151(1)(c)(v)). One submitters asked what evidence would be used to make this determination and who would be consulted in the process (i.e. developers, surveyors, council planners, private and overseas investors).

375. The provision requires the chief executive to endeavour to notify all the owners of the land of the proposal to appoint a managing kaiwhakarite. One submitter noted there was no

threshold for how many owners must be notified. This was concerning. The Raukawa District Māori Council suggested the chief executive "notifies Māori groups that may have a customary association with the land including any representative of an associated hapū or iwi". If it appears that an insufficient number of owners have been contacted, the chief executive should have to take into consideration the objections of others who appear to have a customary association.

Cl 152: Notice of appointment

376. Clause 152(1)(a) provides that the term of appointment of a managing kaiwhakarite must be a fixed term of at least 7 years. Two submitters were concerned about the length of time for the appointment. They considered a period of 7 years excessive.

377. Ngāi Tahu Māori Law Centre considered that the election and appointment of kaiwhakarite should be recorded by the Registrar of the Māori Land Court.

378. Te Tumu Paeroa noted that those interested in taking on appointment as a managing kaiwhakarite should be able to

> *"… apply for and where appropriate receive agency funding to consider optimum land use and development opportunities. It is unclear how the feasibility type costs will be met. If agency funding will not be available, section 152(1)(c) (which sets out what the notice of appointment must contain with respect to fees and reimbursements) should clarify that this could include approved pre-appointment costs incurred."*

379. Clause 152(2) allows for the notice of appointment to be amended. Two submitters recommended that such amendments should only be made after input from owners.

Cl 153: Distribution of income generated from operations of managing kaiwhakarite

380. Two submitters made a number of comments about this provision. They wanted to know:

- Where is the money coming from to pay for chief executive services imposed on owners? (cl 153(3))
- How long can the chief executive invest owners' money for (see cl 153(3)(c));
- What is the limit of the management fee for their services? What is reasonable? (see cl 153(3)(d))
- Why is the Māori Trustee the default entity to transfer undistributed monies? (cl 153(6)(b))

Cl 154: Managing kaiwhakarite entitled to recover certain amounts out of income from land

381. Eight submitters (3 individuals, 2 trust, 2 iwi organisations, and 1 national Māori organisation) commented on the payment of managing kaiwhakarite. Four submitters expressed concern that such payments are to be deducted from the income of the land. They noted that many land blocks were small and the income generated would not be able to support costs of this kind.

382. One submitter supported remunerating kaitiaki for good performance; but only on the basis that the payment reflects actual trustee work done and that there is sufficient income to justify payment. Two other submitters suggested the Bill clarifies and gives examples of

the fees, remuneration, reimbursements and other amounts that the kaiwhakarite can charge. These charges cannot be limitless. Another submitter stated that fees and reimbursements must not exceed market rates.

Cl 156: Managing kaiwhakarite entitled to retain operating budget out of income

383. Two submitters noted the wording of this clause was open-ended. Consequently, they considered this provision to be an unacceptable backwards step.

Cl 157: Rights of owners while managing kaiwhakarite appointed over land

384. Clause 157 provides that the appointment of a managing kaiwhakarite does not change the legal or beneficial ownership of the land.

385. Te Tumu Paeroa points that, as legal ownership of the land remains vested in the owners, only the owners or an agent acting on their behalf would be able to enter into a lease or licence in respect of the land or owner assets. Consequently, a managing kaiwhakarite would have no power to commit the land to a new lease or licence without approval of a majority of owners (see cls 108 and 109). They commented that:

> *"… if this is the case, it is unclear how managing kaiwhakarite would in most cases be able to generate income let alone a net return to its owners. If it is impracticable for owners to appoint a governance body (because quorum numbers are unlikely to be satisfied), it would almost certainly be unlikely that approval of a majority of all owners to the granting of a lease or licence will be obtained."*

386. Two submitters noted that, for the purposes of this provision, assets do not include "any assets identified as personal assets of the managing kaiwhakarite in the notice of appointment of the managing kaiwhakarite" (see cl 157(4)(b)). They pointed out that any issues around proof of ownership needed to be resolved prior to appointment.

Cl 158: Termination of appointment of managing kaiwhakarite

387. Clause 158 sets out the manner in which the appointment of a managing kaiwhakarite can be terminated.

388. Two submitters noted that owners are stuck with a poorly performing managing kaiwhakarite for seven years unless they can convince the chief executive to terminate his/her appointment or they intend to form a governance entity (see cl 158(3)). Other options for terminating the appointment need to be developed to protect the interests of owners. By themselves, these options are unacceptable.

389. The provision provides that the appointment of a managing kaiwhakarite can be terminated if the chief executive is satisfied that the owners of the land intend to appoint a governance body for the land (cl 158(3)). Ngāi Tahu Māori Law Centre felt this provision was too strict and owners should be able to resume administration of the land as soon as they are actively making decisions regarding the land. Another submitter considered that the Bill should include a provision that provides an ability for owners to assume co-operative management and control of their land, with a view to become self-managing. Both submitters felt that ceding management back to the owners is an ideal that managing kaiwhakarite should strive for.

390. A role for the Māori Land Court in overseeing the managing kaiwhakarite was discussed. The Wahiao Māori Committee considered that the Māori Land Court should annually review the performance of managing kaiwhakarite. To avoid potential conflicts of interest, Māori Land Court judges should be required to disclose any previous dealings with a kaiwhakarite appointment. Ngāi Tahu Māori Law Centre agreed that managing kaiwhakarite should be required to regularly report to the Court, and the Court should ensure that the land is being administered effectively. If the court decides the land is not being utilised effectively, it should have the jurisdiction to call the kaiwhakarite to account.

Cl 159: Responsibilities of managing kaiwhakarite if appointment terminated

391. Following the termination of their appointment, a managing kaiwhakarite is required to deliver the records kept in accordance with cl 148(2) and to transfer any income generated from the operations of the managing kaiwhakarite to the chief executive. Two submitters raised concerned about these responsibilities as it would result in doubling handling, the costs of which would be passed on to the owners.

392. Clause 159(2) implies that if the appointment of a managing kaiwhakarite is terminated, the chief executive may appoint another managing kaiwhakarite for the land. Two submitters found this provision unacceptable as such an appointment could be made without notice to or approval from the owners.

8.3 Other comments

393. Te Tumu Paeroa submitted that the managing kaiwhakarite process will result in passive leasing over activities which may be optimal in the medium to longer term. This is because:

> *"… managing kaiwhakarite will be personally liable to meet land rates up to the maximum income generated from the land (cl 155). Their appointment although for a fixed term of at least 7 years (cl 152(1)(a)) can be terminated at any time by owners appointing a governance body (cl 158(1)(c)). These factors may well lead managing kaiwhakarite to prefer early and consistent income generating activities over activities that would require greater investment and delayed returns but which may deliver greater use and development of the land. In effect, this could encourage suboptimal land use.*

9.0 The New Governance Model

394. This section outlines the comments received from submitters on the new governance model. The relevant sections of the Bill are set out in Parts 5 (Authority to act in relation to Māori freehold land) and 6 (Operation of government bodies). Schedules 1 (Transitional and related provisions) and 3 (Governance agreements) are also relevant to the new governance model, but these are discussed in the section relating to schedules.

395. Almost half of the submissions (151) discussed the new governance model, and approximately 25% were supportive while 35% were opposed. The most considered feedback was supplied by those that expressed concern or conditional support.

	Supported	Opposed	Issues raised	Number of Submitters
Individual(s)	20%	42%	38%	76
Trust(s)	24%	34%	42%	38
Incorporation(s)	8%	25%	67%	12
Local Māori Organisation(s)	36%	36%	27%	11
Council	100%	0%	0%	3
Iwi Organisation(s)	33%	0%	67%	3
National level Māori organisation	33%	0%	67%	3
Other national organisation	67%	0%	33%	3
Land related professionals				2
Other				0
Overall	25%	35%	41%	151

9.1 General Themes

396. Submitters thought that moving towards best practice governance structures is to be encouraged and the preparation of a governance agreement and sign-off process would support more owners to engage with their whenua. However, concerns were expressed that the proposed governance process attempted to apply a 'one size fits all' approach. This was viewed as too assimilatory in nature, did not distinguish between small and large blocks, and did not allow for well-functioning trusts and incorporations who have operated successfully under the current regime.

397. Questions were raised about the need for existing trusts and incorporations to comply with the new regime. Requiring them to comply (especially as some entities are excluded) was seen as unfair and ignores the mana whenua and tino rangatiratanga of those entities. Well-functioning trusts and incorporations should either be excluded from the new governance regime or allowed to "grandfather" their current constitutional arrangements. Current ahu whenua and whenua tōpū trust structures should also be able to incorporate any additions to their responsibilities to achieve the aspirations of the proposed legislation.

398. There was a perception that there could be costs related to moving to a rangatōpū structure, and these would have a larger impact on smaller blocks. It was unclear how these costs would be met. Many wanted the Crown to meet such costs.

399. Questions were raised about the need for drastic reform. It was argued that, in general, the current Act was working and only required minor changes. As Mangaheia 2D and Hauiti Incorporation noted:

> *"You cannot guarantee good governance through legislation, governance courses, seminars etc. Whilst they have their place; they do not guarantee success. Empowering owners who have limited or no knowledge of the requirements involved in running these multi-million dollar businesses is asking for trouble. Our current collective incorporation governance groups have derived and developed through the current system over several years. We believe that the results achieved by these governance groups are proof that the system is reasonably sound, and it works."*

400. There was a perception that the proposed changes would impose significant burdens on Māori land owners that are not placed on non-Māori landowners. This could place existing Māori trusts and incorporations at a substantial commercial disadvantage as compared to non-Māori operations. There needs to be a level playing field. There was a call for the Ministerial Advisory Group to carefully consider the new and additional obligations and criteria contained in the Bill to ensure any unintended consequences that place exiting Māori incorporations and trusts at a commercial disadvantage are counteracted.

401. It was widely considered that issues around attracting good governance would not be resolved by the proposed changes to the structure of governance bodies. Increasing the level of expertise required may prevent diligent owners becoming kaitiaki. Extensive training schemes should be put in place to ensure kaitiaki are informed of the obligations and fiduciary duties they each personally hold in their role.

402. There was some concern that the standard governance agreement has yet to be drafted and would not be available until the Bill is introduced. Submitters want to see the agreement before then to assess its suitability.

403. Concerns were expressed about the corporatisation of kaupapa Māori objectives. Issues were also raised around the colonisation of tikanga Māori and the undermining of mana hapū and whānau. To help alleviate such tensions, it was suggested that governance entities should be required to provide for kaupapa objectives in their governance agreement.

404. Clarification was sought around the roles and responsibilities of those involved in the governance process. For example, the difference between the powers of a rangatōpū that is a body corporate and a "governance body"; where obligations lie with the governance body verses kaitiaki, or rangatōpū or representative entity that is a private trust (as it has no separate legal personality); how the tests of "endeavouring to keep owners informed" and "maximise the level of engagement of the owners with the governance body" will be applied; and whether kaitiaki are explicitly required to act in the best interests of the beneficial owners.

405. In terms of land management plans, support was expressed for the proposals but some concerns were raised about the costs associated with preparing such plans. The Māori Land Court was deemed a robust and reliable mechanism for Māori land management.

9.2 Clause by clause analysis

Cl 161: Owners of Māori freehold land may appoint governance body to manage land and other assets

406. Two submitters argued that the use of the word "may" in this provision is a misnomer since if the owners do not appoint a governance entity, one will be forced on them under the managing kaiwhakarite proposals.

Cl 162: Governance bodies holds asset base on trust

407. Under this provision, governance bodies hold the asset base on trust for the owners in proportion to their relative interests (see cl 162(1)(a)) and have full powers to conduct the management of the asset base provided it is consistent with the governance agreement and the governance body is not operating in a manner that is or is likely to create a substantial risk of serious loss to the owners (see cl 190(1)(b)).

408. FOMA also noted that given that the governance body will hold the assets on trust, the governance body will not only be bound by the Bill and the governance agreement, but will also be bound by standard trustee duties in terms of the Trustee Act 1956 and the common law. These duties require that kaitiaki: (i) act in accordance with all legal obligations as trustees; (ii) act in the best interests of the beneficiaries with fidelity and good faith; (iii) act with professionalism, integrity and high ethical standards; (iv) make and be seen to make decisions that are based on fair process; (v) respect the confidentiality of information disclosed to them as a Trustee; (vi) act in and serve the interests of the Trust as a whole over their own or whānau interests. They suggest that these duties are comprehensively stated in the Bill.

409. Te Tumu Paeroa agreed suggesting that if it is intended that a governance body will owe common law trustee duties to owners by virtue of holding the asset base on trust then this should be made clear. This suggestion was also endorsed by another submitter, who pointed out that with a few exceptions the Corporate Body Rules will apply to Māori incorporations in such circumstances.

410. Taheke 8C incorporation noted the absence of a provision stating that the assets must be held in accordance with the governance agreement as well as the Bill, as well as the lack of a provision dealing with conflicts between the Bill, governance agreement and trust duties.

Cl 163: Rights of owners in respect of asset base

411. Kaimoho A1 Incorporation and one other submitter considered that this clause impacted on the raātiratanga of owners, as it states that an owner of Māori freehold land held by a governance body under a governance agreement retains beneficial ownership, but not legal ownership, of the land while it is managed under the agreement (see cl 163(1)(a)).

412. Taheke 8C Incorporation noted that under cl 163(1)(c) owners may receive their share of the asset base by way of distribution of profits or through a distribution scheme. They wanted to know whether this provision would limit the provision of grants and scholarships.

Cl 164: Process for appointing governance body

413. Clause 164 of the Bill sets out the process to appoint a governance body. Tauhara North No 2 Trust and the form submission from 9 trusts noted that although Schedule 1, cl 4 provides that existing ahu whenua trusts under the current Act automatically become the rangatōpū, it is not clear that cl 164 could be invoked to appoint a new governance body at any time thereafter. The submitters are concerned that there is no guarantee that their trust will continue as the governance body for the land they own. This situation has the potential to create significant uncertainty for the Trust and its third party joint venture partner, the Trust's financiers and third parties dealing with the Trust.

414. These submitters and two others noted that the appointment of a governance body must be approved by a simple majority of owners who participate in the decision. In their view, this is a relatively low threshold for such a significant decision, particularly if the outcome of the decision is to replace the Trust with another governance body. Such a significant decision should not be made lightly, if at all.

415. Te Rakaupai te Iwi Turoa Trust noted that it is possible under this clause for an entity other than the existing trust (such as, a representative entity or an existing statutory body) could be appointed as the governance body for the Trust land. This will require a simple majority of participating owners. The Trust opposes a simple majority of participating owners as the threshold for a replacement governance body to be appointed, and submits an alternative threshold of 75 percent or higher majority.

416. One submitter raised concerns about the order indicated for the establishment of a governance body. The submitter considered that determining the structure and authorising the body should come before the approval of the governance agreement. As the governance agreement will become the charter for the use of the land, it should be developed in conjunction with the governing body.

Cl 165: Additional process requirements if owners establish rangatōpū as governance body

417. Under this provision owners must decide whether the rangatōpū will be a private trust or body corporate. Taheke 8C Incorporation was surprised with the wording of this provision. The submitter notes that all rangatōpū have trust obligations. The submitter also pointed out that if they decide that the rangatōpū will be a body corporate (see cl 165(2), the kaitiaki must meet director criteria either under another Act (e.g. the Companies Act 1993) or under cl 214. This could create confusion.

Cl 166: Additional process requirements if owners appoint existing rangatōpū as governance body

418. Taheke 8C Incorporation noted that under this provision a governance body must be established in accordance with the process set out in the existing governance agreement. The submitter would like the provision to specify what happens if the owners do not all agree.

Cl 167: Restrictions on governance bodies being party to more than 1 governance agreement

419. Under s 167(2) a rangatōpū must not be party to more than one governance agreement.

420. Three submitters (3 trusts) noted that this provision means that a trust cannot be appointed as the governance body for other Māori freehold land under a separate governance agreement, yet an existing statutory body or representative entity can be so appointed. This could, for example, affect arrangements relating to adjoining Māori freehold land. The submitters opposed this provision on the basis that there is no sound policy rationale for this difference.

421. The New Zealand Institute of Surveyors raised concerns about the effect this provision will have on existing incorporations. The submitter believes an existing incorporation may have to negotiate any number of different rangatōpū in order to retain the status quo in respect of the current incorporation and the lands that it administers.

Cl 170: Additional requirements for application to register new governance agreement

422. Clause 170(b) provides that an application to register a new governance agreement must, among other things, identify all assets and liabilities that are intended to vest in the governance body. Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust questioned why a governance body must identify all assets and liabilities of the governance body in this process. This will be onerous for large governance bodies with extensive asset bases.

Cl 171: Additional requirements for application to register updated governance agreement

423. Given that a lot of power can be put into the governance agreement resulting in loss of power to owners, Ngāi Tahu Māori Law Centre proposed that kaitiaki should have to review governance agreements with owners at least once every five years.

Cl 176: Grounds for rejecting application for registration of governance agreement

424. Clause 176(1)(d) enables the chief executive to reject a name if it's similar to the name of another rangatōpū, company or other entity. Taheke 8C Incorporation wanted to know how the chief executive is going to deal with multiple entities with iwi or hapū names included.

Cl 177: Governance certificate

425. Under cl 177(1)(d), the governance certificate must identify the Māori freehold land managed under the agreement. Taheke 8C Incorporation wanted to know whether the certificate has to be updated each time land is added. If so, this could be a compliance cost prohibitive for large organisations developing a wide-raāng portfolio. This is not a requirement for companies. The submitter would like to know, why it is required for Māori entities. It was suggested that the provision is reworded to reflect the equivalent provision relating to certificate of incorporation as per the Companies Act 1993.

Cl 179: When registration of rangatōpū creates separate legal personality

426. Section 179(2)(b) provides that where a rangatōpū is a body corporate, the rangatōpū certificate must provide that the rangatōpū “may do anything a natural person of full age and capacity may do, except as provided for in this Act or any other enactment”.

427. FOMA was unsure why there is a difference in language between the powers of a rangatōpū that is a body corporate and a "governance body". In cl 190(2)(a), "governance body" has "full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction". It is not clear why a "governance body" does not have the powers of a "natural person" and what the relevant implications are.

Cl 180: Court may review certain decisions of owners relating to governance bodies

428. Clause 180 provides a process for the Māori Land Court to review and potentially set aside the appointment of governance bodies on the application of any owner of a parcel of Māori Freehold Land. Parininihi ki Waitotara Incorporation expressed concern that the Court could potentially interpret this section as applying to existing incorporations as part of the transition process required as per Schedule 1. In their view, this does not appear to be the intention of the Bill. For the avoidance of doubt, a new sub-clause 180(6) should be added as follows:

> *"That for the purposes of this Clause, in respect of existing Māori Incorporations, Ahuwhenua Trusts, or Whenua Toopu Trusts (as such are defined in the first Schedule hereto) that the date of the decision for the purpose of appointing a Governance Body for the land shall be the date of the Original Māori Land Court Order creating such existing Ahu Whenua or Whenua Toopu Trust or in the case of an existing Māori Incorporation, the date of the Order in Council constituting the existing Māori Incorporation."*

Cl 181: Owners of Māori freehold land may revoke governance body's appointment for that land

429. This provision sets out the threshold level for the decision to revoke an appointment of a governance body. Five submitters (2 trusts and 3 incorporations) felt that the threshold (75% of participating owners) was too low, and recommended this be changed. They were concerned that if the participation threshold is not met, it would be possible to hold a second meeting to decide a proposal to revoke the appointment. The second meeting would not have to meet any relevant participation threshold or quorum requirement, and the decision would be valid if 75% of the landowners at the meeting agree, whatever the number of landowners actually present. It would therefore be possible for a small minority of landowners to wind up the governance body. This gives a small minority of disaffected landowners a disproportionate amount of power.

