

In Confidence

Office of the Minister for Māori Crown Relations: Te Arawhiti
Cabinet Legislation Committee

Post-Settlement Governance Entities (Exemption from jurisdiction of Māori Land Court) Bill: Approval for Introduction

Proposal

- 1 This paper seeks the approval for the introduction of the Post-Settlement Governance Entities (Exemption from Jurisdiction of Māori Land Court) Bill (**the Bill**).
- 2 The Bill gives effect to policy decisions made by the Cabinet Social Outcomes Committee on 4 June 2025 and [confirmed by Cabinet on 6 June 2025 [SOU-25-MIN-0066 and CAB-25-MIN-0184 refer].
- 3 The Bill has a category 5 priority on the 2026 Legislation Programme (to proceed to select committee before the 2026 General Election).

Background

- 4 The Bill is a one-off legislative solution to exempt Post-Settlement Governance Entities (**PSGEs**), who request it, from the supervisory jurisdiction of the Māori Land Court (**MLC**). As a standalone Bill, it recognises and rectifies an unintended consequence within the Treaty settlement framework without amending Treaty settlement legislation associated with respective PSGEs.
- 5 Although the threshold for amending Treaty settlement deeds and/or legislation is necessarily high, if both the Crown and the Iwi agree that an issue exists and no alternative viable solution is available to rectify it, then an amendment is justified.

Provisions of Te Ture Whenua Maori Act 1993

- 6 Sections 237 to 245 of Te Ture Whenua Maori Act 1993 (**the Act**) collectively confer a broad supervisory jurisdiction on the MLC over Māori land trusts and trusts constituted in respect of general land owned by Māori. However, under the PSGE framework, it was not intended by the Crown that this supervisory jurisdiction would extend to PSGEs, particularly given the prevalence of general land transferred through settlements.
- 7 Applying the MLC's supervisory jurisdiction to PSGEs, contrary to that original intent, has the potential to impede post-settlement development, including the effective use of collective assets.

Court case

- 8 On 3 October 2024, the Supreme Court released the judgment of *Nikora v Kruger*.¹ The judgment held that Te Uru Taumatua Trust, the PSGE for Tūhoe, is

¹ *Paki Nikora and Parearau Polly Alice Nikora on behalf of Te Kaunihera Kaumatua o Tūhoe v Tamati Kruger on behalf of Tūhoe – Te Uru Taumatua Trust* [2024] NZSC 130; [2024] 1 NZLR 608.

subject to the supervisory jurisdiction of the MLC under sections 237 to 245 of the Act. This judgment has implications for the majority of existing PSGEs, and for future PSGEs.

- 9 Following the Supreme Court's judgment, Te Arawhiti consulted all PSGEs that could be affected by the judgment's findings regarding the jurisdiction of the Māori Land Court between November and December 2024. Most expressed both surprise and concern at the Court's finding that the Tūhoe PSGE is subject to the supervisory jurisdiction of the Māori Land Court, and indicated a preference for urgent legislative change to exempt them from that jurisdiction.

2025 Cabinet decisions

- 10 PSGEs being subject to the supervisory jurisdiction of the MLC is an unintended consequence of settlement legislation failing to explicitly disapply the supervisory jurisdiction of the MLC under sections 237 to 245 of the Act over the PSGE. Accordingly, after consultation with PSGEs, Cabinet policy approval was obtained in 2025 for legislation to disapply the supervisory trust provisions in the Act in respect of those PSGEs that confirmed that they did not wish to be subject to MLC jurisdiction. On 4 June 2025, the Cabinet Social Outcomes Committee invited the Minister for Māori Crown Relations: Te Arawhiti to issue drafting instructions to the Parliamentary Counsel Office for the Bill [CAB-25-MIN-0066 refers]. Cabinet confirmed this decision on 6 June 2025 [CAB-25-MIN-0184 refers].
- 11 Cabinet agreed in June 2025 to policy approvals providing that the Bill to exempt PGSEs from the supervisory trust jurisdiction of the MLC by these PSGEs being named in a schedule. Cabinet also agreed that the Bill to include an Order in Council power that would enable PSGEs that have been unable to make a formal decision within the specified time frame and hapū trusts to be exempted later by being added to the schedule. Cabinet authorised for technical policy decisions to be made as needed to support the drafting instructions, in line with the decisions under SOU-25-MIN-0066.