Cl 183: Cancellation of governance agreement

430. Taheke 8C Incorporation pointed out that between the time of application of cancellation and the actual cancellation nothing apart from appropriate bank payments can be done by the existing kaitiaki without the approval of the court or an appointed person. This is a cumbersome process. The submitter suggests consideration is given to how this will work in practice for a large corporate entity.

Cl 186: Effect of cancelling governance certificate,

431. Under this provision, on the cancellation of a governance certificate, the Māori freehold land managed under the agreement vests in the beneficial owners of the land. One submitter noted that:

> *"… it is neither wise nor do-able to simply breakup, individualise and then distribute the asset base. Who for example gets to own the urupā or the pathway from the roadside gate through the paddock to the urupā? This is just a recipe for further alienation of whānau from their land. If a "governance body is cancelled" the first and only role of an administrative kaiwhakarite should be to explore through all means possible ways to move to election of a new governance body."*

432. Te Tumu Paeroa agreed with this concern. They noted that unlike with rangatōpū where kaitiaki can be appointed and removed, where the Māori Trustee is the governance body owners cannot simply keep their governance body and change its kaitiaki. Owners who do not wish to continue with the Māori Trustee but wish to keep their asset base managed by a governance body should not be forced to go through the full distribution scheme thereby having any reserves dissipated in a forced return to owners. In their view, owners should be able to have the asset base transferred directly from the Māori Trustee to another governance body that they establish for this purpose. This will ensure that the asset base remains intact for the new governance body.

Cl 190: Powers, duties and responsibilities of governance bodies

433. This clause imposes certain duties on governance bodies, set out in cl 190(1)(a) to (e). Four submitters (4 trusts) raised a number of concerns about this provision including (i) why these obligations are imposed on the governance body, rather than the kaitiaki; (ii) how these obligations would apply to a rangatōpū or representative entity that is a private trust (as it has no separate legal personality); (iii) how the tests of "endeavouring to keep owners informed" and "maximise the level of engagement of the owners with the governance body" would be applied. The submitters also raised a concern as to trust liability where these duties are not executed as a developing and non-insured trust.

434. Three other submitters (1 trust and 2 incorporations) noted that as the current Act does not contain similar obligations, the interpretation and likely effect on existing trusts and obligations it is unclear. In their view, this provision has the potential to be interpreted in a manner that places onerous obligations on existing governance bodies.

435. FOMA felt that the thresholds set out in the duties prescribed in cls 190(1)(b)(i) and 190(1)(c) were too low, and appeared to be inconsistent with cl 191 as well as general trustee duties (see their comments on cl 162). They also observed that given that some governance bodies are likely to be investment vehicles for commercial or investment land or assets, these duties also do not comply with the high standards expected of ordinary commercial entities.

436. FOMA noted that there was an inconsistency between the standards for governance bodies and those of their kaitiaki. They pointed out that cl 190(1)(b) provides that a governance body "must operate in a manner (i) that is consistent with the governance agreement; and (ii) that does not, and is not likely to, create a substantial risk of serious loss to the owners". However, cl 190(1)(c) provides that before incurring an obligation or liability, the governance body must be satisfied that there is a reasonable prospect of the governance body being able to meet the obligation or liability when required to do so.

437. One of the duties of a governance body is to keep the owners informed about the asset base and activities relating to the asset base (cl 190(1)(d)). Te Tumu Paeroa agreed that owners should be entitled to information, as this allows them to fully participate as owners.

Such information should include copies of the minutes of owners' meetings, copies of annual accounts, information packs sent out with notices, a copy of the governance agreement and variations, and to the extent the governance agreement or the Bill requires a decision to be approved by owners, information in connection with that decision should be provided. They would like the Bill to identify the core governance documents that a governance body must provide. This provides clarity to owners and governance bodies alike avoiding misunderstandings and disputes.

438. Tuwharetoa Māori Trust Board also considered that the language in cl 190(1)(d) should be tightened to avoid interpretation debates. This comment also applied to cl 190(1)(e), which requires a governance body to "endeavour to maximise the level of engagement of the owners with the governance body".

439. One submitter considered the concept of maximised engagement to be consistent with involvement of owners in decisions about their land.

Cl 191: Powers, duties, and responsibilities of kaitiaki

440. This clause imposes obligations on each kaitiaki, which are set out in sub-clauses (a) to (c). FOMA considered the requirements in this provision a positive step towards more owner groups ensuring suitably qualified people are appointed to manage their land assets. Te Tumu Paeroa, however, suggested that the Bill makes clear whether these duties are owed to the governance body or the owners. Under the trust paradigm, common law duties require trustees to act in the interests of owners; while under the governance body paradigm, duties are owed to the governance body.

441. The Institute of Directors thought that it was not clear if any distinction is intended between the duties and responsibilities for kaitiaki of different types of governing bodies, for example for kaitiaki governing a body corporate compared to kaitiaki governing a trust. They would like these duties to be consistent as this would also provide clarity for kaitiaki. They were also uncertain how the new Act will 'fit' with other legislation, for example the duties and liabilities for directors under the Companies Act 1993 and how they will apply to kaitiaki governing a company.

442. The Institute of Directors supported the inclusion of the duty to 'act honestly and in good faith', as they correlate with existing director duties. However the fiduciary obligations of kaitiaki are not clear, for example to act in the best interests of the governing body and/or the landowners. Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust agreed that it was a concern that there is no obligation placed on kaitiaki to act in the best interests of the beneficial owners.

443. The Institute of Directors agreed with the duty in cl 191(b) that kaitiaki must "act, and ensure the governance body acts, in accordance with the governance agreement and the requirements of this Act". This duty is clear and consistent with other statutory requirements for directors and other governors.

444. Commenting on cl 191(c) the Institute of Directors noted that the intent and meaning of this clause appears to create a standard of proof about what a reasonable kaitiaki would do in the circumstances. This is an objective test. They note that s 137 of the Companies Act 1993 has a similar requirement but also requires the court to take into account: (i) the nature of the company; (ii) the nature of the decision; and (iii) the position of the director

and the nature of the responsibilities undertaken by him or her'. In their view it would be reasonable to apply the same guidance to the kaitiaki role.

445. Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust noted that the Bill does not provide for decisions to be made by a majority of kaitiaki or the effects if any kaitiaki dissents in writing to a decision made by a majority of kaitiaki. The submitters suggested that these matters, which are both included in the current Act, are repeated in the Bill.

446. Taheke 8C Incorporation noted that other clauses of the Bill impose additional duties on kaitiaki (see, for example, cl 225(b)(ii)). In their view, all the duties owed by kaitiaki should be set out in this provision.

447. Five submitters (2 individuals, 2 trusts and 1 local Māori organisation) noted that although trustees are generally cognisant of their legislative obligations, an extensive training scheme should be put in place to ensure kaitiaki are informed of the serious obligations and fiduciary duties they each personally hold in their role as a kaitiaki.

Cl 192: Immunity of kaitiaki from personal liability

448. One submitter noted that trustees of an ahu whenua trust are in general personally liable for meeting the trust's obligations. This requirement is sometimes excluded in contracts by the insertion of a clause that limits the trustees' obligations to the total asset value of the trust. However, this is not always done due to a lack of legal knowledge. The submitter noted there are also cases where this cannot apply such as with the Inland Revenue Department. The issue rising from this is the impediment 'trustee personal liability' puts on trusts in attracting experienced and commercially minded people to fill the governance positions. Clause 192 provides immunity to kaitiaki for personal liability. The submitter supports this provision and considers its enactment will help remove the current impediments that Trustee Personal Liability puts on ahu whenua trust structures.

449. Te Runanga o Ngāi Tahu considered this "a positive change given it provides clarity and assurance to the kaitiaki that they will not be personally liable for obligations of the governance body".

450. The Institute of Directors, however, felt that the intent and meaning of this provision was not clear, and should be more clearly drafted to reflect already established legal principles, such as those set out in the Companies Act 1993 (see Part 8, ss 131-138A). Under that Act, company directors who fail to meet the key legal requirements are answerable for the decisions they take. A degree of personal liability is imposed on directors, which is well understood and which is common across other comparable jurisdictions. Trustees can be personally liable in the situation where beneficiaries claim loss or damage suffered as a result of acts or omissions on the part of trustees. The Institute considers it important that liabilities are not so onerous that they deter directors and others from putting themselves forward to serve on boards and in governance roles. However, by limiting or avoiding liability for a breach of duty, the importance of the duties can be undermined, as may the vigilance of governors in carrying out their role.

Cl 193: Asset base vests in governance body on registration of governance agreement

451. Mangatu Blocks Incorporation and Wakatu Incorporation were opposed to the Bill applying to non-Māori freehold land through its inclusion in the asset base. Entities may have

purchased general land for commercial or investment reasons, specifically to avoid the decision-making restrictions under TTWM Act and to allow for commercial flexibility. In other cases, entities may have been through a lengthy process in the Māori Land Court to change the status of Māori freehold land to general land for development reasons. This work may be undone by the Bill, which takes as its default position the inclusion of all land and assets, regardless of their legal status, under the Bill and the auspices of a governance body.

452. Mangatu Blocks Incorporation noted that under the current Act, beneficial interest only extends to Māori freehold land. However, the Bill proposes to extend beneficial interest to the whole asset base including Māori freehold land. This has some implications. Firstly, as a risk management strategy to secure borrowings against assets other than Māori freehold land, this now requires the same threshold of 75% of all owners to use non-Māori freehold land assets as security of future borrowings. Second, beneficial ownership exposes Māori freehold land to regulatory risk, given that Māori land is involved in the most dangerous businesses after mining being forestry and farming. Legislation was initially targeted at the owners of the land to ensure the necessary cultural change was made, which in the case of the Emissions Trading Scheme (ETS) was the liability for replanting forests and in the case of Health and Safety after the Pike River tragedy was the zero harm safe working environment for all who work on Māori land. This risk to beneficial ownership has been reduced substantially but is still there where governance and management are not up to best practice.

Cl 195: Status of contracts and other instruments

453. This clause ensures that existing contracts remain in place following the vesting of assets or liabilities in a governance body. In essence, it prevents third parties from using the transfer as a basis for termination.

454. Tauhara North No 2 Trust was concerned that the clause does not expressly state the terms of any such contracts are deemed to comply with the Bill. In their view, it is uncertain whether cl 195 “perfects” existing contracts or leases so that they are deemed to comply with the Bill (even if they do not technically comply with the new requirements set out in the Bill). On its face, the clause seems to simply provide that the new governance body is deemed to have entered into the existing contract or lease. To the extent that the existing contract or lease is contrary to the Bill, cl 195 is silent as to whether that contract or lease is invalidated. They suggest that an additional provision should be included that deems all existing contracts, agreements, conveyances, deeds, leases, licences, undertakings, notices or other instruments to be consistent with the Bill.

Cl 197: Matters not affected by vesting under section 193

455. Tauhara North No 2 Trust noted that changing the trust to a governance body risked triggering a change of control clause in the trust’s existing joint venture agreements. While cl 197 appears to address that risk, the clause could be clearer, by expressly providing that the vesting of assets and liabilities in a governance body does not result in a change of control or create a new person for the purposes of existing contracts. In their view, an additional provision should be included in the Bill that provides that the vesting of assets and liabilities in a governance body does not result in a change of control.

Cl 199: Requirements if governance body sells or exchanges parcel of Māori freehold land

456. Taheke 8C Incorporation observed that this clause requires rangatōpū to use the proceeds of sale of land to purchase more land, which must then be converted to Māori land. Subject to meeting the obligations agreed by the owners in the governance agreement, they suggest that rangatōpū should be able to use the proceeds of sale for other investments not just the purchase of land. They therefore suggest that the requirement that land asset sale proceeds be used to buy more Māori land be removed for corporate Māori entities. These concerns were shared by Ngāti Whakaue Tribal Lands.

457. Under cl 199 the governance body must update the governance agreement and register the updated agreement with the chief executive within one month after the exchange of the parcel of Māori freehold land. Taheke 8C Incorporation also noted this will create greater compliance obligations and is not an obligation faced by other mainstream entities including private trusts. They wanted to know why such obligations are being forced on Māori entities?

Cl 201: Requirements for Allocation Scheme

458. Taheke 8C Incorporation noted that this provision is "part of a process to alienate the land from the larger land owning entities. The allocation scheme identifies the land blocks and who the owners are rather then dealing in common shares". The submitter recommended that owners in Māori incorporations and trusts retain shares and all rights accorded to them through these schemes.

Cl 202: Requirements for land management plan

459. Three submitters (2 trusts and 1 incorporation) recommended that a provision is included recognising existing land management plans, thereby ensuring that these remain a key document for the entities concerned and are not lost through the strike of a legislative pen. They pointed out that such plans are key to the trusts' development and growth over the decades since their introduction and cannot be sacrificed.

460. The PSA noted that the list of requirements in cl 202(3) would entail comprehensive research by kaitiaki, and would also likely in many cases give rise to landowner differences about aspirations making the 75% participatory owner threshold difficult to achieve. Further, disputes could arise from differences that landowners and kaitiaki have about what is best for the land. These eventualities are contrary to stated intent of empowering owners and simplifying the process for land management. By comparison, trustees under the current Act have the power to make decisions and conclude contracts on behalf of the landowners and report back on these decisions, with the check-and-balance of recourse to the Court if those decisions are not in their best interest. The Bill does not set out remedies for land management plans that are unable to gain approval due to conflicting goals.

461. With regard to dispositions, the PSA considered that the land management plan must explain why it is necessary with reference to the governance agreement, and how this process will be managed by the governance body. As a concept this is a useful tool for owners and governance bodies and will indeed provide a forum of discussion for landowners during any major changes that may affect their land. However, it certainly does not offer the same protection when disputes about disposition arise that the current Act

does. That is, all alienations are confirmed by the Māori Land Court, however under the proposed Bill governance bodies will have the ability to dispose of the land without this confirmation following adoption of their land management plan.

462. Given that the role of the Māori Land Court is diminished to that of mere procedural oversight body, ensuring that the sale process undertaken was compliant with the Bill, the PSA would like to know where are the safeguards for owners who had valid reasons why the disposition should not occur and who may have formed the minority when voting for the land management plan or, indeed, may not have even been aware that the alienation proposal was being discussed (e.g. non-participatory owners)?

463. Taheke 8C Incorporation agreed with these sentiments, stating that it would be difficult for a smaller land trust or incorporation to comply with these compliance obligations.

464. Parininihi ki Waitotara Incorporation noted there is no requirement that the land management plan need be deposited anywhere for public viewing. The submitter supports this approach.

Cl 205: Unpaid distributions

465. Pursuant to cl 205(2), a governance body may use any unpaid distribution (including net gains on the amount e.g. interest) for any purpose that is consistent with the governance agreement, with the unpaid distribution (but not net gain) being deemed to be a debt payable to the owner or the owner's successor in title.

466. FOMA and the Raukawa District Māori Council commented that freeing up unpaid distributions for use as working and/or investment capital will be a positive step towards owners being able to grow their assets. However, Parinnihi ki Waitotara Incorporation noted the consultation document refers to a one year period before dividends that are not claimed become classed as "unclaimed", but this is not mentioned in the Bill. If this is the intention, the Bill should be amended accordingly.

467. One submitter suggested that this clause is not practical, will create difficulty in administration and is far from fair in that the unclaimed amounts will be held by the chief executive of the Māori Land Service (under cl 212). In his view, the Bill should include a provision specifying that for an unclaimed dividend amount that is older than five years and cannot be identified as owing to any particular owner, that amount if authorised by a resolution of the governance body can be transferred back to equity and any liability to make payment extinguished.

468. One submitter noted that imposing interest payments on unclaimed dividends when paid out will burden many governance bodies. The calculation of the payment will require skill and expertise that governance bodies may have to pay for, increasing the compliance costs of the new regime. In her view, this consequence needs to be considered taking a balanced view of what is practical and fair

469. Te Tumu Paeroa suggested that governance bodies should only be obliged to repay the debt from available funds i.e. the debt is not repayable on demand. The Bill should also clarify that unpaid distributions must be recorded as a non-current liability in the financial accounts of the governance body.

470. Clause 205(4) requires a governance body to keep records of the unpaid distributions details of each unpaid distribution and to send these details to the chief executive as soon as practicable after the end of each financial year for all unpaid distributions the governance body is holding at the end of that financial year which have been held for more than 12 months from the distribution date. For the purposes of this provision, financial year means the financial year in the relevant governance agreement under which the governance body operates. Te Tumu Paeroa was concerned about providing unpaid distribution details in respect of pre-1987 distributions as this would provide an enormous challenge and may not be practicable as these distributions would need to be manually retrieved from ledgers many of which may, through the annals of time, have been lost or destroyed. They would like to meet with those involved in the design of the Māori Land Register to discuss these issues.

Cl 206: Governance body must notify chief executive of unpaid distribution details

471. The Wellington Tenths Trust and Palmerston North Māori Reserve Trust considered that the requirement to advise the chief executive of the dividends unclaimed in each year is not acceptable and it is queried why this is now necessary when many existing trusts and incorporations have managed their unclaimed dividends efficiently and effectively over several years. In their view, governance bodies should not need to be compelled to provide the chief executive with its unclaimed dividends detail.

472. Similar comments were made by Taheke 8C Incorporation, who noted that this provision requires reporting to the chief executive of any unpaid distributions 12 months after the distribution date and at the end of each financial year. Their preference was for single annual reporting, if at all. The submitter also felt that the governance entity should hold and make available this information, rather than having to report it.

Cl 209: Obligations to prepare partial distribution

473. Taheke 8C Incorporation observed this is the means by which small owners will get distributions for individual blocks. They wanted to know how this would work if the block is a replacement block which the governance body has bought and paid for using funds from the sale of another block. In the submitter's view, larger entities need to be protected from being torn apart using such clauses.

Cl 212: Transfer of unpaid distributions from outgoing governance body to Māori Trustee

474. Under cl 212(3)(d) the Māori Trustee is obliged to as soon as practicable after the end of each financial year to send to the chief executive up-to-date unpaid distribution details for all unpaid distributions that the Māori Trustee is transferred in this manner (a similar obligation applies to amounts transferred by managing kaiwhakarite: see cl 513(7)).

475. Te Tumu Paeroa is unclear whose financial year is being referred to – the Māori Trustee's, the managing kaiwhakarite's or the governance body whose governance agreement is being cancelled. If the latter, this would mean multiple financial years and cause extreme complexity. Although the expectation is that distributable income will be paid on money received, the definition of unpaid distribution (see cl 205) does not include interest/distributable income. They suggested that the Bill clarifies whether the chief executive requires "interest" to be stripped out when these details are provided.

Cl 213: Māori Trustee must transfer unpaid distribution to successor governance body

476. Under this provision, when the Māori Trustee transfers to the governance body the amount of any unpaid distributions he must ensure that governance body and the chief executive receive up-to-date unpaid distributions details for the distribution (see cl 213(3)). Te Tumu Paeroa would like this section to be clear that all 'interest/distributable income' pertaining to the distribution should also be paid over to the governance entity. The same issues as in respect of historical unpaid distribution details apply here (see cl 205(4) above).