Purpose of Bill

- 12 The purpose of the Bill is to exempt from the supervisory jurisdiction of the MLC specified PSGEs, trusts controlled by the PSGE, and hapū trusts to which the PSGE has transferred settlement land, and certain other hapū trusts, while also preserving the ability of an exempt trust to access the court's dispute resolution processes by mutual agreement. This exemption of the named PSGEs is consistent with the intention of each of the PSGEs named in Schedule 2.

Powers given effect to by the Bill

- 13 The Bill includes an Order in Council making power to provide for PSGEs to be added in the event they were unable to make a formal decision within the specified time frame (for example, due to trustee elections etc). Once a PSGE has followed their relevant decision-making processes in accordance with their

own trust deed, they can seek the recommendation of the Minister for Māori Crown Relations to be made exempt from the supervisory jurisdiction of the MLC, by an Order in Council.

- 14 The Bill also authorises that other PSGEs, and certain hapū or other trusts that receive, or will receive, Treaty of Waitangi settlement redress can be added to the schedule by Order in Council on the recommendation of the Minister for Māori Crown Relations and with the written consent of the relevant trust. The trust must also provide evidence to the Minister that this consent was arrived at in a manner consistent with the process required by the trust deed constituting the trust.
- 15 The dispute resolution services provided under Part 3A of the Act offer an effective, no-cost, mediation service for those PSGEs that choose to use them. Therefore, the Bill provides that PSGEs or other exempted trusts may, by agreement of the parties to a dispute, may request a referral to mediation under the Act despite the disapplication of sections 237 to 245 of the Act.
- 16 Claimant groups engaged in current or future Treaty settlement negotiations have the opportunity, within their settlement negotiations, for their settlement legislation to exempt their PSGE from the supervisory jurisdiction of the MLC.

Technical policy decisions made under delegated authority

- 17 Consistent with my Ministerial approval, this Bill therefore disapplies the supervisory trust provisions of the Act to some hapū trusts, on enactment, rather than later by Order in Council. The matter of exemption of hapū trusts to which the PSGE transfers redress land was raised by PSGEs during consultation on the Bill.
- 18 The hapū trusts to be exempted on enactment are confined to the hapū trusts receiving Treaty settlement redress of 9 named PSGEs where that hapū trust is not constituted in respect of Māori land. Only the hapū trusts of PSGEs that have confirmed their wishes for their hapū trusts to be exempted and are satisfied that being made exempt is in alignment with the view of the relevant hapū will be exempted upon enactment of this Bill. This exemption of hapū trusts for these PSGEs is indicated in Schedule 2.
- 19 This is due to the nature of settlement redress and the intention of the PSGEs' post-settlement governance arrangements,

Impact analysis

- 20 The Ministry for Regulation determined that this proposal is exempt from the requirement to provide a RIS, on the grounds that the Bill has no or only minor economic, social, or environmental impacts.

Compliance

Principles of the Treaty of Waitangi

- 21 The Bill aims to address an unintended consequence of settlement legislation failing to explicitly disapply the MLC jurisdiction under sections 237 to 245 of the Act to PSGEs. This one-off legislative solution preserves the authority of the PSGEs as intended by both Crown and Iwi at the time of settlement and, in doing so, upholds the integrity of each Treaty settlement.

Compliance with advice from the Treaty Provisions Officials Group

- 22 The Bill does not contain any Treaty of Waitangi provisions and therefore no advice has been sought from the Treaty Provisions Officials Group.

Rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

- 23 The Bill complies with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The Ministry of Justice has considered the Bill against the New Zealand Bill of Rights Act 1990 and has provided advice to the Attorney-General. Advice provided to the Attorney-General is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill.

Disclosure statement requirements

- 24 A disclosure statement has been prepared and is attached to the paper.

Principles and guidelines set out in the Privacy Act 2020

- 25 The Bill does not raise any privacy issues.

Relevant international standards and obligations

- 26 There are no relevant international standards or obligations affected by this Bill.

Legislation Guidelines

- 27 The Bill complies with the Legislation Advisory Committee's Legislation Guidelines (2021 edition), which are a guide to making good legislation. The Order in Council making power that would enable other trusts to be exempted from MLC jurisdiction is a justified power with appropriate safeguards.

Consultation

Relevant government departments or other public bodies

- 28 Te Tari Whakatau and the Ministry of Justice were consulted on the Bill and Cabinet Paper.
- 29 The Māori Land Court was also consulted during policy development and on the draft Bill. The proposal to provide for the exemption of each specified PSGE from sections 237 to 245 of the Act has been discussed with the Chief Judge of the MLC, who provided information that assisted in the analysis of this issue, while noting that in keeping with the doctrine of separation of powers they did not seek to advocate for a particular policy decision or outcome on this matter.