Cl 214: Requirements for kaitiaki of rangatōpū

477. Parininihi ki Waitotara Incorporation observed that the eligibility criteria for kaitiaki set out in cl 214 are more detailed than those for members of Committee of Management provided for in s272 of TTWM Act. A person may be disqualified from holding office as a kaitiaki on grounds relating to their criminal history, personal insolvency, professional incompetence and personal incapacity. In their view, this is a positive step.

478. The Raukawa District Māori Council suggested that kaitiaki should be required to have proven skills and respect for tikanga and kaupapa Māori and be required to apply these skills in managing the land. This is similar to their recommendation regarding managing kaiwhakarite. Ngāi Tahu Māori Law Centre agreed noting that, in addition to having the required fiduciary skills, kaitiaki should have an understanding of and acknowledge the spiritual connection that owners have to their whenua. Failure to acknowledge the land as taonga tuku iho can enrage owners.

479. Taheke 8C Incorporation commented that these requirements should be applied to administrative bodies for whenua tāpui.

480. Te Tumu Paeroa, notes that this provision requires a kaitiaki of a rangatōpū to be a natural person (cl 214(1) and (2)). Owners may wish to draw on the Māori Trustee's governance and land administration experience as co-kaitiaki and should be able to do so for as long as they wish. Te Tumu Paeroa therefore suggests that the definition be expanded to include the Māori Trustee and any person acting under a delegation from the Māori Trustee.

Cl 216: Court may appoint kaitiaki

481. Clause 216(1)(b) provides that, if a rangatōpū has less than three kaitiaki, the court may appoint a kaitaiki. Three submitters (1 individual, 1 incorporation and 1 local Māori organisation) expressed concern about this provision, saying that it was inappropriate for a creditor to be appointed as a kaitiaki. Creditors do not have the requisite understanding of tikanga or the connection that owners have to land. As they do not have the required skills under the Bill, the provision should be deleted.

Cl 217: Rangatōpū must maintain interests register

482. Commenting on the requirement that rangatōpū must maintain an interests register, Taheke 8C Incorporation questioned whether the proposal was too wide and should be restricted to the interests held in the land managed by the rangatōpū. In their view, the scope of this clause should be reduced.

483. It was also noted that a governance body is currently required to approve applications to amend its share register by way of a transfer of shares (see s 264 of TTWM Act). Concerns were raised that these powers have been removed from the Bill and appear to have been replaced with cl 217. It is not clear how the integrity of the share register will be preserved. In their view, the integrity of the register must be preserved and maintained by the incorporation as is the case now. This should be clarified in the Bill to ensure that existing incorporations and/or rangatōpū who adopt interest registers understand the law and process, that they have the power to maintain their registers and protect the integrity of the information, especially information about whakapapa.

484. The requirement that rangatōpū maintain accurate records of its shareholders was supported by Taharo No2C1 Trust and Pariwhero A4B Incorporation. They commented that it needs to be made clear whether the Māori Land Service will also hold a register of interests, and if so, how this register will be maintained and how the Māori Land Service will interact with the rangatōpū to ensure that both registers are correct and up to date.

Cl 219: Rangatōpū not subject to rule against perpetuities

485. Two submitters would like to know the effect of this provision, as it is not clear from the wording of the Bill.

Cl 220: Requests for information and cl 221: Reasons for withholding information

486. Parininihi ki Waitotara Incorporation noted that these provisions appear to codify what the existing law is regarding obligations upon trustees and directors to disclose information and grounds for refusing to disclose. In the submitter's view, this is a useful addition to the legislation which provides greater clarity to owners and governors.

487. Te Tumu Paeroa considered that cl 220(1)(a) should be amended to read: "(a) owners can understand the governance body's operations and can effectively exercise their rights as beneficial owners as provided in the governance agreement and this Act." This wording correctly reflects the fact that owners' participation in the management of the asset base occurs where the governance agreement or statute provides – the general rule being that the governance body alone manages the asset base in accordance with the governance agreement (see cl 162((1)(b)).

488. Taheke 8C Incorporation suggested that the provision should be redrafted to provide that requests should be reasonably specific. However, governance bodies should be required to comply with the request for information.

489. In relation to the reasons for withholding information, the submitter suggested that cl 221 is tightened to prevent vexatious requests, which are costly to comply with. They asked who is expected to pay for the production of this information – the requester or the governance body. In its view, the governance body should be able to charge reasonable costs to the owner requesting the information.

490. Taheke 8C Incorporation also suggested that the word "or cost" are inserted into cl 221(c), which would bring the provision into line with the official information process.

491. One submitter suggested that kaitiaki should not be able to hold 'special meetings' attended only by the kaitiaki themselves. This will improve the transparency of the activities of kaitiaki.

Cl 222: Court may make orders or investigate governance bodies

492. Clause 222 enables the Court to investigate governance bodies where there is a substantial risk of loss. Raukawa District Māori Council suggested an addition that the Court may make an investigation where there is a substantial disregard for Māori kaupapa or tikanga or where there is inadequate protection for minority interests.

Cl 223: Matters relating to investigation of governance bodies

493. Two submitters would like to know the effect of cl 223(2) and (3) relating to the appointment and functions of the examining officer.

494. Taheke 8C Incorporation noted that security can be sought from the applicant and costs can be sought from the governance body, an owner or any other person for the investigation or court inquiry. Clause 223(4) does not refer to the applicant in that list. Further "any other person" could refer to a person that does not have the right to participate in the proceeding or be heard.

Cl 225: Court may disqualify kaitiaki

495. This clause permits the Court to make an order disqualifying a person from being appointed, or continuing in an appointment, as a kaitiaki on certain grounds. Tuwharetoa Māori Trust Board felt these removal thresholds are too high and open for interpretation. The submitter would like clarity as to the removal thresholds and consideration be given to lowering these thresholds. For example, if the thresholds are not lowered, it would be helpful to provide guidance on what constitutes "persistent failure".

496. Clause 225(b)(i) creates an obligation on kaitiaki to comply with duties under "any enactment, rule of law, rules of court, or court order (to the extent that the duty relates to the role of kaitiaki under this Act)." Taheke 8C Incorporation would like to know what is included by this provision as it is potential wide reaching. The submitter recommends the duties owed by a kaitiaki should be clearly set out to avoid confusion.

Cl 226: Jurisdiction of the court in respect to certain rangatōpū

497. One submitter considered that cl 226(2) removes the common law jurisdiction of the Māori Land Court in the area of trust law. This is because the provision removes the words "whether by statute or by any rule of law or by virtue of its inherent jurisdiction" which are found in the equivalent provision of the current Act (s 237(1)). The submitter considered that, as a Court whose jurisdiction is that of "statute only", the replacement of s 237(1) by the proposed clause will deprive the Māori Land Court of a common law inherent jurisdiction that is sourced originally in English equity law, force Māori into High Court at great expense; and most importantly deprive Māori of the development of a unique and indigenous court of equity.

498. Two submitters would like to know how a rangatōpū can be a private trust, and asked what the alternative was.

499. Taheke 8C Incorporation noted that the provision states that when dealing with trusts the court has all the powers and authorities that the High Court has and may exercise under the Trustee Act 1956. The submitters would like to know that by specifically stating this regarding trusts, does that mean those acts and powers don't extend to rangatōpū that are not trusts (e.g. incorporations).

9.3 Other matters

Advisory trustee

500. Ngāi Tahu Māori Law Centre and Te Tumu Paeroa commented on the existing role of 'advisory trustee' noting that it does not appear to be included in the Bill. They question how governance bodies will be guided as to matters of cultural and spiritual significance for each parcel of land that they manage. In their view, the role of advisory trustee must be preserved, with a requirement that the responsible trustee or kaitiaki consult with the advisory trustee(s) at least annually, and report to the owners about the engagement that they have had with the advisory trustees every five years.

Charitable status

501. The Rangiwewehi Māori Committee noted that many trusts and incorporations contribute thousands of dollars annually to the unclaimed monies fund. They believe that such monies should continue to be deemed as charitable monies and made available for charitable purposes and needs.

Standard governance agreement

502. Ten submitters (3 individuals, including the Not One Acre More submission, 1 trust, 2 incorporations, 2 national Māori organisations, 1 iwi organisation and 1 other organisation) expressed concern that the standard governance agreement has yet to be drafted and would not be available until the Bill is introduced. One submitter noted the importance of seeing the agreement. They commented that existing trusts and incorporations have no idea whether the 3 year period is sufficient time for governance bodies to merge their existing Trust Deeds into a standard governance agreement and what this would require. Further, there is no consideration of whether the Trust Deeds are even capable of being merged into a standard governance agreement.

503. Three submitters (1 trust, 1 local Māori organisation and 1 national Māori organisation) did not agree that having one standard form governance agreement would be adequate for many trusts and incorporations, as they are different in nature. In the event that a trust or incorporation does not take steps to comply with the new regime, to have the same default requirements is not beneficial or expedient. There needs to be advice and information available about the types of changes and options for Māori land trusts to be able to make a decision that best suits their needs.

504. These comments were echoed by the form submission from 9 trusts, who commented that minimum governance standards, imposed through legislation, are used in the case of entities receiving and managing assets (public funds) in settlement of Treaty of Waitangi claims. Imposing minimum governance standards on private land owners (who in many

cases have held that land since time immemorial) is a step too far. No other regime forces private land owners into a governance model.

Tax Status

505. Twelve submitters (2 individuals, 1 trust, 6 incorporations, 2 national Māori organisations and 1 iwi) commented on application of the Māori Authorities Tax Regime under the proposed reform. There was unanimous support for governance bodes that are recognised by the Bill to remain eligible to be Māori authorities for tax purposes.

506. One submitter commented that most commercial entities separate their land assets from the trading entity (usually a company) with the trading entity paying a lease fee or profit share to the land owning entity. The submitter noted this model is difficult to structure in a tax efficient way where Māori Trusts and Incorporations are involved. Māori Trusts and Māori Authorities usually elect to be `Māori Authorities for income tax purposes and pay income tax at the rate of 17.50%. A company pays tax at the rate of 28%. The 10.5% difference in taxation rates is significant and together with the issues of imputation credits and dividend withholding tax makes it all too complicated and costly to utilise. Māori business is in turn denied this risk management tool and also denied the ability to recruit skilled directors to the board of the trading entity. In some cases it is being achieved by the use of Limited Partnerships but these are expensive to set up and administer and effectively only useful to the larger Māori business entities.

507. The submitter went on to say that this issue means a structuring tool of risk management is effectively unavailable to Māori Authorities. Also because the commercial activity cannot be isolated in a separate entity the ability to have members of governance in the director role is unavailable and this means Trustees must fill both the governance of the land owning activity as well as the trading activity. This can place the trading activity in a situation where only a mediocre trading result is achieved.

508. The submitter requests a change to the Income Tax Act 2007 to allow a company that is wholly owned by entities which were created under Te Ture Whenua Māori, to be able to elect to be Māori Authorities. This would extend the provisions currently provided under section HF 2 of the Income Tax Act 2007. There will also need to be a provision in the Income Tax Act 2007 that provides for the current Māori Authority tax status of existing Māori entities to be transferred if a new regime is adopted

10.0 Administration of estates

509. Part 7 of the Bill concerns succession to land interests. Clauses 227 to 232 are introductory provisions. Clauses 233 to 239 provide for how beneficial interests in Māori freehold land are distributed when an owner dies without a will. Clauses 241 to 245 set out how beneficial interests in Māori freehold land that are gifted by will become vested in the beneficiaries.

510. Approximately one quarter of submitters discussed the provisions relating to succession.

	Supported	Opposed	Issues raised	Number of Submitters
Individual(s)	41%	17%	41%	46
Trust(s)	48%	11%	41%	27
Local Māori Organisation(s)	29%	29%	43%	7
Incorporation(s)	25%	25%	50%	4
Council	50%	0%	50%	2
Land related professionals	50%	0%	50%	2
National level Māori organisation	0%	0%	100%	1
Other national organisation	0%	0%	100%	1
Iwi Organisation(s)				0
Other				0
Overall	42%	15%	44%	90

10.1 General Themes

511. Although there was support for the succession provisions, there were concerns that whenua would become a commodity and ngā taonga tuku iho would be lost to coming generations; the rights of beneficiaries to tino rangatiratanga would be taken away and a situation would arise where beneficiaries would be forced into establishing trusts; and the succession process was considered unwieldy and too costly, in terms of time and money.

512. There was a view that, over time, land would be owned by individuals with little or no knowledge or tikanga related to whenua. The tension between culture and economics was widely expressed with fears that land will be treated as a commodity not as ngā taonga tuku iho. Submitters considered the succession process, particularly the mandatory requirement to establish whānau trusts, breached “tino rangatiratanga”. Cultural concerns were also raised around the issue of surviving spouses with many referring to the fact that tikanga Māori requires the land to go to the deceased owner’s children or siblings. Anything else is culturally unacceptable.

513. More importantly, submitters saw the potential for the succession process to further disenfranchise owners and that the “one size fits all” approach may not be appropriate for all situations. There was a concern that the intestacy provisions would take autonomy away from beneficiaries. The Bill forces whānau trusts upon beneficiaries of an intestate, limiting their ability to self-govern. Many expressed the view they should have the ability to decide how the interest should be held, including applying their interests to rangatōpū.

514. It was noted that the proposed succession process does not address the fact that many Māori land estates involve deceased owners who have not been succeed to for many years and there may be several generations of owners who remain unsucceeded. More importantly, it does not resolve the fact that a large number of Māori hold off getting a will.

515. It was also felt that the proposed succession process (particularly the inclusion of the mandatory establishment of a whānau trust) is unlikely to result in an increase in the number of Māori landowners preparing wills. Successors will not apply for succession if they do not want a whānau trust structure. This will mean that the number of deceased owners will increase. This will have flow on affects in terms of decision making and administration and management of land by governance bodies.

516. The costs associated with the succession process was seen as a major issue. Criticisms were made about the fee that is currently charged for applying to the court for succession, as it dis-incentivised owners to succeed and contributed to alienation from their land. When discussing the succession register, it was stated that resources should be provided to assist whānau with estate planning.

517. Some submitters wanted the Māori Land Court to be resourced better rather than instituting and new law. The PSA, for instance, noted the processing of succession applications is currently the most common transaction administered by the Court. The preparation process is currently straightforward, with application forms available both in the Courts and online for stakeholders to print and complete. Court advisory staff are also available to advise and guide applicants. This is important as staff ensure that the whakapapa connections to the land being succeeded to are correct, a task re-checked by the processing case manager. In their view, the Māori Land Service's ability to maintain this check-and-balance for eligibility will be reliant on employing experienced staff not currently available within the ranks of Te Puni Kōkiri.

518. The PSA considers that the degree to which this task is satisfactorily undertaken will determine the degree to which the Court is called upon to inquire into and determine whether a succession complies with the Bill (see cl 269(1)(b)). In the event that an adequate pool of staff experienced in succession processes are not recruited and the Court is called upon to remedy incorrect allocation of land shares, this will thwart the stated goal of freeing up the Court to concentrate on more serious issues.

519. There was some perceived lack of clarity regarding various roles and responsibilities in the Bill. In terms of the succession register, there was concern that the role of the Māori Land Service may impact unfavourably on whānau. Submitters also stated that the use of three separate bodies to keep records, e.g., LINZ, Māori Land Court and Māori Land Service was inefficient and likely to introduce errors. There was a recommendation that the Court should keep the records.

520. Given the concerns that have been raised about the succession process, one submitter proposed that a number of changes be made to the current Act as opposed to introducing new legislation. These changes should include:
    - Section 100 / 93 should be amended so that repealed legislation does not continue to have effect in any circumstances (new successions would then follow the rules of succession outlined in the current Act);
    - Timeframes need to be shortened and adhered to more strictly;
    - Straightforward successions should be decided without a formal hearing;
    - Standard procedures and forms should apply across all court districts;
    - Successions should be dealt with automatically by the registrar, rather than requiring the court's approval. There should also be no fee for this process. Further

successions should still be subject to the current 'Minute Book' process of recording proceedings;

- Kaitiaki trusts that are appointed over minors should automatically expire when the minor turns 18 years of age, without requiring an application to be made to the court.

10.2 Clause by clause analysis

Distribution of interests when owner dies intestate

Cl 232: Restrictions relating to testamentary promises and family protection legislation

527 Two submitters would like cl 232(3)(a) revised in order to clarify whether the High Court overrides the Māori Land Court and, if so, how can the decisions of the High Court be challenged.

Cl 233: Who may succeed to interests

528 Clause 233(1) introduces a priority order for those who may succeed on intestacy. Three submitters (1 individual, 1 trust and 1 incorporation) were concerned this list includes people who do not whakapapa to the land (such as step-brothers and step-sisters). They suggest whānau trusts are only created where beneficiaries are descendants that whakapapa to the land. Another submitter raised a similar concern regarding the potential for whāngai to be included as a beneficiary of a whānau trust.

529 Te Rakaupai te Iwi Turoa Trust observed that this provisions differs to the current Act, which provides a class of persons primarily entitled to succeed and the proportions in which they are so entitled under cl 109(1)(a) to (c). They queried whether the removal of the proportions in which people are to succeed is intentional, and if so would like to know why.

530 Clause 233(2)(a) provides that where there is more than one eligible beneficiary, a whānau trust must be established over the land. This provision attracted a number of comments. Mangatu Blocks Incorporation said this proposal would help reduce the issue of ownership fragmentation. Many others noted, however, that Māori do not have wills. While it may be appropriate upon the death of a person who is intestate to place their interests into a whānau trust, this proposal strips Māori of their decision making ability and forces them into something they may know nothing about and have little or no control over. Many felt this proposal contradicts the principle of increased autonomy given that it removes the choice from beneficiaries as to how they want to manage their land. One submitter noted the Māori Appellate Court has held that the establishment of a trust needs full consideration by and consultation with owners. This should be something that is up to the beneficiaries, not a matter of legislation. Te Runanga o Ngāi Tahu also noted the proposal would make it more difficult to terminate a whānau trust than it is under the current Act.

531 Ngāi Tahu Māori Law Centre considered that the requirement to establish a whānau trust when an owner dies without a will breaches Article 2 of Te Tiriti o Waitangi. In their view, forcing whānau trusts upon beneficiaries of an intestate estate breaches "Te tino rangatiratanga", and also the right to "full exclusive and undisturbed possession" of lands. Another submitter said it was discriminatory as it treated owners of Māori land differently to other landowners.

532 Ngāi Tahu Māori Law Centre also felt it would be dangerous to force whānau to establish whānau trusts. They noted there could be disharmony within the whānau, leading to a situation where it is impractical for them to work together. More significantly, there may be safety issues which make it impossible for whānau to be put in a situation where they have to interact with another whānau member; for example, whānau with domestic violence issues.

533 The PSA noted that this proposal would create two types of ownership, namely 'interests' (for beneficiaries under a whānau trust) and 'shares' (for beneficiaries who are able to succeed in their own right when a will is in place). This separation of entitlement category will disadvantage beneficiaries unfortunate enough to have a parent pass away without a will. For instance, in cases where trusts count votes by the number of shares held, this being the case for all incorporations. In addition, beneficiaries not holding individual shares are disadvantaged should they wish to obtain a partition, an occupation license and, further, they are unable to receive dividend payments in their own right.

534 Taheke 8C Incorporation was critical of the proposal (cl 233(2)(b)) to define the purposes of the trust. In this submitter's view, to define the purpose as a charitable entity is not appropriate. This is a matter that should be left to the family's discretion.

535 One submitter noted that this provision does not specify who would be the trustees of the whānau trust. The submitter felt that this should be made clear.

Cl 235: Processing of application

536 Clause 235 provides that once an application is filed, the chief executive considers whether the application meets the form requirements as set out in the Bill. If the chief executive is satisfied, submissions are called for and if no objections are received in 20 days, the register must be amended to reflect the new ownership details.

537 One submitter noted that this provision will not ensure the "succession process is simple, timely, or in line with Māori owner's aspirations". If, for some reason, the chief executive is uncertain as to whether any of the information in the application is correct, he may refer the application to the Court. The submitter was concerned that this is at the sole determination of the chief executive and there are no guidelines provided as to what the chief executive should consider when determining whether or not the information can be deemed correct.

538 One submitter considered that the 20 working day period for making submissions (cl 235(3)) does not allow sufficient time for those that may have an interest in the application to firstly become aware of the application and secondly, to respond with a formal objection. The submitter noted that more often than not, the Court represents the first and only time the successors, beneficiaries and whānau engage with someone with a legal background. Under the Bill, it appears that Māori owners should seek legal representation at every step prior to any appearances in Court in order to ensure their interests are protected. This is a cost that the majority of Māori will not be able to meet.

539 Clause 235(4) requires the chief executive to advertise a summary of the application in newspapers and on-line. Ngāi Tahu Māori Law Centre noted that many Māori struggle or simply cannot afford to pay the existing $60.00 filing fee when applying for succession. Under the new Bill, the requirement to post advertisements related to a proposed whānau

trust in several newspapers would be far beyond the financial means of many owners of Māori land. In their view, the people who were unable to afford to meet the advertising costs are most likely the ones whose parents were most likely to have not left wills. They also note that advertising in newspapers is an ineffective method for contacting owners of Māori land. Three submitters (1 trust, 1 incorporation and 1 national Māori organisation) supported this concern and wanted clarification as to who would pay for these advertisements. Two other submitters questioned why this requirement needed to be mandatory.

540 Two submitters suggested that this provision should include a timeframe for processing the application and registering the new ownership details.

Cl 236: Determination of application where objections received

541 Under this provision, if objections are received within the notice period, the application is referred to dispute resolution in the first instance and if no resolution can be achieved, it will finally be referred to the Court. Three submitters (1 individual, 1 incorporation and 1 national Māori organisation) felt that this adds another level of process that need not occur if applications are referred straight to the Court for determination. They felt that some succession applications raise complex legal or factual issues that require judicial involvement and oversight from the outset. Two other submitters commented that the Māori land dispute resolution service was not defined in the Bill. If this was the same service set out in Part 9 of the Bill, this should be specified clearly. Te Rakaupai te Iwi Turoa Trust considered that the provision should specify who may object to an application as the current wording was ambiguous.

Cl 238: Succession interests subject to certain rights of surviving spouse or partner

542 Clause 238(2) provides that a surviving spouse is entitled to receive any income or discretionary grants that the owner would have been entitled to receive until he/she remarries, dies or relinquishes the right. Two submitters Te Unu Unu 2F1B Trust and one other submitter did not support the surviving spouse receiving any income from the owner's interests. Succession and retention of Māori land should be under the concept of taonga tuku iho. While they recognised that a surviving spouse may have rights under other legislation, the submitters did not agree that other legislation should over-ride the retention of Māori land under Te Ture Whenua.

Cl 239: Matters relating to whānau trust established on intestacy

543 The PSA commended the inclusion of a prohibition against trustees disposing of the beneficial interest in the land by way of sale, exchange, gift or mortgage (see cl 239(1)), and that the trust deed can be amended upon application by a trustee or beneficiary under cl 61(2). However, they noted that the former provision is weakened by allowing for changes to the trust deed to be made in regard to disposition when there may be disengaged beneficiaries and the trustees secure this amendment unbeknown to those beneficiaries. Similarly, the trust may be terminated when "a 75% majority of the beneficiaries who participate in making the decision agree" (see cl 57(2)(a)(ii)). That is, in cases when there are large number of disengaged beneficiaries a minority of 'participatory owners' could have the trust terminated, the shares allocated, and commence a partition – in their view this is an alienation process.

Cl 240: Transfer of occupation lease or licence where grantee dies intestate

544 Two submitters noted that the process for transferring intestate occupation licence/lease is extraordinarily defined compared to other clauses, and wanted to know the explanation for this. They observed that under cl 240(4)(b) recipients may go to the chief executive to have the lease or licence transferred or the court may order it to be transferred. The wording in this provision is open to misrepresentation and should be revised. Referring to cl 240(8), they also suggested that further detail is included on how the chief executive may give notice to owners. For instance, the Bill could example of the form that should be used during this process.

Vesting of beneficial interests gifted by will

Cl 241: Vesting of beneficial interest gifted by will when grant of administration

545 Te Runanga o Ngāi Tahu considered that the succession process has the potential to exclude whānau as succession via a will does not require notice to be given. Without notice, there is no guarantee that all whānau will be aware that succession will be occurring. In their view, mandatory notice requirements need to be established to ensure all whānau are informed of the process. This suggested was echoed by Te Hunga Roia Māori o Aotearoa who noted that without notice there is no guarantee that all whānau will be aware that the succession application has been made and have the opportunity to be heard on the matter.

546 Te Runanga o Ngāi Tahu also noted that it was unclear what the process would be should any application be opposed prior to the chief executive updating the Māori Land Register. In their view, such an application should trigger the dispute resolution process. They suggested this be clarified in the Bill.

547 One submitter expressed concern that wills would be held by the chief executive and asked for what purpose this would occur.

548 Ngāi Tahu Māori Law Centre expressed concern about record keeping for succession, noting that the proposed process seems to be haphazard. They noted that currently successions are well recorded with each succession having a Minute Book reference, which can then be referenced in the future to provide a wealth of information about the particular succession. In their view, the Māori Land Court should continue to fulfil this role.

549 Six other submitters (1 individual, 2 trusts, 2 incorporations and 1 professional association) noted that the Bill does not currently provide for a succession register. They suggested that a succession register should be established, which contains the details of successions and is accessible to those wishing to access its records.

Cl 243: Vesting of beneficial interest gifted by will when no grant of administration

550 Two submitters requested further information on the requirement that the chief executive must notify each person entitled to seek a grant of administration. They wanted to know how this would occur and why a 20 working day timeframe had been included.

Cl 244: Recording of certain rights of surviving spouses and partners

551 Two submitters wanted to know why the chief executive is involved in the recording of rights of surviving spouses and partners.

10.3 Other issues

552 Te Hunga Roia Māori o Aotearoa notes that Part 7 does not prescribe who may be left Māori land in a will. These provisions are found in Part 4 of the Bill relating to dispositions by way of gifting. In their view, there needs to be some cross reference between the parts.

553 Ngāi Tahu Māori Law Centre notes there is no provision in the Bill for whānau trusts to be exempt from the 'rule against perpetuities'. While cl 219 applies to rangatōpū, there is no equivalent provision for whānau trusts. In their view, this issue needs to be addressed.

554 Ngāi Tahu Māori Law Centre also suggest that, in the interest of simplicity, all succession applications should be lodged in the same place regardless of the estate details. Under the Bill, succession applications are proposed to be lodged at different places depending on whether or not probate was obtained, i.e.: (a) If there is a will and probate is granted – application to the Māori Land Service; (b) If there is a will where administration has been granted, but without 'effective administration' – application to the Māori Land Court; and (c) If there is no will – application to the Māori Land Service.

11.0 Registers

555 This section sets out the comments that were received on Part 8 of the Bill, which contains miscellaneous provisions including those about registers and regulations.

11.1 Clause by clause analysis

Cl 248: Māori land register

556 Clause 248 requires the chief executive to establish and maintain a register of Māori land. Submitters agreed that a register should be maintained to record the names and whakapapa of all interests in Māori land, regardless of size. However, two submitters (2 whānau trusts) felt that this should not be a national register or one held by the Māori Land Court. Rather they suggested that iwi authorities should be financially supported to register and maintain all Māori Freehold land within their tribal boundaries.

557 One submitter questioned why a whole new "register" is required. Pursuant to s 127 of the current Act, the Registrar is already required to establish and maintain a record of ownership; pursuant to s 209 the Māori Trustee is required to keep a record of improvements affected by a right of compensation in a lease; and the Registrar is required to record all orders, minutes, noting's and confirmations of the Court. The current Māori Land Court Record contains Block Order files with chains of ownership title and whakapapa from the original freehold title. In the submitter's opinion, these services already exist under the current Act and no further amendment is required.

558 The submitter, however, agrees that the accessibility to these records requires updating and further resourcing. They are concerned about what the change proposed in the Bill would entail given the record or register would now be under the control of Te Puni Kōkiri and Land Information New Zealand. They would like to know how the move or change of the record/register would affect its public accessibility.

559 In the submitter's view, the current Māori Land Court record needs be updated and the processes improved with systems that take into account modern communication methods. This will provide added benefit to Māori owners by reducing compliance costs.

Cl 249: Purpose of Māori Land Register

560 Two submitters wanted to know why it is important for the public to identify Māori land owners. They queried the motivation behind this provision. Noting that if you collect that information and hold it, it is subject to a request under the Official Information Act 1982. This means the public will be able to obtain information on the governance entity or the land owner. They felt this was grossly inappropriate as it is not the public's business or their right to know.

Cl 250: Contents of Māori land register

561 Te Tumu Paeroa welcomed the establishment of the Māori land register noting that up-to-date contact details for owners of Māori land are vital to communicate with, give notice to and generally engage with owners. In their view, "the Māori land register provides a real

opportunity to improve the number and accuracy of contact details available for governance bodies and others to maximise owner engagement".

562 Ngāi Tahu Māori Law Centre and two other submitters observed that there are many mistakes in the current records. They suggested a method needs to be put in place to correct the official record where it is found to be wrong. In their view this needs to be done at no cost to the applicant.

563 Two submitters would like it explained in what cases it would be necessary for the identity of a kaiwhakarite to be withheld because it is commercially sensitive (see cl 250(3)(a)).

Cl 252: Application of the Privacy Act 1993

564 Two submitters would like examples of the types of situations that would be covered by this provision.

Cl 255: Right to apply for inclusion in Māori land register where instruments lost, destroyed etc

565 Two submitters would like to know how the person will give notice to every owner (see cl 255(3))

Cl 256: Chief executive may replace or reconstitute records

566 Two submitters felt that there should be a penalty if the chief executive loses, damages or destroys an instrument

Cl 260: No liability of the Crown for notation for Māori freehold land

567 Two submitters thought it was unacceptable that the Crown is not liable to pay compensation if they make the error. They asked where are the accountability and mechanisms to ensure responsibility is taken for these mistakes.

Cl 262: Change of name of parcel

568 Commenting on cl 262(6)(b), two submitters asked if the standards of the Cadastral Survey Act 2002 allow for traditional names to be reinstated onto the land parcel. In their view, there is the potential for Māori land to be sanitised on paper using non-Māori names/descriptors.

569 Two submitters wanted to know what is the prescribed fee for the integration of parcel names and who will receive it (see cl 262(7)(b)). In their view, no Government to Government Agency transaction fee should apply.

Cl 265: Registration of land in name of tupuna

570 The Wellington Tenths Trust and Palmerston North Māori Reserve Trust noted that cl 265 provides that a tupuna may become registered as proprietor of certain land being Māori freehold land or any land reserved as a whenua tāpui. They pointed out that section 220A of the current Act refers to 'the whole or part of the property of the Trust'. They would like to know the rationale for this difference.

Cl 266: Māori land remains affected by existing interests after vesting

571 Two submitters would like the intent of this provision clarified and examples provided.

Cl 269: Jurisdiction of court for purpose of this Act

572 Referring to cls 269(4) and (5), two submitters sought clarification as to whether it will be directly confrontational to have the High Court able to intrude on the jurisdiction of the Māori Land Court. The submitters argued that the High Court Judges are not specialists. They were concerned that this would diminish the status of the Māori Land Court.

Cl 279: Māori freehold land not available for enforcing judgment against debtor

573 Two submitters would like to know why this clause does not include garnishing the debtor's benefits payable from their land interest

Cl 281: Reasonable access to landlocked Māori land

574 Two submitters considered this clause confusing as it is hard to determine whether the Māori Land Court can still grant access on landlocked land. These submitters also want cl 281(2)(d)(i) to better explain the process for appointing administrative kaiwahakarite over the land.

575 Mangatu Blocks Incorporation asked how the costs associated with entering into discussions and resolving the matter would be met?

Cl 285: Notices to owners of Māori freehold land

576 Taheke 8C Incorporation asked how this provision relates to the advertising requirements in other parts of the Bill. In its view, their needs to be consistency between these processes.

Cl 287: Regulations

577 Two submitters wanted to know the timeframe for the preparation and issuance of regulations. The submitters felt that, as their role is being forced on owners, the chief executive should not be able to prescribe charges or fees for the services he/she provides under the Bill.

12.0 Disputes Resolution

12.1 General Themes

Support for the Dispute Resolution Process

578 Over half of all submitters made comments about the disputes resolution process, which is set out in Part 9 of the Bill. Most submitters were supportive of the proposal to enable parties to resolve Māori land disputes themselves in a manner that recognises their tikanga: support occurred across all submitter types.

Submitter Type	Support	Oppose	Concerns	Number of submitter
Council	50%	0%	50%	2
Incorporation	38%	8%	54%	13
Individual	46%	20%	34%	104
Iwi Organisation	100%	0%	0%	2
Local Māori Organisation	87%	7%	7%	15
National level Māori organisation	33%	17%	50%	6
Other national organisation	80%	20%	20%	5
Trust(s)	57%	16%	28%	58
Overall	**52%**	**17%**	**31%**	**205**

579 Submitters noted that dealing with Māori land owners disputes is often a delicate yet unique situation that can often be mismanaged due to the levels of emotion of the many personalities involved. Disputes if not concluded properly often create subsequent problems, which can lead to long standing whānau disputes and on many occasions have a serious effect on the future success of the land's management. They have the ability to create a strain on the long and short term relationship – personal or otherwise – of trustees and owners. Disputes are preventable but are often managed irresponsibly in the early stages because there is no pressure on trustees to include a disputes process in their rules or to abide by those that are included.

580 Many submitters considered that the current process of taking disputes through the Māori Land Court can be an unforgiving process. Some spoke about their experiences with the current process. It places an enormous strain on relationships, and has significant cost implications in terms of time and expense. The lack of a statutory power for both judges and parties to refer disputes to alternative dispute resolution processes was seen as a major gap in the current Act, especially when most other jurisdictions are well advanced in this area. It was felt that many disputes that end up in the court could have been resolved earlier had a strong disputes process mechanism been in place.

581 Most submitters supported the notion of alternative dispute resolution mechanisms as a first port of call. They identified a number of benefits of the proposal in terms of cost savings, minimising the Māori Land Court case load and seeking to resolve disputes as quickly as possible. Te Hunga Roia Māori o Aotearoa noted that such a process would be more effective at preserving relationships between parties than having a matter heard and determined by a Judge. The parties are in control of the process themselves and can determine their own outcomes instead of leaving this to a Judge. This can lead to more flexible and creative outcomes than those available to the Court.

Concerns about the Dispute Resolution Process

582 However, Te Hunga Roia Māori o Aotearoa felt the dispute resolution process envisaged by the Bill was a mixture of mediation (whereby the kaitakawaenga will facilitate a process for the parties to resolve their issues by agreement) and arbitration (whereby, if they cannot reach agreement the parties can agree to give the kaitakawaenga the ability to make a decision that is binding on the parties). Although there are some advantages in combining mediation and arbitration into one process, they identified a number of disadvantages. These include:

- There is a risk that the impartiality of kaitakawaenga may be affected by overseeing the mediation, and this may affect their ability to later make binding decisions
- A party may be reluctant to openly discuss its position with the kaitakawaenga knowing they will also be the arbitrator of the dispute.
- If the kaitakawaenga gives their views of the merits of the case during the mediation phase but there is no settlement, the parties may use their comments to strengthen their arguments and submit additional information
- If the 'mediation/arbitration' does not lead to settlement, a party might seek to challenge a subsequent binding decision of the kaitakawaenga on the basis of some alleged lack of due process.

583 Tahora No2C1 Section 3 Trust noted that the establishment of the dispute resolution service would siphon money away from the Māori Land Court. They were concerned that this reduction in funding, combined with reduced jurisdiction for the Māori Land Court, may result in delay in the progression of cases being heard by the Court and added costs being passed on to the parties to those cases.

Involvement of the Māori Land Court

584 A number of issues associated with alternative disputes resolution mechanism were identified and, as a consequence, many submitters encouraged the Government to proceed with caution. Most submitters supported the idea that the Māori Land Court should be available to determine disputes it they remain unresolved following mediation. However, several wanted a greater role for the Judges.

585 The Organisation of Māori Authorities noted that alternative dispute resolution processes are judicial in nature and, therefore, should be provided by the 'independent' branch of government, not by the Executive branch of government. They noted that the Māori Land Court has powers to refer issues to a mediator under the Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004. They considered that this jurisdiction should be extended to all Māori land disputes. To support their view, they pointed out that dispute resolution processes are widely used in the Environment Court, where Judges (not officials) oversee and coordinate the provision of these services.

586 Te Hunga Roia Māori o Aotearoa noted Māori land is highly regulated, so the outcomes negotiated would need to be in line with the governing legislation. Parties would not be able to circumvent the process, even by agreement. In their view, Judges should have a stronger role in the disputes resolution process, including ensuring that the process aligns with principles of natural justice (Te Runanga o Ngāi Tahu supported these comments).

587 Te Hunga Roia Māori o Aotearoa commented that compelling the parties to resolve disputes does not necessarily align with the principle of autonomy. They considered that a balance needs to be struck between the value Judges play in assessing the appropriateness of cases for dispute resolution, and the role the chief executive plays in managing the process. They suggested that matters should be assessed by a Judge, who should have the ability to persuade the parties to attempt a disputes resolution process. This should be discussed at the first calling of the dispute and considered at every milestone in the process. It should be a requirement for the parties, and their counsel, to explain why dispute resolution processes are not appropriate. They suggested that a provision similar to s 268 of the Resource Management Act 1991 be included in the Bill with further support for the dispute resolution process to be set out in regulations.

588 Given that the Māori Land Service is forecast to take 3 to 5 years to phase in, Te Hunga Roia Māori o Aotearoa also felt that it is necessary that the disputes resolution process gains credibility from the outset. In their view, it is important that the Judges have overall management of the process during this period.

589 Other submitters were supportive of the current process and wanted the Māori Land Court to retain its jurisdiction over disputes. They acknowledged there were issues with the Court but felt these could be resolved with additional resources. They questioned the need for change and raised several issues about disputes resolution mechanisms. For instance, one submitter noted that "in mediation there is a lack of enunciation of community values and therefore no precedent created. With mediation there is also no guarantee of a binding decision. There may be a lack of procedural safeguards. There may also be possible mediator bias".

Trialling the dispute resolution process

590 One submitter considered the dispute resolution process should be trialled before it is rolled out across the whole country.

Alternative approaches

591 A number of submitters felt that hapū or iwi authorities would be better placed to resolve disputes as they would be more familiar with the matters at issue. Although they would need to be appropriately resourced this would be cheaper than establishing a new entity.

12.2 Clause by clause analysis

Cl 289: Interpretation

592 FOMA questioned why Part 9 provided a definition for 'kaitakawaenga' and 'mātauranga takawaenga'. In their view, it was not clear why, if a definition is required, that this is not provided for in the Interpretation section for the statute as a whole.