Relevant private sector organisations and public consultation processes

- 30 All 73 PSGEs have been consulted following the Supreme Court judgment, and 46 PSGEs have formally confirmed their requests for the supervisory jurisdiction of the MLC to be removed, whilst 9 PSGEs have confirmed their request for the exemption to apply to hapū trusts that they have transferred redress to. By this confirmation, these PSGEs confirm that they have followed their respective trust deed provisions for making a decision of this nature.
- 31 The 46 PSGEs that have formally confirmed their requests for the supervisory jurisdiction of the MLC to be removed were also consulted on the draft Bill.

Binding on the Crown

- 32 This Bill states that “This Act binds the Crown.”
- 33 I consider that it is appropriate for this Bill to bind the Crown and will not create any adverse implications for the Crown.
- 34 That the Bill provide that the resulting Act will bind the Crown was not expressly approved when Cabinet policy approvals were granted for the Bill, therefore I seek Cabinet’s approval now that this Bill will bind the Crown.

Creating new agencies or amending law relating to existing agencies.

- 35 The Bill does not create a new agency.
- 36 The Bill does not amend the existing coverage of the Ombudsmen Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision-making powers

- 37 The Bill does not allocate decision-making powers between the executive and judiciary.

Associated regulations

- 38 No regulations will be required to bring this Bill into operation. No consequential amendments are required. The Bill will not amend any Treaty settlement legislation.

Other instruments

- 39 The Bill includes an Order in Council making power to provide for PSGEs to be added to a schedule in the event they were unable to make a formal decision within the specified timeframe.
- 40 This Bill also authorises PSGEs, certain hapū or other trusts that received, or will receive, Treaty of Waitangi settlement redress to be added to a schedule through an Order in Council on the recommendation of the Minister for Māori Crown Relations and the written consent of the relevant trust.

- 41 Any Order in Council made will be secondary legislation and will be subject to the requirements of the Legislation Act 2019. The explanatory note for the Bill sets out these reasons.

Definition of Minister/department

- 42 The Bill does not create a new definition, or amend an existing definition, of Minister or department.

Commencement of legislation

- 43 The Bill will come into force on the day after the date on which it receives Royal assent.

Parliamentary stages

- 44 The Bill has a category 5 Priority on the 2026 Legislation Programme (to proceed to select committee before the 2026 General Election).
- 45 I recommend the Bill be introduced on the first available date after approval by Cabinet and referred to the Māori Affairs select committee.

Proactive Release

- 46 I propose to proactively release this paper within 30 business days, in accordance with Cabinet Office Circular CO 23 (4) Proactive Release of Cabinet Material: Updated requirements. Redactions may be made as appropriate in line with the Official Information Act 1982

Recommendations

- 47 I recommend that the Cabinet Legislation Committee:
- 1 **note** that the Post-Settlement Governance Entities (Exemption from Jurisdiction of Māori Land Court) Bill holds a category 5 priority on the 2026 Legislation Programme (to proceed to select committee before the 2026 General Election);
 - 2 **note** that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that the Bill has no or only minor economic, social, or environmental impacts;
 - 3 **note** that some provisions in the Bill give effect to decisions made under the authority Cabinet delegated to the Minister for Māori Crown Relations to make technical policy decisions to be made as needed to support the drafting instructions, in line with the decisions under SOU-25-MIN-0066.
 - 4 **approve** the Post-settlement Governance Entities (Exemption from Jurisdiction of Māori Land Court) Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

- 5 **agree** that the Post-settlement Governance Entities (Exemption from Jurisdiction of Māori Land Court) Bill will state that this Act will bind the Crown;
- 6 **agree** that the Post-settlement Governance Entities (Exemption from Jurisdiction of Māori Land Court) Bill be introduced on the first available date after Cabinet has approved the Bill for introduction;
- 7 **agree** that the government propose that the Post-settlement Governance Entities (Exemption from Jurisdiction of Māori Land Court) Bill be:
 - 7.1 referred to the Māori Affairs select committee for consideration; and
 - 7.2 enacted, if possible, in 2027;
- 8 **agree** that the Minister for Māori Crown Relations may authorise the Parliamentary Counsel Office to make any minor changes to the Bill following consideration by the Cabinet Legislation Committee.

Authorised for lodgement

Hon Tama Potaka
Minister for Māori Crown Relations: Te Arawhiti