593 Two submitters suggested that the term "mātauranga takawaenga" also refers to the kawa of the whānau, as it currently only refers to kawa of the hapū.

Cl 290: Chief executive to provide dispute resolution service

594 Two submitters considered that the chief executive should not have this role. However, they did not provide an alternative.

595 The PSA wanted to know how the disputes resolution mechanism will be staffed; whether kaitakawaenga will be employed permanently and on a full-time basis, or will their services be contracted; and how kaitakawaenga will be trained. In their view, the Bill should provide better clarity around these issues.

Cl 291: How dispute resolution process initiated

596 This clause sets out how a disputes resolution process may be commenced. Te Hunga Roia Māori o Aotearoa noted that it was not clear what would happen if a party lodges a notice of dispute with the chief executive but the other party does not respond. They wanted to know whether the matter is referred to the Court or whether the chief executive makes a determination on the basis that the other party has not responded. They were not supportive of the latter approach and suggested that in such circumstances the matter needed to be referred to the Judge to issue directions as to service, if that is an issue, or direct the party to appear and respond to the claim being made.

597 Maniapoto Māori Trust Board urged the "inclusion of a provisions to minimise and prevent frivolous, malicious or vexatious disputes from progressing, regardless of who was bring the dispute".

598 A similar concern was echoed by Ngāi Tahu Māori Law Centre, who were concerned that the introduction of dispute resolution processes may further slow Māori Land Court processes. In their view, dispute resolution processes should only be carried out where appropriate, and that clear timelines be set around those processes.

Cl 292: When dispute resolution process must begin

599 This clause relates to the appointment of kaitakawaenga to conduct a dispute resolution process. To provide flexibility in appointment, it purposely does not set out the competencies of kaitakawaenga. The only requirements are set out in cl 292(2) which provides that if one kaitakawaenga is appointed that person must possess knowledge and experience of tikanga Māori and, when handling or dealing with the dispute, be able to act impartially. If more than one kaitakawaenga is appointed, at least one of them needs to possess these skills. It is also implied that kaitakawaenga should have an understanding of te reo Māori as cl 293 allows proceedings to be conducted in te reo Māori.

600 Te Hunga Roia Māori o Aotearoa and Te Runanga o Ngāi Tahu were both supportive of the chief executive having the responsibility for employing/contracting kaitakawaenga and for meeting their costs and expenses. However, they were concerned about the type of mediators that would be appointed. They supported the notion that tikanga is an important criteria not only in terms of the process but in terms of their requisite skills and experience. There is real value in ensuring that kaitakawaenga have significant knowledge and experience in tikanga to ensure the process is tangata whenua based. However, this needs to be balanced against the need for kaitakawaenga to have the required process and written skills, especially as many disputes that come before the Māori Land Court do not involve matters of tikanga but legal disagreements. They also need to have a solid working knowledge of the governing legislation.

601 It was also stressed that, given the binding nature of the agreements, the persons providing the dispute resolution services should be competent and capable of drafting an enduring binding agreement that covers all matters that need to be required. There was a strong view that kaitakawaenga need a certain level of legal skills.

602 Te Hunga Roia Māori o Aotearoa and one other submitter (1 whānau trust) proposed that kaitakawaenga possess professional qualifications, through one of the two accredited bodies in New Zealand, LEADR NZ or AMINZ, and be registered with these bodies. They also encouraged the government to work with these bodies to develop a Māori-focused accreditation process for kaitakawaenga. They did not think that people should be appointed solely on the basis that they are a kaumātua or have some facilitation background working for a government agency.

603 To ensure the credibility of the process, formal training, experience and qualifications in professional dispute resolution are necessary. If this did not happen, there is a danger that the parties may have inconsistent experiences, which could lead to a distrust of the process. Te Hunga Roia Māori o Aotearoa warned that "if Māori did not trust the process, they would not use it if there is another choice. If they are compelled to use a process they do not trust, that defeats the entire purpose of the reform."

604 Four other submitters (1 incorporation, 1 iwi organisation, 1 local Māori organisation and 1 professional association) echoed these concerns, especially the lack of a requirement to possess legal skills. Whilst cultural or te reo skills were important, these are not enough.

605 Clause 292(1) allows the parties to appoint a kaitakawaenga to conduct their dispute resolution process. The PSA suggested that the Bill clarify whether this will be from a list of kaitakawaenga provided by the Māori Land Service, or do the parties have the opportunity to appoint persons other than those employed / contracted to the Māori Land Service.

606 Clause 292(2) enables more than one kaitakawaenga to be appointed. Te Hunga Roia Māori o Aotearoa considered this positive as dual mediators will ensure that the parties have the best people available for complicated multi party and multi issue disputes. They noted, however, that having two kaitakawaenga can exacerbate the time involved at a mediation process and there will be questions around who makes the final decision if the parties agree to move to the arbitration/decision-making process by consent. They suggested only one kaitakawaenga is appointed but require all kaitakawaenga to possess skills and have some form of qualification or accreditation in mediation/arbitration processes generally.

<u>Cl 293: Role of kaitakawaenga</u>

607 Clause 293 sets out the role of kaitakawaenga during the dispute resolution process.

608 As part of this role, kaitakawaenga may be guided by the tikanga of the hapū associated with the relevant land and the concept of mātauranga takawaenga when deciding the procedures that should be followed. This requirement was viewed positively, with many submitters commenting that tikanga is the foundation of Māori custom and expresses the values, standards, principles and norms developed by Māori to govern themselves. As such, its inclusion in the process may preserve and transform relationships.

609 However, Te Kopua 2B3 Incorporation noted that this provision assumes there is widespread understanding of tikanga and its application. The reality is very different. Knowledge and the practical application is held among the few. They were concerned how this requirement will work in practice in a dysfunctional environment. As the PSA pointed out, the Bill is unclear what would happen if the parties had conflicting views regarding tikanga and could not agree on protocol. It was also unclear what would happen when one of the parties was not Māori (for example, a lessee). They considered that kaitakawaenga may need a deeper understanding of universal tikanga Māori.

610 One submitter suggested this provision clarify that, if kaitakawaenga are assisted by staff of the Māori Land Service during the mediation (i.e. support staff, Māori wardens and any contracted security), they shall have control over these persons and can issue instructions to them.

611 Two submitters suggested that the parties should be able to reject a kaitakawaenga.

Cl 294: Conduct of dispute resolution process

612 Clause 294 focuses on the conduct of a disputes hearing. It does not describe the process that should be followed. Several submitters commented on a possible process.

613 One submitter considered that the dispute resolution process should run in a similar way that the Māori Land Court hearing forum currently operates: that is, the kaitakawaenga should hear from both parties and then render a decision or issue directions. In his view, the owners and beneficiaries should be afforded the opportunity to engage with the parties by presenting written questions pertinent to the mediation. These questions should be submitted in advance to the staff assisting the kaitakawaenga, who should have a discretion as to how and if they are presented (for instance, the owner may be invited to address the hearing).

614 Other submitters commented that all parties should be required to attend the mediation conference, afforded the opportunity to speak, and required to act fairly and honestly towards each other. Minutes should be kept of the hearing.

615 Te Hunga Roia Māori o Aotearoa stressed that it will important for the parties to try to reach agreement on matters such as the precise format of any mediation and how privileged or confidential information disclosed in the course of a mediation is to be dealt with, particularly if the kaitakawaenga is then asked to make a binding decision.

616 The Bill is silent about whether lawyers can assist parties during the dispute resolution process. Four submitters committed on this issue. Given the binding nature of decisions made by kaitakawaenga, Te Hunga Roia Māori o Aotearoa considered it important that parties have available legal support to provide advice on important process issues. Ngāi Tahu Māori Law Centre proposed that provision be made for parties to be accompanied by advocates if they so wish. In their view, if this is not provided for, there is a high risk that power imbalances may play a part in decisions coming out of the dispute resolution process. James Broughton agreed that lawyers should be involved but suggested their involvement be limited: for instance, to situations where the parties don't possess the necessary skills to provide a legal defence. Legal aid should be available for parties who are unable to cover the cost of legal counsel. Ngāti Whakaue Tribal Lands expressed

concern that the involvement of lawyers in the process would increase the compliance costs for owners.

617 Although cl 294(2) provides that any statement, admission or document created for the purposes of the dispute resolution process must be kept confidential, this provision does not require the hearing to be closed to the public. One submitter considered that this should not occur. Dispute hearings that are closed to the grieving parties or those directly involved often leave owners or beneficiaries confused and grossly uninformed. They should be heard in an open and controlled forum setting. Two submitters considered that there should be a penalty for breaching confidentiality, applicable to the kaitakawaenga, the parties and other persons attending the hearing.

618 One submitter also discussed the location and time of the dispute hearing. The submitter noted that mediation hui often take place on a marae. In some cases, this provides significant advantage for one party and places the other party as well as the court staff in an uncomfortable position. The submitter suggested that hearings should be restricted to public venues (such as public halls or event centres) and should not be held at a marae or any other location that may be seen to hold some time of advantage for one of the parties. The submitter also suggested that hearing should take place at the weekend, as many owners would not be able to attend hearings conducted during the week due to work commitments.

619 The PSA also wanted to know where the mediation will take place and, if it was held outside of the offices of the kaitakawaenga, who would meet the costs of venue hire.

Cl 295: Parties may confer powers of recommendation or decision on kaitakawaenga

620 This clause provides that the parties may confer on the kaitakawaenga the power to make a written recommendation or the power to decide the matter. Te Hunga Roia Māori o Aotearoa acknowledged that this was an important protection, but was concerned that unless the parties have retained legal counsel, they may be unaware of the importance of process on substantive matters.

621 The Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust noted that the wording of sub-clauses (2) and (3) appears to make such recommendations and decisions binding on the parties. They were surprised that recommendations of the kaitakawaenga may be binding on the parties. This clause should be amended to clarify whether any such recommendations are binding on the parties.

622 Tauhara North No 2 Trust supported the idea that a kaitakawaenga may be asked to make recommendations (rather than binding findings) in order to facilitate a resolution of issues through mutual agreement. However, such a recommendation should become binding within a certain period, if agreement cannot be reached.

Cl 296: Successful dispute resolution outcome

623 Taheke 8C Incorporation discussed cl 296(2)(a) which requires the kaitakawaenga to explain to the parties the effect of signing the agreed terms of resolution. The submitter noted the risk of people attending without legal counsel and failing to understand the implications as well as the lack of a cooling off period under the Bill. Accordingly,

Kaitakawaenga need to properly advise the parties that they could lose their legal right to go to the Court (except for enforcement issues) if they agree to terms during this process.

624 Two submitters commented on cl 296(2)(b)(i) requirement that kaitakawaenga deliver the signed record of the terms of resolution to the chief executive. They wanted more information about the role of the chief executive, including whether this role could be delegated; whether the terms of resolution become a matter of public record and thereby discoverable; and whether there were any penalties for breaching confidentiality once the signed record is received.

625 Clause 296(3) provides that once the agreed terms of resolution are signed by the kaitakawaenga, those terms are final and binding. No party can bring those terms before a court for any reason other than enforcement purposes. Te Rakaupai te Turoa Trust and Tauhara North No 2 Trust were concerned about the inability to appeal the agreed terms of resolution for any matter other than enforcement purposes. They noted that the Bill is inconsistent with other dispute resolution process and refer to the Arbitration Act 1996 (s5 of Sch 2), which allows appeals on a question of law.

626 One submitter suggested that following the signing of the agreed terms of resolutions, kaitakawaenga should check in with the parties at least twice to ensure they are being complied with.

Cl 297: Unsuccessful dispute resolution outcome

627 Te Hunga Roia Māori o Aotearoa did not think it appropriate or necessary for the chief executive to have the ability to refer unresolved issues to another kaitakawaenga if the dispute resolution process is initially unsuccessful. This is a judicial function and therefore should be a matter for the Māori Land Court. The role of the chief executive is effectively an administrative role.

Cl 299: Independence of kaitakawaenga

628 This provision provides that the chief executive must ensure a kaitakawaenga is able to act impartially. If the kaitakawaenga belongs to the same hapū as one or more of the parties, they should only be appointed to conduct the dispute resolution process if the parties agree. One submitter commented that given one of the criteria of kaitakawaenga is understanding of hapū tikanga, there is a risk that relatives will adjudicate disputes, thus creating the risk of possible conflict.

Cl 300: Chief executive may issue general instructions

629 Two submitters wanted to know why the chief executive has the power to issue general instructions and the associated costs.

Cl 302: Parties to refer disputes for dispute resolution before court may proceed

630 Clause 302 sets out the proceedings in which a matter must go to dispute resolution before it may proceed to the Māori Land Court. Clauses 302(2)(a) to (i) state the types of proceedings that must go to dispute resolution in the first instance. Under cl 302(4), the Court does not have the jurisdiction to hear and determine matters under these sub-

clauses unless some or all of the matters are unresolved or the dispute resolution process was unsuccessful.

631 The Tauhara North No 2 Trust and Lake Rotoaira Trust expressed support for the requirement to undertake a dispute resolution process before these matters are referred to the Māori Land Court. However, Te Hunga Roia Māori o Aotearoa did not think it necessary for the Māori Land Court to refer a matter that comes before it to the dispute resolution service. A Judge should be able to hear and determine the matter.

632 Conversely, one submitter stated that where both parties were represented by counsel, dispute resolution should not be obligatory. Experienced practitioners are well placed to judge whether or not a dispute is likely to be resolved through such a process. The parties should be given the option of going straight to Court.

633 Tauhara North No 2 Trust and one other submitter commented on the wording of cls 302(6)(a) and (b) noting that the references to "the court or the chief executive" made these provisions confusing. Appropriate cross-references should be included in these provisions.

634 Ngāi Tahu Māori Law Centre suggested that the dispute resolution services should be available to beneficiaries and heirs of estates that include interests in Māori land.

12.3 Other issues

635 Submitters asked about the costs associated with using the dispute resolution process, and who would pay for these costs. Several commented that for this service to be effective, it must be free for Māori land owners to access, otherwise it will not be utilised to its full potential.

636 Ngāi Tahu Māori Law Centre asked where the pūtea will come from to fund this service. Parties to a dispute should be required to demonstrate that they have attempted to resolve the dispute themselves before they are able to access subsidised mediation. They suggested that a clear and simple process outlining the steps parties need to take before the dispute can go to mediation should be established.

637 One submitter noted that during the mediation kaitakawaenga should be accompanied by staff of the Māori Land Service to carry out administrative functions. In addition to these support staff, local Māori Wardens or Professional Security Personnel will need to be contracted by the Māori Land Service as a safety preventative measure and to provide security at the mediation (if this is deemed necessary or upon a formal request made by the owners, kaitakawaenga or the Māori Land Service staff) and shall act under the instructions of the Mediator and On-site Staff.

13.0 Refocusing the Māori Land Court's Jurisdiction

13.1 General Themes

639 Almost one quarter of submitters discussed the proposed reshaping of the Māori Land Court. The levels of support, opposition and issues with the proposal on reshaping the Māori Land Court were approximately equal.

	Supported	Opposed	Issues raised	Number of Submitters
Individual(s)	30%	28%	43%	40
Trust(s)	33%	57%	10%	21
Local Māori Organisation(s)	33%	44%	22%	9
Incorporation(s)	56%	22%	22%	9
Council	33%	0%	67%	3
National level Māori organisation	0%	67%	33%	3
Other national organisation				2
Iwi Organisation(s)	100%	0%	0%	1
Land related professionals	0%	0%	100%	1
Other				0
Overall	33%	34%	32%	89

Support for the proposed changes

640 Supporters of the proposed changes thought that they would reduce the administrative burden of the Māori Land Court, and allow it to focus on matters of law. They thought that the proposed changes would provide more autonomy to owners.

641 It was noted that while the current process is costly, time-consuming and frustrating, there will be cost implications on land owners to adjust to the changes.

Opposition to the proposed changes

642 There was mixed support for the division of services between the Māori Land Court and the Māori Land Service. While some submitters thought that splintering of services was a good idea, others felt this was not necessary and would lead to problems. They argued that the Court has the capacity, structure and legislative framework to undertake the roles envisaged for the Māori Land Service. Submitters commented that it was not clear what the driver was for this significant change and sought more detail about the proposals.

643 It was felt that the Māori Land Court should retain its role as the judicial forum for Māori land issues. The resourcing of the Court was seen as a key issue. It was suggested that this be increased along with better management and performance monitoring. While they acknowledged some minor changes to the current legislation needed to be made, these measures would be a sufficient and cost efficient alternative.

644 A number of arguments were raised in support of the Māori Land Court. Although it is not perfect, the Court was seen as a safe pair of hands. It was impartial, fair and transparent. People understood where they must go and what is required to sort out matters relating to their land interests. It provided a level of assurance, which submitters did not want to see compromised under any future change.

645 One of the core problems that needs to be addressed is the governance capability of owners, and this needs to be addressed. It was felt that the proposals would weaken the current safeguards around ownership interests and had the potential to alienate Māori from their land. The Māori Women's Welfare League felt the proposed changes were reminiscent of days when the Native Land Court and Land Boards were Crown agents, while two others said the Māori Land Court would be unable to function without political influence. Submitters were worried about the loss of key services in the regions.

646 It was suggested that the Māori Land Court continues to maintain thorough information about Māori land blocks (owners contact details). It was noted that there was a risk that beneficial interests (shares) on the Court record may be lost as the records will have to be manually transferred to the registry of the Māori Land Service.

Māori Land Court minute books

647 There was a particular concern that responsibility for holding the Māori Land Court minute books would pass to the Māori Land Service. Te Runanga o Ngāi Tahu noted that the minute books hold records of the hearings and evidence given to establish the Native Land Court titles across New Zealand. They record tribal history, whakapapa and evidence of iwi and hapū use and occupation of land. In its view, the minute books are a unique archival source for Māori and for iwi. They are a repository of the oral tribal histories and whakapapa of most tribes, recorded at hearings in the nineteenth and twentieth centuries by Native (later Māori) Land Court clerks. The submitter stressed that without this unique source, much tribal history and traditional knowledge would have been lost.

648 Submitters stated that it was unclear whether this information is going to be held in a safe and secure place or how the information is intended to be maintained. There is no clarity about the role of the Māori Land Court, and/or what future role it will undertake in this regard. Submitters was concerned about the potential loss of this information.

Opposition to the Māori Land Court

649 Several submissions were opposed to the Māori Land Court in general. They commented that the Court is still a government agent and as such continues to alienate Māori from their land. Māori land owners should make decisions without the Court's approval and in order to adhere to tribal customs and lore, all matters should be taken back to the marae for discussions and decisions. Many tribes have tribal runanga where these matters are addressed.

13.2 Separate Acts

650 It is intended that Parts 1 to 10 will become Te Ture Whenua Māori Bill and Parts 11 to 16 will become Te Kooti Whenua Māori Bill.

651 FOMA considered that it is not helpful to separate the two Acts. This is because a significant part of the jurisdiction of the Māori Land Court is contained in Parts 1 to 10 of the Bill, and having a completely separate piece of legislation containing Parts 11 to 16 is likely to result in confusion and further difficulty for users to understand the scope of the court's role. For example, cl 14 provides that the Court may determine whether any land is Māori customary land. Clause 15 provides that the Court may determine the class of collective owners of Māori customary land.

652 They also note that where a major statutory reform has taken place that confers jurisdiction to a special tribunal, it has not been standard practice to have separate statutes to cover the substantive provisions and a separate piece for legislation to establish the tribunal. To support their view, they refer to the jurisdiction of the Environment Court, which is fully set out in the Resource Management Act 1991.

13.3 Clause by clause analysis

Cl 320: Governor-General may confer special jurisdiction

653 Two submitters wanted cl 320(3) expanded and examples provided of the situations that would be covered by this provision.

Cl 330: Exercise of jurisdiction generally

654 FOMA noted that it was not clear whether the Māori Land Court will have jurisdiction to hear a claim challenging the decision of the chief executive. This is not specifically provided for in this clause. In its view, "if the Court does not have jurisdiction, then the usual remedy will be judicial review proceedings in the High Court, which will create added layers of bureaucracy, more uncertainty and greater cost for landowners".

Cl 339: Chief Judge may correct mistakes and omissions

655 Two submitters were concerned about this provision, noting that the Crown could negotiate 'customary' land outside a rohe and there would be no recourse for manawhenua. They would like it clarified who has jurisdiction to determine changes to vesting orders for customary land.

656 Te Hunga Roia Māori o Aotearoa noted that it is unclear what the process is if a decision of the chief executive regarding a succession application is challenged. Currently, the wording of this provision does not cover the actions of the chief executive. In their view, the actions of the chief executive should be able to be corrected by way of cl 339 as in the same way as mistakes and omissions of the Court and the Registrar.

Cl 350: Appeals from Māori Land Court

657 Two submitters commented that if the Court's jurisdiction is limited by a clause in the Bill, then this should be noted in this clause.

Cl 379: Orders affecting Māori land conclusive after 10 years

658 Two submitters wanted this provision clarified and examples provided of the situations that would be covered.

Cl 387: Functions and powers of receiver

659 Two submitters wanted it explained why a receiver can grant a lease or license while a dispute is going on or being heard in the Court (see cl 387(4)). In their view, this would negate the owner's authority over their land.

Cl 392: Judge may convene judicial settlement conference

660 Te Runanga o Ngāi Tahu and Te Hunga Roai Māori o Aotearoa noted the inclusion of judicial settlement conferences in the Bill. They consider it positive that judicial settlement conferences, which have been a big part of the District and High Court system for some time, may now be available to Māori land owners who would ordinarily bring disputes before the Court. Judicial settlement conferences focus on settling any disputes before they go to a full hearing, with the ability for the judge presiding over the settlement conference to give his or her view on the merits of the case, which may sway the parties to settle or discontinue an action.

661 While they consider this is a positive development, one of the difficulties with the proposal is that there is only a small pool of Māori Land Court Judges and at times, they can be conflicted because of their previous roles as lawyers or having whakapapa connections to particular areas. Therefore, this may lead to some parties having to wait for some time to have their matters determined. For this reason, they both suggest further consideration is given to provide additional resources to enable judicial settlement conferences to be delivered more effectively.

Cl 395: Attorney-General to publish information concerning appointment process

662 Four submitters (3 individuals and 1 whānau trust) as well as the Not One Acre More submission disagreed with what they mistakenly saw as a proposal that the Minister for Māori Development will no longer recommend the appointment of Māori Land Court judges. They did not support this role being moved to the Attorney-General as they feared it would lead to the government appointing judges it likes.

13.4 Other Issues

663 Ngāi Tahu Māori Law Centre considered that the Bill fails to address the practical difficulties associated with the functions of the Māori Land Court. They proposed the inclusion of reasonable timeframes for decisions to be adhered to. In their view, applications to the Chief Judge of the Māori Land Court should be decided within five years of being filed, and decisions in the Māori Land Court and Māori Appellate Court should be decided within one year of filing.

14.0 Schedules to the Bill

664 This section sets out the comments that were received on Schedules 1 through 3. No comments were received on Schedules 4 through 7, although some criticised the fact that Schedule 7 had yet to be drafted (the consequential amendments have since been inserted in the Bill).

14.1 Schedule 1: Transitional and related provisions

665 One quarter of submitters (95) discussed transitional arrangements. It was noted the transition process could provide an opportunity for existing trusts and incorporations to be reviewed and positive changes made to their governance arrangements which would lead to improved transparency and increased participation of owners. However, most responses raised concerns about the transition process, which centred on the possible manipulation of arrangements during transition; the ease of transition for blocks that are underutilised or that have less mature and sophisticated governance bodies in place; the impacts on existing commercial and/or legal arrangements; and forcing blocks who do not have land administrators or active trustees in place to become a rangatōpū by default.

666 The transition process for existing trusts and incorporations was not seen as a problem so long as they have established and efficient systems in place, receive appropriate support, are guided through the process by effective kaitiaki and are operating legally. However, there was a view that existing trusts and incorporations should not have to transition to the rangatōpū model or adopt the standard governance agreement as a default option, particularly in circumstances where a suitable constitution is in place. It was felt that they should be able to grandfather their existing constitutional documents.

667 While some submitters thought the transition could occur straight away, many suggested that three years was not enough time. In part this was due to the necessary work to plan the transition, including requirements under other legislation. Alternate time frames included five years with discretion of court to extend this period to ten years.

668 A number of comments were made about the costs associated with transitioning to the new governance model. It was felt that this would have a larger impact on small and medium trusts, who are less likely to absorb the costs of these changes. For instance, Te Tumu Paeroa estimated it would cost on average $8,800 to update the constitutional documents of an existing trust. In its view, these costs would be related to activities around:

- Review by trustees/kaitiaki of existing trust orders to assess whether they are appropriate and compliant with the new legislation, and how they compare with the standard governance agreement;
- Legal advice as part of the above process;
- Legal and other professional advice around whether a rangatōpū that was an ahu whenua or whenua tōpū trust should become a body corporate or remain a private trust;
- Review of current trustees to assess whether they comply with legislative requirements to be appointed as kaitiaki;
- Drafting of new or updated governance agreements;
- Meetings of owners to explain the reasoning and impact of the changes, approve the new or updated governance agreement and appoint a governing body.

669 In addition to the concerns around costs, it was felt that current trustees would be less likely to remain in the position, or that they will not actively pursue transition. It was also pointed out that there are not many facilitating sections or clauses that would assist with the streamlining of processes and reduction of compliance costs.

670 The transition needs to be facilitated by capability building of land owners; support from owners and relevant organisations: Councils, Local and National Māori organisations; simplifying the process; and the Māori Land Service providing administration services to assist with many services required. FOMA considered that toolkits for each type of existing entity outlining mechanisms and process to transition to either a trust or body corporate would be both helpful and necessary to reduce the increased burden on these groups.

671 Submitters commented on the need for kaitiaki to be adequately trained and capable of making decisions efficiently and effectively to be able to increase productivity and maximise output. Currently many kaitiaki lack these governance and management skills. A robust education programme to raise critical awareness around the impact and potential changes to Māori land owners also needs to be rolled out across the motu.

Schedule 1, cl 2: Existing Māori incorporations continue as rangatōpū

672 Many submitters disagreed with this proposal, arguing that existing incorporations that are operating well should be entitled to continue under the proposed reform without having to transition to a rangatōpū. It is unclear what costs and effects the transition process may inflict on existing incorporations. At the very least it will cause confusion for owners whose land is tied up with the incorporation. Several submitters suggested that, if existing incorporations are required to change, Māori corporate entities should be included in the Bill separate from rangatōpū, so that the applicable provisions are clearly set-out, easy to read and interpret.

673 Ngāti Whakaue Tribal Lands and Taheke 8C Incorporation noted that mainstream investors, banks and other organisations that interact with Māori organisations understand "Incorporation" (and "Trust") just as they understand "Limited" in the corporate sense. There is jurisprudence relating to each. In the submitter's view, creating a new name for an entity that has body corporate status will create confusion and cost as third parties will undertake further due diligence to understand what it is they may be contracting with. They suggest that corporate Māori entities retain the word "Incorporation" (or "Trust") within their titles.

674 Under Schedule 1, cl 2(2) on commencement each unclaimed dividend becomes an unpaid distribution for the purpose of this Bill. Taheke 8C Incorporation would like to know the implications of this for tax liability, as the outcome may have a considerable compliance cost for Māori entities. Parininihi ki Waitotara Incorporation sought clarification as to whether (a) only those dividends that, on commencement of the Bill, have been held for at least 10 years become "unpaid distributions", or (b) all dividends that are unpaid at the commencement of the Bill to become "unpaid distributions, and therefore able to be utilised under clause 205(2).

Schedule 1, cl 2: Rights of shareholders of existing Māori Incorporations preserved during transition period

675 Taheke 8C Incorporation noted that under cl 3(1)(b) during the transition period shareholders retain the same rights and entitlements as they had under the current Act. In their view, those rights and interests and the sections relating to them under TTWM Act should be clearly stated in this section to ensure that the rangatōpū does not miss any and breach this clause.

676 Clause 3(2) requires that the updated governance agreement must not materially alter the rights and entitlements of a person who was a shareholder in the incorporation. One submitter asked what is the transfer to undivided shares if not a material alternation of rights? Further, what happens if the requirements of the Bill that must be included in the governance agreement are material? The submitter wants to know why those provisions are not all included in this Schedule rather than referring to TTWM Act, which will have been repealed.

Schedule 1, cl 4: Existing ahu whenua or whenua topu trusts continue: trustees become governance bodies

677 Many submitters disagreed with this proposal, arguing that existing trusts that are operating well should be entitled to continue under the proposed reforms without having to transition to a rangatōpū. It is unclear what costs and effects the transition process may inflict on existing trusts. At the very least it will cause confusion for owners whose land is included within the trust.

678 One submitter noted that the effect of this clause is that the RUHT would continue as a rangatōpū that is a private trust and therefore subject to Schedule 3 and Parts 5 and 6 of the Bill. The submitter noted that the Bill refers throughout to "owners" of Māori freehold land who can participate in the meeting process under Schedule 2. The Māori Appellate Court has held that the "owners" of Hauturu East 8 only hold a reversionary interest and otherwise have no beneficial interest in the RUHT. The beneficiaries of the RUHT are the class defined by descent from 22 tipuna. Accordingly, none of the provisions in the Bill relating to quorum or participation threshold will apply to the RUHT in accordance with the definition of owner in cl 8. In the submitter's view, the RUHT should not be deemed to continue as a rangatōpū that is a private trust and be subject to Parts 5 and 6 of the Bill.

Schedule 1, cl 5: Other ahu whenua trusts and trusts of Māori land continue as if this Act had not been enacted

679 Three submitters (2 trusts and 1 incorporation) commented that existing well-performing Māori incorporations and trusts were being forced to comply with the new regime, while those entities specifically listed in this provision have been excluded. Ātihau Whanganui Incorporation stated that requiring existing trusts and incorporations to comply with the new legal regime (in circumstances where some Māori trusts and incorporations are excluded) is unfair and ignores the mana whenua and tino rangatiratanga of these trusts and incorporations. They suggested that this provision be opened up to other trusts and incorporations.

680 The Tuwharetoa Māori Trust Board noted that the trust appears to be captured by cl 5(1)(b), which covers "any other trust constituted in respect of any Māori land that is not

an existing ahu whenua or whenua topu trust." For the avoidance of doubt, they would like the Trust expressly listed in cl 5(1)(a)

681 Lake Rotoaira Trust wanted to know why the Bill is not intended to apply to the Trust.

682 Both the Tuwharetoa Māori Trust Board and the Lake Rotoaira Trust would like to know whether they will face difficulties managing their land assets if the Bill does not apply to the Trusts. They would like to have a discussion with the officials working on the Bill on this matter.

Schedule 1, cl 7: Governance body must, within 3 years, update or confirm transitional agreement or adopt standard agreement

683 Parininihi ki Waitotara thought that the requirement to update and confirm the transitional agreement or adopt a standard agreement was a positive step towards providing opportunity for entities to tailor their constitutional requirements to their unique circumstances. However, another submitter thought there was no good reason to require existing trusts and incorporations to adopt a new governance agreement.

684 Two submitters noted that when the current Act was introduced, ahu whenua trusts were required to review their trusts and confirm or update their trust orders. Although they were all notified and given three years to do so, most failed to transition. The transition requirement was a major drain on Court resources. The current process will be no better. It will be costly and time consuming. In order to meet the three year timeframe in the Bill, existing trusts and incorporations will need a lot of support from the Māori Land Service.

685 Although one submitter felt that existing entities should be required to transition straight away, many others questioned the three-year transition period. Taheke 8C Incorporation noted that as the standard governance agreement had not been prepared the transition period should be extended to 5 years. Te Tumu Paeroa agreed that this was a more suitable time period, however the Wellington Tenths Trust and Palmerston North Māori Reserve Trust both wanted it extended to ten years. As an alternative, Taheke 8C Incoporation suggested that the Bill should include a discretion for owners to apply to the court for an extension if the transition period proves onerous.

686 Te Runanga o Ngāi Tahu expressed concern that whānau would have to bear the full costs of preparing a governance agreement that conforms to the requirements of the Bill.

687 Clause 7(4) provides that once a transitional agreement is confirmed and registered as a governance agreement, any part that does not comply with Schedule 3 (Governance Agreements) is invalid and ceases to apply. Taheke 8C Incorporation noted that this provision had the potential to significantly disadvantage existing shareholders. In its view, all rights and interests set out in transitional agreements should be preserved unless specifically excluded. The provision therefore needs to be amended to set out the rights and interests that would be excluded if they are in conflict with the Bill.

Schedule 1, cl 10: Consequences if a governance body fails to update or confirm a transitional agreement, or adopt a standard agreement, within 3 years.

688 One submitter noted the process the chief executive follows if a governance body fails to update or confirm a transitional agreement, or adopt a standard agreement, within 3 years

(see cl 10(2)(c)) requires no input or consent by the owners. This appears to conflict with the principle of autonomy and decision making. They further note that in such a scenario the governance body will automatically become a body corporate, even if the entity was previously a trust.

689 There was strong criticism around the mandatory creation of company structures. For instance, one submitter noted:

> *"As a kaitiaki for future generations of a Taonga, a trust is an appropriate vehicle. A company is a corporate structure which does not invoke a sense of protection for future generations. This takes away from Māori Land the general principle of Kaitiakitanga and trusteeship."*

Schedule 1, cl 13: Other trusts of Māori land not affected

690 Taheke 8C Incorporation wanted to know what other trusts would be covered by this provision.

Schedule 1, cl 22: Existing registration of land in name of trust or tipuna

691 The Wellington Tenths Trust and Palmerston North Māori Reserve Trust noted that, despite the title of the provision, cl 22(2) provides only for lands registered in the name of a tupuna. They would like to know whether this is an oversight. In their view the provision should be amended to include lands registered under the name of a Trust.

14.2 Schedule 2: Default decision-making process for decisions requiring agreement of owners of Māori freehold land

Schedule 2, cl 1: When decision-making process applies

692 This provision confirms that the decision-making process applies if the Bill or a governance agreement requires a decision to be agreed by a majority of the owners of Māori freehold land and requires the decision to be made in accordance with the process set out in Schedule 2. Given this is a default process, Taheke 8C Incorporation asked whether rangatōpū can contract out of this clause via the governance agreement should the owners choose. In their view, flexibility should be given to rangatōpū to contract out of these provisions.

Schedule 2, cl 2: Decision-making process commences with notice of proposal

693 Under this provision, the decision-making process may be triggered by a single landowner by giving the governance body written notice of a proposal. The body is then required to convene a meeting of landowners to decide the proposal.

694 Six submitters (1 individual, 2 trusts and 3 incorporations) noted that this gives individual landowners a significant and disproportionate power over Māori incorporations and other shareholders. In their view, it is a significant departure from the current position (for example, Māori incorporations are required to hold a special general meeting of shareholders by a requisition in writing signed by shareholders holding in the aggregate not less than 10% of the total shares). The provision significantly lowers the threshold to require Māori incorporations to hold a meeting of landowners. This has the potential to

severely undermine the governance and operations of Māori incorporations, obstruct the governance body's ability to function effectively and impose significant costs. It was therefore suggested that this threshold be increased. Taheke 8C Incorporation felt this threshold should be a certain percentage of owners. Ātihau Whanganui Incorporation and Parininihi ki Waitotara Incorporation proposed that meetings of landowners should only be convened if there is support of at least 50 owners who together own at least 10% of the individual freehold interests in the land (a figure equivalent to the participation thresholds set out in cl 45(4)(d)). Tahora No2C1 agreed with this approach but suggested that 25 owners (owning 10% of the individual freehold interests in the land) needed to support the proposal to convene a meeting.

695 Parininihi ki Waitotara Incorporation sought an amendment to Schedule 2, cl 2(1) to confirm that when an owner provides notice of a proposal to the Governance Body, if the notice does not comply with the requirements of clause 3 to 9, Schedule 2, then the Governance Body's obligations (and the timing requirements) to arrange a meeting of owners to consider the proposal are not triggered.

696 Schedule 2, cl 2(2) prohibits an owner of land that is not managed under a Governance Agreement from commencing a decision-making process to appoint a Governance Body if, during the previous 6 months: (a) a proposal to appoint a Governance Body for that land failed to gain sufficient votes to pass; or (b) a decision to appoint a Governance Body for that land was set aside by the Court under cl 180. Three submitters (1 trust and 2 incorporations) supported this proposal but wanted a similar provision included to prohibit decision-making processes being commenced where land is managed under a Governance Agreement, and when similar proposals have been considered in the previous 6 months (or longer period).

Schedule 2, cl 3: General requirements for notice of proposal

697 The Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust noted that this provision does not provide an absolute notice period and recommended that one should be specified. For example, there must be at least 14 days' notice of any vote.

Schedule 2, cl 5: Additional requirements for notice of proposal to appoint governance body

698 One submitter noted that a notice of proposal for a decision to appoint a governance body must include a compliant governance agreement. This will require the proponent of the governance body to undertake a significant amount of preparatory work at an initial stage (at their own cost) before even determining support for a governance body. There is clear risk that appropriate advice may not be obtained at the outset thereby locking the owners into a structure and governance agreement that is not fit for purpose. The Māori Land Service needs to properly advise owners on such matters.

Schedule 2, cl 10: Governance body or chief executive to arrange meeting of owners

699 Schedule 2, cl 10(1) requires the governance body or chief executive to arrange meetings of owners within one month after a decision-making process is commenced. Taheke 8C Incorporation and the Tahora No 2C1 Section 3 Trust noted the potential costs associated with organising meetings and wanted to know what the expected costs would be for governance bodies. Given these costs and the potential that a vexatious person may call a meeting of owners every other month, Taheke 8C Incorporation suggested that meetings

should align with a standard AGM. The Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust wanted to know what the words "make arrangements" mean, as they are unclear.

700 Parininihi ki Waitotara Incorporation observed that this provision does not provide a notice period for a meeting of owners. Given the challenges incorporations face organising meetings of shareholders, the submitter suggested this provision be amended to (i) refer to time periods by number working days, rather than number of months and weeks, to limit possible confusion and also to maximise time available to a rangatōpū to complete the required steps; (ii) refer explicitly to the time period a rangatōpū has from the date of receiving a proposal to when it must convene a meeting of owners; (iii) refer explicitly to convening or holding a meeting of owners, rather than "make arrangements "; and (iv) extend the time period that a rangatōpū has to convene a meeting of owners.

701 Schedule 2, cl 10(2) sets out the notification process. One submitter commented that this process requires a higher level of advertising than is currently required pursuant to the Māori Assembled Owners Regulations and is greater than the current advertisement process by pānui. The submitter considers this is a good thing as it is likely to provide better communication and notification than is currently available.

702 Schedule 2, cl 10(2)(a) provides that the notice of the meeting must include the date, time and place of the meeting. Ngāi Tahu Māori Law Centre considered that meetings of owners should be held in the area where the lands are located, or in a town located close to the land; both to recognise ahi kā, and to best enable owners to participate in decision making.

703 Schedule 2, cl 10(2)(d)(iii) specifies the closing date for voting must be at least 7 days after the date of meeting. Parininihi ki Waitotara Incorporation suggested that voting should close at the meeting date as this would provide immediate result to the participants at the hui. The provision of information on key decisions at the meeting should be provided through communication channels prior to the meeting.

704 Schedule 2, cl 10(3) sets out how the notice of the meeting must be advertised. One submitter stated that this provision should ensure that the governance body or chief executive exercises due diligence to identify, locate and notify the owners of the meeting. Taheke 8C Incorporation noted that the current wording of this provision may lead to different methods of notification, which would be confusing. They suggested one form of notice be prescribed.

705 Five submitters (1 individual, 1 trust, 2 incorporations and 1 local Māori organisation) and the Not One Acre More submission were not in favour of the highly prescriptive advertising requirements. Many stated that the immense cost involved would be prohibitive if owners or governance bodies were required to arrange the advertising themselves. Any advertising requirement must be free, to encourage its use.

706 Ngāi Tahu Māori Law Centre felt the use of newspapers as a means of advertisement indicates an 'out-of-touch' attitude, which fails to recognise the declining role of newspapers in contemporary society. Furthermore, they did not consider having the Māori Land Service pay for extensive advertising through a medium that is unlikely to reach the desired audience was a sensible use of public money. Parininihi ki Waitotara Incorporation agreed and suggested greater use be made of electronic formats for notice

provisions – including web-based notice boards managed and funded by the Māori Land Service.

707 Ātihau Whanganui Incorporation was particularly concerned about the obligation to use any method reasonably likely to bring the notice to landowners' attention. This phrase is wide in scope and will impose additional obligations and costs on large trusts and incorporations. They suggested that trusts and incorporations should be able to retain the meeting notification process contained in their existing constitutions.

Schedule 2, cl 11: Meeting of owners

708 A number of comments were received on this provision, which discusses the meeting of owners. This provision allows owners to attend in person, via a nominated representative or via telephone or Internet-based communication technology. Five submitters (3 individuals, 1 incorporation and 1 local Māori organisation) were supportive of this provision as it would maximise owner participation.

709 Parininihi ki Waitotara Incorporation noted that the term "nominated representative" is not defined in the Bill, nor is a process for appointment of a "nominated representative" provided for. The Ngati Rangiteaorere Koromatua Council felt that nominated representatives should be required to obtain a power of attorney from non-participating owners, and these should be assigned within whānau lines to ensure the voting process is not abused.

710 Parininihi ki Waitotara Incorporation commented that as with public notice in newspapers, the provision for attendance by telephone or Internet-based communication technology may impose significant costs on rangatōpū.

711 Schedule 2, cl 11(2) sets the quorum for meetings of owners. For "a parcel" of land with more than 500 owners, the quorum is at least 50 owners who together hold at least 10% of the individual freehold interests in the parcel. Parininihi ki Waitotara Incorporation noted that this can be very difficult to achieve and considered that this will compound as share fragmentation continues over time.

Schedule 2, cl 12: Voting on proposals

712 Schedule 2, cl 12(1) sets out who is entitled to vote on a proposal requiring the agreement of a majority of owners. The Ngāi Tahu Māori Law Centre was against whānau trust beneficiaries being able to vote on decisions at meetings of owners where those decisions are by show of hands (see schedule 2, cl 12(1)(c)). It was felt that this undermines the role of trustees of whānau trusts, and creates confusion as to the rights and responsibilities of trustees and beneficiaries. It was suggested, in votes by show of hands, the whānau trust should have a single vote as cast on agreement of the trustees.

713 Schedule 2, clause 12(2) provides that votes may be cast at the meeting, by post or by electronic means. Taheke 8C Incorporation was supportive of this provision, although some wanted to know how much such a voting system would cost.

714 It was also pointed out that while a returning officer is referred to in this and other provisions in Schedule 2, the Bill does not set out requirements as to eligibility or appointment of this role, including their independence.

Schedule 2, cl 13: Decision-making process ends with notification of vote results

715 This provision provides that within 14 days of the close of voting, the returning officer must provide the governance body (or chief executive, depending on the person that arranged the meeting) with a written notice of the result. The governance body (or chief executive) then has 14 days to notify owners of the result and give public notice. Parininihi ki Waitotara Incorporation noted that the Māori Incorporations Constitution Regulations does not require Incorporations to give public notice of its voting results. The submitter was opposed to this change as it would increase cost unnecessarily. The submitter wanted their current processes of informing shareholders of results at their AGM and through their shareholder magazine to continue.

14.3 Schedule 3: Governance agreements

Schedule 3, cl 1: Form of governance agreement

716 Schedule 3, cl 1(2) provides that a governance agreement must be signed by, or on behalf of, the governance body and the owner.

717 The Te Rakaupai te Iwi Turoa Trust and Tauhara North No 2 Trust thought it was unclear if all owners must sign the governance agreement. If so, this requirement will be impracticable.

718 The Ngāi Tahu Māori Law Centre suggested that kaitiaki should be able to make decisions in reliance on their governance agreement. Where the agreement is silent, the presumption should be that kaitiaki do not have the power in question. The submitter also submitted that that kaitiaki should have to review the governance agreement with owners at least once every 5 years.

Schedule 3, cl 2: Details of parties to governance agreement

719 Wakatu Incorporation noted that the wording of this provision implies that the governance agreement will only include Māori freehold land, not other assets of the governance body. In the submitter's view, it is not clear why the agreement would have to specify by legal description the Māori freehold land that the body will manage, but not any other land or assets.

720 Taheke 8C Incorporation felt that the requirement that changes to details must be notified to the chief executive within 5 working days was too short may lead to breach. The submitter suggested that this timeframe should be extended to 30 working days

Schedule 3, cl 4: Governance agreement may specify process for amending agreement

721 FOMA considered that the process for approving amendments to a governance agreement is not very clear or user friendly. In their view, there seems to be a difference in the level of approval between cl 164 and schedule 3, cl 4(3)(a)(ii).

Schedule 3, cl 7: Governance agreement must require minimum level of owner agreement for some decisions

722 This provision sets out the thresholds for decisions. Taheke 8C Incorporation commented on the reference to the Companies Act 1989 in cl 7(1)(b), noting that it is preferable not to refer to other statutes and to have a Bill that reflects all matters for ease of reading for laypeople.

723 A number of comments were made about the threshold levels for the different types of decisions set out in the Bill. However, there was a range of views about whether the thresholds were set at the rights level. For instance, one submitter considered that decisions should require a majority of shares, not owners, to avoid the situation whereby a few people with minority shares are able to influence major decisions simply by being in attendance at a meeting. The Te Unu Unu 2F1B Ahu Whenua Trust and Pariwhero A4B Incorporation felt that important decisions – such as the sale of land, change of stats from Māori land to general land and land exchange – should all require a higher threshold. On the other hand, Tuwharetoa Māori Trust Board noted that the majority of dispositions require agreement of 75% of owners. They felt this threshold was too high and suggested that it be lowered. Taheke 8C suggested that discretion should be provided to allow entities with the approval of owners to set their own threshold level.

724 In relation to specific types of decisions, most comments were directed at the threshold for selling land (see cl 80). Although some submitters supported the proposed threshold of 75%, many considered that this should be set higher, even 100% of all owners. Ngāi Tahu Māori Law Centre noted that the general law governing private land that is not Māori land, but that is held by tenants in common, sets out that all owners must agree to significant changes to the title (such as a status change). In their view, a similar approach should be taken in regard to Māori land.

725 Several submitters felt that the threshold for partitioning land should not be a simple majority. The PSA and one other submitter commented that this would make it easier for owners who wished to sell land, but could not get the required majority to partition out their respective interests. Once this has been done, the owners could proceed to sale as the opposition had been removed.

726 Wakatu Incorporation felt that it was unclear how decisions will be made by vote under the Bill. Schedule 3, cl 7(3) suggests voting takes place by way of equal vote (one person, one vote) as the language used relates to the percentage of owners (i.e. individuals) of the land who participate in the voting. Part of this confusion, stems from the wording of cls 39 to 51, which make it clear that voting takes place on the basis of an individual's interests in the land and/or asset base of the governance entity.

727 Nine submitters (4 individuals, 4 trusts and 1 incorporation) and the Not One Acre More submission were not supportive of such a process, arguing that voting should be by shares. This would avoid the situation where a small minority of owners can frustrate decisions. The New Zealand Institute of Surveyors also noted that it would cause a major shareholding to lose value due to its inability to make decisions.

728 Those submitters (4 individuals, 1 iwi organisation and 1 professional association) who considered that voting should take place by way of equal vote argued, amongst other things, that: (a) the shares system overrides whakapapa as the principal determiner for

land distribution amongst whānau; (b) whakapapa is a Taonga Tuku Iho which promotes Māoridom and Te Ao Māori and is superior to the shares system that has divided Māori; (c) the shares system is responsible for the under-utilisation of the land and land-banking by some whānau; and (d) the shares system causes whānau to violate whakapapa and whānaungatanga. The PSA considered that voting by shares will distance owners without large shareholdings from their whenua as their vote will be deemed insignificant. This was a form of disenfranchisement.

729 Wakatu Incorporation considered that the governance agreement should stipulate how voting is to be carried out by the owners (according to interests held or on some other basis, such as a show of hands).

Schedule 3, cl 8: Governance agreement may require owner agreement for some things that would otherwise not require owner agreement

730 The Kawakawa Trust thought that the 75% threshold for accessing finance was too high and would impede progress unless changed.

Schedule 3, cl 11: Governance agreement may specify planning and reporting requirements

731 Taheke 8C Incorporation wanted to know why the interests register needs to be specifically reported upon at an Annual General Meeting. While it should be available to owners at the office of the rangatōpū, the submitter did not see the necessity to report on it.

732 The Whakatohea Māori Trust Board noted that consultation with owners should be more robust than just putting notices in the local newspaper. Social media, website, meetings and newspaper should be utilised to the fullest.

Schedule 3, cl 12: Governance agreement must specify certain matters

733 This provision notes that the governance agreement must specify the remuneration to be paid to the governance body or kaitiaki and how it will be paid. Ngāi Tahu Māori Law Centre noted that highly qualified kaitiaki will expect to be paid for their services. However, most Māori land will not receive sufficient income to pay these persons. Currently many trustees are not paid to manage their whenua, and income from the whenua is instead invested back into the land. They do not support professional kaitiaki being paid from income generated by land that they are managing. This would result in less pūtea available for the owners or for development of the whenua. In their view, with access to specialist advice and assistance, 'everyday' people can make excellent responsible trustees of Māori land, and the Bill should make provision for this.

Schedule 3, cl 15: Rangatōpū governance agreement may specify level of owner agreement required for decision to appoint rangatōpū

734 Taheke 8C Incorporation noted that this clause provides for a minimum of a simple majority of owners participating to appoint a kaitiaki notwithstanding that the title of the clause refers to appointing rangatōpū.

Schedule 3, cl 16: Rangatōpū governance agreement may provide for matters relating to kaitiaki

735 This provision provides that kaitiaki may only be appointed for a period equal to or less than three years. Several submitters commented on the length of tenure of kaitiaki. One submitter agreed with the proposed length of tenure. The Maniapoto Māori Trust Board and Te Rakaupai te Iwi Turoa Trust and the form submission from 9 trusts observed that while it is generally considered best practice to have regular elections for kaitiaki, there may be a genuine reason why owners want some, or all, of the kaitiaki to have a life time role. In the submitter's view, if the rationale is sound, the owners should have that prerogative. The Tauhara North No 2 Trust and one other submitter endorsed this view, noting that if owners wanted a maximum term of appointment, this should be reflected in the governance agreement rather than imposed on them through legislation.

736 The Tuaropaki Trust noted that the proposed maximum term of three years does not provide sufficient time for a newly appointed kaitiaki to understand the operations of the governance body and make an effective contribution. This aspect of the Bill is too prescriptive and would result in unnecessary rotation of trustees and possible instability.

737 Ngāi Tahu Māori Law Centre notes that there appears to be only one circumstance where the Bill requires that a power must be specified in the governance agreement, or kaitiaki will not have that power. In their view, the governance agreement must clearly set out all kaitiaki powers. Where the governance agreement is silent on whether kaitiaki have the power to do something, the agreement should be read as prohibiting the power in question.

Schedule 3, cl 17: Special requirements for governance agreements of existing Māori incorporations continued as Rangatōpū

738 Taheke 8C Incorporation commented on the reference to the Māori Purpose Act 1975 in this provision, noting that it is preferable not to refer to other statutes and to have a Bill that reflects all matters for ease of reading for laypeople.

15.0 Māori Land Service

739 A third of all submitters (124) discussed the proposed Māori Land Service. More submitters supported the proposal than opposed.

	Support	Oppose	Concern	Number of submitters
Māori Land Service	30%	10%	60%	124

15.1 General Themes

740 Several submitters welcomed the establishment of the Māori Land Service, especially as it would provide improved infrastructure support and information for Māori land. It should prove to be an important asset for Māori land owners. It was seen to make processes easier, cheaper to access and less time-consuming. There was a strong view that Māori need a single, separate body to work with. When undertaking land developments, owners are currently required to liaise with a large number of central and local government agencies. Many of these organisations have different roles in the process and do not communicate with one another. Owners are required to navigate their way through unique processes with limited understanding of the technical requirements and next to no support.

741 However, considerable uncertainty exists in the Bill as to how the Māori Land Service will operate, what its funding will be, the nature of the digital infrastructure that will be required to successfully implement a true digital cadastre for Māori land. Its structure and establishment was seen as critical to the implementation of the objectives of the Bill.

742 Submitters questioned why the Māori Land Service was being established and how it would benefit Māori land owners. They considered that the services proposed appeared to be no different to those already provided by the Māori Land Court, and therefore the case for change had not been made out. They felt that owners could not afford to lose the Court and the protection it offers. There was also a risk that institutional knowledge would be lost. Submitters liked the fact that the Court was independent, impartial, accessible and cost effective. They suggested that the Crown should simply resource the Court better and allow it to carry out the new services proposed.

743 Submitters were unsure about the continued roles of Land Information New Zealand and Te Puni Kōkori in the process. Many were also worried about the budget of the Māori Land Service and who would fund it. There was a concern that if the Māori Land Service was not adequately funded, these cost would be passed on to owners.

15.2 Services provided

744 In terms of the services provided, most submitters saw the Māori Land Service as a one-stop shop for Māori land governance and management. There was broad support for the Māori Land Service to provide decision-making support, dispute resolution services, guidance on governance structures, Māori land ownership and title records, Māori land ownership and title information, and the Māori land governance registry services.

745 In terms of decision-making support, the support provided should include encouraging and assisting owners to participate in decision-making. It should provide mentoring services, guidance around the types of decisions that can be made, prepare simplified forms for

owners to use and assist with the preparation of applications. The Māori Land Service should make the holding of meetings as easy as possible. This should include provision of teleconferencing facilities, facilities for internet communications and rooms for hui. These facilities should be available free of charge.

746 There was widespread support for the Māori Land Service to provide dispute resolution services, including the provision of mediators (free of charge). These services need to be regional based.

747 There was also support for the proposal that the Māori Land Service provides advice to owners on their options for a governance structure and support them to establish a governance body. They need to be involved end-to-end on processes such as rangatōpū formation, rather than only being involved after the decision has been made. Owners will need advice and guidance with these preliminary steps of the process as well as calling meetings and registering the governance body. The Māori Land Service should be responsible for providing on-going governance training

748 The Māori Land Service should also support regular compulsory reviews of rangatōpū and statutory authorities managing whenua by ensuring these reviews occur and developing a database to show when these bodies are due for a review. The Māori Land Service should also have the power to investigate that land is not being illegitimately used, or used in contravention of the governance agreement.

749 Submitters want the Māori Land Service to maintain land ownership and title records. It should develop and maintain a secure and reliable database of ownership and title record, including contact information. As part of this role, the Māori Land Service needs to work with owners to tidy up owner and shareholder lists. Up-to-date contact details were seen as being vital to communicate with, give notice to and generally engage with owners.

750 However, there was a strong view that the court record and minute books should remain with the Māori Land Court.

751 The Māori Land Service should help connect Māori to their land through access to information. The Māori Land Service needs to enable people to search and have access to Māori land ownership and title records, and obtain copies of this information. As part of this function, the Māori Land Service should prepare guidance material and provide training on how to understand and search land information, as well as have appropriate technology available to allow this to occur.

752 Submitters agreed that the Māori Land Service should maintain a register of owners and any kaitiaki associated with the land. It should maintain a register of governance agreements, and a list of beneficiaries of whānau trusts.

753 Te Tumu Paeroa considered that the Māori land register provides a real opportunity to improve the number and accuracy of contact details available for governance bodies and others to maximise owner engagement. As the portal to identify who is an owner of land at any time, Māori land owners should be able to provide the register, within a secure security setting, up-to-date contact and even payment details with permissions as to who that information can be passed over to e.g. the governance body or bodies that administer their Māori land interests. At some later stage consideration should be given as to whether the Māori land register itself could become the sole official register for contact details

rather than requiring every governance body to maintain separate registers which is highly costly and inefficient given the numbers of multiple owners of Māori land and the ongoing challenges of fragmentation of interests.

754 Submitters considered that the Māori Land Service should maintain a succession database and help find successors to Māori land and up-date the records.

Other services

755 Submitters considered that the Māori Land Service should also provide other services to Māori land owners including social support (employment training) economic development, legal advice, and training and education.

756 A range of suggestions were made regarding how the Māori Land Service could financially support owners to develop their land. Some submitters considered that the Māori Land Service should help mentor Māori land owners and build their financial literacy. It should also provide advice on how owners can best use and develop their land and where to obtain finance to enable this to occur (such as bank loans). Others felt that the Māori Land Service should facilitate access to finance (for instance, assist with approaching banks to secure borrowing against Māori land), and provide financial support for economic development through the provision of loans and grants.

757 The training and educational services provided by the Māori Land Service should be to Māori roopū and Marae about the need for owners to participate and the consequences if they don't; and to Territorial Authorities and other government agencies so that they are better informed about Māori land.

15.3 Location of the Māori Land Service

729 Submitters wanted the Māori Land Service to be accessible. Consequently, it needs to provide greater coverage than that currently provided by the Māori Land Court and Te Puni Kōkiri. The Māori Land Service should be regionally based and staff should be willing to travel to marae to attend hui and meet with owners. They did not support the Māori Land Service being as sparsely located as the offices of Te Tumu Māori are (who are not based anywhere in the South Island). The Māori Land Service should conduct regular outreach clinics in towns in which they do not have offices to ensure that owners in remote locations are able to access real people to meet with and obtain assistance from.

730 The Māori Land Service needs to be adequately resourced with experienced and appropriately trained staff who are able to provide high quality advice and information. The institutional knowledge of the current arrangements should not be lost. This means where possible, the Māori Land Service should be staffed by the current employees of the Māori Land Court. There was strong belief that owners and kaitiaki would have a much better experience if they engaged with a familiar face, as opposed to an unfamiliar team of people.

15.4 Engagement with the Public

731 There was general consensus that that public needs to access the services provided in a variety of ways: face-to-face, by telephone and on-line. All three were necessary to ensure people of all ages, abilities and understanding can access it.

732 Face-to-face contact was considered important as it ensured consistency in the way staff engaged with their customers. Liaison officers need to be appointed to deal with customers, and these staff need to maintain ongoing personal interaction with their clients.

733 Although it was considered essential for the Māori Land Service to have a Freephone number, submitters did not want this to be a call-centre that is based overseas. It was felt that a Freephone number would help minimise cost and encourage owner participation. It would also ensure that those living in rural areas without broadband would have another way of accessing the Māori Land Service.

734 Online services were seen as convenient, particularly as they are available 24/7 and attractive to younger generations. They also allow owners living overseas to maintain information and contact freely. Ngāi Tahu Māori Law Centre and Te Hunga Roai Māori o Aotearoa both stressed that any information that can be accessed physically can also be accessed online. They proposed that each owner of Māori land should have a 'personal portal' similar to that recently introduced by the Māori Trustee (the 'My Whenua' service). It is imperative that lawyers acting for owners have access to such portal. If a personal portal is introduced, governance bodies would be able to send pānui to the Māori Land Service for distribution to relevant persons via their personal portals, as another means of ensuring owners are notified and informed regarding their whenua.

735 Te Hunga Roia Māori o Aotearoa also suggested that the Māori Land Service provide an ability for owners to file applications online, book appointments, order documents and any other services to ensure accessibility to owners.

Other guidance material

736 Te Hunga Roia Māori o Aotearoa noted that the Māori Land Service should provide at least the following information to owners and their representatives: (a) A searchable website akin to Māori Land Online with extensive land and owner information; (b) Information booklets akin to Māori Land Court information booklets available in hard copy and online about:

- All the various applications that can be made and the processes to make them;
- Regarding the various structures - how they work and how they are accountable;
- Outlining the various roles under the current Act; who is eligible to fill those and the rights and responsibilities that come with those roles;
- Stating clearly the matters that must be addressed in governance agreements;
- Explaining how owners can be actively participating in their whenua and how governance bodies can assist for that to occur;
- The process and requirements of transition;
- How to keep records and run meetings; and
- Any other matters of relevance.

737 The same submitter suggested that the Māori Land Service prepare regular newsletters outlining the services it offers and highlighting success stories, important information and dates. It should also offer a free system for communication that is accessible to governing bodies and owners similar to the BNZ partner centres which provide video and teleconferencing facilities

15.5 Fees

738 Submitters proposed that the services provided by the Māori Land Service must be affordable if not free. Owners need to be able to involve the Māori Land Service at the beginning of any process that they are undertaking without being afraid of incurring a large Bill. If owners are hesitant to utilise the Māori Land Service then it will not be effective.

15.6 Transition Period

739 The Whangarei District Council noted that there would be a transition period for the Māori Land Service becoming operative of 3-5 years from the Bill being enacted. Although they thought this was a realistic timeframe, they questioned what will happen in the interim? In their view, it is important that the transition from existing service providers to the Māori Land Service is managed effectively to avoid the unnecessary delay of Māori land development projects. To avoid any unnecessary stalling of projects to develop Māori land, more information should be provided regarding the proposed transition from the current model to the Māori Land Service model.

16.0 Issues associated with the Bill

741 Submitters commented on matters that are not currently covered in the Bill. These can be divided into issues impacting on to the development of Māori land (such as landlocked land, ratings, public works, paper roads and local government); matters relating to the administration of the governance body (such as industry levies); the impact of other legislation on the Bill; and those having a wider application to Māori (such as the Māori Trustee and the Treaty settlement process). There was a strong view that undertaking reform in these areas would positively align with the overarching objectives of the proposed Bill and assist with achieving a more productive and innovative Māori economy.

16.1 Issues relating to Māori land

Accessing landlocked land

742 Fifteen submitters (4 individuals, 6 trusts, 2 incorporations, 2 iwi organisations and 1 council) raised the issue of accessing landlocked land, which they saw as a major barrier to economic utilisation. They noted that although there were provisions in the current Act that covered this issue, these were costly and difficult to apply and could be overridden by other legislation. There was a strong call for this issue to be urgently addressed.

743 Mangatu Block Incorporation noted that the Bill included provisions relating to accessing landlocked land (see cl 281 of the Bill). However, the issues with the current Act would not be resolved by these provisions alone.

744 Ngāti Kahungunu ki Wairarapa – Tāmaki Nui ā Rua Trust agreed, stating that the problems associated with accessing landlocked land would not be fixed by simply amending the current Act. In its view, one of the largest impediments to resolution is the resources that are required. Considerable expertise is required in a range of fields including project management, facilitation, surveyors, lawyers and community liaison. Unless and until adequate resources are available these amendments will make little if any practical difference. As part of the reform, adequate resourcing needs to be made available to owners of landlocked and uneconomic blocks.

Local Government

745 Six submitters (1 incorporation, 2 iwi organisations, 2 national Māori organisations and 1 council) discussed the impact that local government policies were having on the utilisation of Māori land. Te Runanga o Ngāi Tahu noted that due to rural zoning and its location, Māori land is often poorly connected to public utilities, such as water, storm-water, electricity and sewage. The costs required to install the necessary infrastructure can prove prohibitive to the development of the land. This was recognised by the Northland Regional Council, which also noted the costs associated with the consent process. The Council supported financial assistance in the form of papakāinga whenua infrastructure and Māori housing grants, but recognised that financial impediments were a significant issue of many owners. It recommended the Government commits ongoing funding for specific projects that promote the development of ancestral Māori land.

746 FOMA considered that local and regional councils could do more to support the needs of Māori land owners. Often they delegated decision-making powers and processes and this

had a great impact on the ability for Māori to invest in and grow their land holdings. Along with other submitters, FOMA suggested that Māori land owners be involved in the development of local government policies that impact on Māori economic development.

747 Te Runga o te Rarawa called for the removal of local government plans that restrict the use of Māori land (including the designation of undeveloped Māori land as natural landscapes, or heritage sites which cannot be actively developed).

Paper Roads

748 Tauhara North No 2 Trust, Te Runga o te Rawara and the form submission from 9 trusts suggested that all paper roads and other redundant public works designations over Māori land should be removed.

Public Works

749 Tauhara North No 2 Trust, Te Runga o te Rawara and the form submission from 9 trusts stated that Māori land should not be taken for public works without the express consent of its owners.

Rating of Māori land

750 The issue of rating of Māori land was raised by twenty-five submitters (11 individuals, 5 trusts, 1 incorporation, 2 local Māori organisations, 1 national Māori organisation, 1 Iwi Organisations, and 3 councils).

751 Submitters were concerned that the proposed Bill did not address this issue. Many spoke about the need to eliminate Māori land alienation due to unpaid rating levies, while others saw the issue as a major impediment to utilisation.

752 There was general support for automatic rates remission on under-utilised, isolated or under-performing land. FOMA suggested that rates should not be levied on Māori freehold land until it was productive. This view was supported by Tauhara North No 2 Trust and Te Runanga o te Rarawa, who considered that Māori land should not be rateable if it is native bush, used for cultural purposes, or otherwise not being actively managed. The Maniapoto Māori Trust Board proposed that rates should be in proportion to the income generated from the land, rather than the generic formula currently applied by councils. Under no circumstances should Māori land be taken for unpaid rates. There was wide support for a consistent approach on the issue of rating Māori land.

753 The Gisborne District Council and the Ruapehu District Council both noted that rating was a major issue for owners of Māori land in their region. They identified a number of issues associated with rates recovery and spoke about the amount of time and energy being spent on this issue. They pointed out that the issue was a particular concern for small land blocks as there was frequently no governance structure in place and the land generated little income. They had each established policies which attempt to recognise the realities of Māori land organisation and use, and the practicalities of rating Māori freehold land.

Valuation of Māori land

754 Te Runga o te Rarawa and the Far North District Council commented on the valuation of Māori land. Both identified the need to develop a reform programme on this issue, with one noting that Māori land valuation needs to reflect 'Taonga Tuku Iho' and suggested a separate valuation process for Māori land used in commercial initiatives.

Zoning

755 Te Runanga o Ngāi Tahu commented that a lot of Māori land is in rural areas or on the outskirts of towns. Traditionally, such lands have been used for agriculture or have not been used at all. Due to these conditions and use of Māori land, Māori land is often zoned as rural. This restricts the development opportunities for owners, particularly housing developments. They pointed out that district planning has not traditionally looked at Māori land as providing a means for housing development, so resource consent applications can prove costly. They would like to see this issue addressed in the Bill.

16.2 Matters relating to the administration of the governance body

Levies

756 FOMA noted that given the proportion of Māori freehold land that is invested in primary industry, Māori are significant contributors to industry levy organisations mandated under the Commodity Levies Act 1990. However, historically Māori freehold land owners have received little to no benefit from these levies to address the particular issues facing Māori land and business development. They considered the reform process should explore how more effective application of the Commodity Levies Act 1990 can better enable the development of Māori freehold land and associated business interests.

757 Mangatu Blocks Incorporation supported this proposal and suggested that Māori Associations should be permitted to collect their own levies for their unique administration requirements as well as to joint venture with mainstream organisations on a range of mutually beneficial projects

Unsettled estates

758 Parininihi ki Waitotara Incorporation noted that the Bill sought to address the issue of otherwise un-administered Māori freehold land (see Part 5, Appointment of administrative kaiwhakarite). However, there were no provisions that addressed the situation of unsettled estates and inactive shareholders which has created issues (under the current Act) with decision-making for Māori incorporations (see Mangatawa Papamoa Incorporation 52 Maniapoto Waikato MB 82 (14 February 2013)).

SILNA Lands

759 Te Runanga o Ngāi Tahu noted that SILNA Lands already vested in the owners, and already operating as an incorporation or a trust are likely to be treated as existing incorporations or trusts under the Bill. Existing incorporations will become a body corporate that is a rangatōpū. The committee of management will become the governing body and the individual members become kaitiaki. The shares in the incorporation will continue as undivided interests in the land.

760 This is concerning for Te Rūnanga, as much of the SILNA lands remains significantly constrained in the ability to utilise the associated economic and cultural values due to geographic isolation, geological limitations, legislative constraints and local government planning regulations.

761 They recommended that separate provisions are provided for SILNA lands following further work to better incorporate the specific issues associated with SILNA lands. They also proposed that the rights and interests of Ngāi Tahu Whānui remain unaffected and excluded from any future amendments to Te Ture Whenua Māori.

Titi Islands

762 Te Rūnanga o Ngāi Tahu was concerned that the Bill did not address the current issues that are associated with the Tītī Islands. In their view:

> *"The automatic creation of a Whānau Trust on intestacy should not by default, broaden the scope of beneficiaries who can then access Titi, to include all members of the Whānau Trust. In some circumstances, there will also be certain Whānau Trusts that will allow whāngai. This is ultimately a decision for each whānau as they create their trust. The Tītī Islanders are clear that the right to place is based on whakapapa alone and the right to bird independently is only given over once the parent with mana has passed on."*

763 They suggested that further work be conducted with Te Rūnanga, the Rakiura Tītī Islands Administrating Body, the Rakiura Tītī Committee, the Ture Whenua Māori Bill panel and Te Puni Kōkiri to better reflect and protect the specific issues associated with Tītī Islands.

16.3 Impact of other legislation on the Bill

764 Nineteen submitters (8 individuals, 2 trusts, 4 incorporations, 2 local Māori organisations and 3 national Māori organisations) queried the relationship between the Bill and other legislation (such as the Resource Management Act 1991, Local Government (Rating) Act 2002 and the Local Government Act 2002; Public Works Act 1981; Te Runanga o Ngāi Tahu Act 1996; Heritage NZ Pouhere Taonga Act 2014; Māori Vested Lands Administration Act 1954; Protected Objects Act 1975). They highlighted the tension that existed between Te Ture Whenua Māori legislation and these Acts. If the Bill is designed to empower the owners of Māori land to pursue their development aspirations for their land, these statutes pose a significant barrier to the achievement of these aspirations.

765 As the Māori Women's Welfare League noted: "the review has entirely omitted to include an assessment of the extent to which the current regulatory environment is enabling or inhibiting the achievement of Māori land owner aspirations." This was viewed as a deficiency in the Bill and reform package.

766 Three submitters (1 trust, 1 incorporation and 1 local Māori organisation) suggested that the Bill should be the primary legislation to govern Māori land and the activities on that land. For instance, it was suggested that the Bill should prevail over other legislation such as the Resource Management Act 1991. However, Ngāi Tahu Māori Law Centre stressed the need for caution and recommended that careful consideration needs to be given as to the consequences of this proposal. For example, the Māori Purposes Act 1983 governs

the process of succession to Tītī Islands, and sets out that those interests can pass by bloodline only. The Māori Purposes Act 1983 prevents Tītī island interests being vested in whānau trusts. In their view, this process should not be overridden by the Bill.

767 The Far North District Council noted that "should the intent of the Bill facilitate and give effect to administrative and management efficiencies for Māori landowners (or their agents), those same landowners may lose this potential and become quickly dissatisfied and significantly frustrated once they participate within local government planning provisions and policies." In particular, Councils believed that any consideration of TTWM Act needed to consider the overlay with the Resource Management Act 1991. The Whangarei District Council also said this did not mean that the Bill should "trump" all of the relevant provisions of the RMA, but rather consideration needs to be given to how the two pieces of legislation interact. For instance, there are inconsistencies across the two statutes, namely the reference to hapū in TTWM Bill and "iwi authorities" in the RMA. This has caused tension through s 33 of the RMA, which states that a transfer of power can be made to iwi authorities but is not clear whether this can extend to hapū. Consistent language should be used and increased across both Acts.

768 Two submitters recommended that the Bill should explicitly state that Māori land is exempt, except in special circumstances, from Public Works legislation.

769 Ngāi Tahu Māori Law Centre considered that s 16 of the Adoption Act 1955 requires amendment so that is it clear whether children adopted out of a whānau are entitled to succeed. In their opinion, this has become a grey area in the courts, with whānau finding loopholes to allow for inclusion or exclusion on a case-by-case basis. This uncertainty needs to be addressed.

770 Ngāi Tahu Māori Law Centre suggested that the jurisdiction of the Māori Land Court be extended to enable the court to grant Probate and also to hear family protection claims when based on claim to Māori land. This suggestion was echoed by Ngā Hapū o Poutama, te Runga o te Rarawa and the Not One Acre More submission.

16.4 Other matters

Commissioner of Māori Land

771 One submitter suggested that the position of a Commissioner of Māori Lands be created. He noted that commissioners exist for crown lands, the environment, and children. There should be one for Māori Lands. The Commissioner should be independent of Parliament, with the responsibility to raise Māori land issues. This would enable the Chief Judge and Chair of the Waitangi Tribunal to be free of daily concerns about the actions of the Crown, and let them attend to judicial issues and Treaty claims.

Health and Safety

772 Tauhara North No 2 Trust noted that health and safety reforms may soon clarify the meaning of a "workplace", the scope of a "person conducting a business or undertaking", and who has a duty as an "officer". In its view, the reforms may result in the owner of a place at which a business or undertaking is operated owing health and safety duties. It is possible these reforms do not sufficiently take into account the fact that Māori land is usually owned by a number of persons, and the potential uncertainty that may cause in

terms of health and safety duties. The Trust suggested that the effect of the proposed health and safety reforms be considered further and, if appropriate, the Bill amended to take into account the impact of those reforms on Māori land.

Māori Trustee

773 Submitters expressed concerned about the role that was being given to the Māori Trustee/Te Tumu Paeroa. In their view, the Bill should not give the Māori Trustee/Te Tumu Paeroa additional powers.

774 Four submitters (including the No One Acre More submission) suggested that the government takes the opportunity to include amendments to the Māori Trustee Act 1953 in the Bill. They were all critical of the current structure of Te Tumu Paeroa, and the role it has played in relation to Māori land. In their view, the primary focus of Te Tumu Paeroa should be land repatriation, and this should be reflected in its governing legislation.

775 Te Tumu Paeroa noted that its role will change with the adoption of the Bill from a passive (paternalistic) relationship to a dynamic (owner driven) relationship. Accordingly, it agreed that its governing legislation required a substantial overhaul to reflect the purpose of the Māori Trustee in the 21st century as a lead provider of support services for Māori governance entities and Māori more generally, in support of their social, cultural and commercial objectives.

Māori trustee conversion shares

776 Te Tumu Paeroa noted that the Māori Trustee continues to hold shares in about 176 parcels of land as a result of the operation of the now abolished Conversion Fund, representing outstanding presumed advances of approximately $3 million. This scheme should be brought into the Bill but with changes which allows for payment of the presumed advance by a rangatōpū of affected land; a progressive return of shares on progressive repayment of the presumed advance; and for those shares to be cancelled by application of the chief executive thereby progressively increasing owners overall share in the individual beneficial ownership of the parcel.

Treaty Settlements

777 One submitter stated that there should be a standard process for administration of land returned in Treaty settlements. The submitter was concerned that Members of Parliament were generally unaware of the Treaty breaches that were being committed by the Crown in the current settlement negotiations: an issue that would cause more problems if it was not addressed. However, the Ruapehu District Council praised the settlement process arguing that it had led to Māori institutions becoming stronger and more focused. Rather than endless squabbles over minor issues, we are now starting to see genuine changes and progress towards more sustainable future.

778 On a more practical note, one submitter wanted to know if land is returned with stop-banks or riparian strips, who is responsible for their maintenance?

APPENDIX A – Consultation Questions

The following questions were asked by Te Puni Kōkiri in the consultation paper to help guide submitters' feedback:

Question 1: What do you think about the process set out in the Bill to appoint a governance body (rangatōpū)?

Question 2: How will the powers and responsibilities of rangatōpū help Māori land owners use and develop their land?

Question 3: How much involvement should Māori land owners have in decisions about their land if that land is governed by a rangatōpū?

Question 4: How easily will existing trusts and incorporations be able to move into the new governance model?

Question 5: What do you think about the safeguards around the sale of Māori land in ensuring it is retained for current and future generations?

Question 6: 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?

Question 7: How will the new processes make it easier to succeed to interests in Māori land?

Question 8: What do you think about the requirement to establish a whānau trust when an owner dies without a will?

Question 9: How will a tikanga-based dispute resolution service support Māori land owners?

Question 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?

Question 11: What do you think about the way the Māori Land Court jurisdiction has been reshaped?

Question 12: List the types of services and information the Māori Land Service should provide

Question 13: How would you like these services to be delivered?

Additional comments

APPENDIX B – SUBMITTER DEMOGRAPHICS

Over half of all submitters were individuals, or represented groups of individuals, with one-fifth of submissions coming from Trusts. For completeness, form submissions are counted in these statistics.

Submitter Type	Number	Percent
Individual(s)	224	57.1%
Trust(s)	96	24.5%
Local Māori organisation(s)	29	7.4%
Incorporation(s)	16	4.1%
Council	8	2.0%
Iwi Organisation(s)	6	1.5%
National Māori organisation	6	1.5%
Professional associations	4	1.0%
Other organisations	3	0.8%
Overall	**392**	

There was wide-spread regional representation across submissions, although one-fifth did not state a region they represented. Several submissions indicated that they had connections to multiple regions.

Region	Number	Percent
Waiariki	92	19.7%
Tairāwhiti	84	17.9%
Waikato Maniapoto	57	12.2%
Aotea	51	10.9%
Te Tai Tokerau	35	7.5%
Tākitimu	24	5.1%
Te Waipounamu	22	4.7%
National Level	10	2.1%
Chatham Islands	6	1.3%
Unknown	87	18.6%
Overall	**468**	