

Departmental Disclosure Statement

Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Te Puni Kōkiri and the Ministry of Justice.

Te Puni Kōkiri and the Ministry of Justice certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

4 September 2019.

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Part One: General Policy Statement

Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Bill includes a suite of amendments to Te Ture Whenua Maori Act 1993 (the Act) designed to—

- enhance the intergenerational well-being of owners of Māori land, supporting opportunities for owners to use their land to meet their aspirations:
- simplify the complexity and requirements that owners of Māori land encounter when engaging with the Māori Land Court, while preserving the integrity of the Māori land tenure system:
- promote the efficient operation of the Māori Land Court, decrease the costs of resolving issues relating to Māori land, and ensure that the remedies available to enforce a decision are practical and effective
- ensure that the Māori land tenure system is fit-for-purpose, clear, user-friendly, and future-proofed

The Act has been in operation for over 25 years and continues to provide a sound legislative framework for Māori land tenure, supporting owners of Māori land to retain, as well as develop and utilise, their land. However, the Act would benefit from some practical and technical changes that support the Māori Land Court and strengthen the legislative framework for Māori land tenure.

Succession

Simplifying the succession process

To succeed to an interest in Māori land, a person must apply to the Māori Land Court. The Act currently requires all succession applications to be heard at a sitting of the Māori Land Court. The length, complexity, and costs of participating in this process have been a disincentive to whānau applying for succession, and have contributed to Māori not succeeding to their land interests.

The Bill will enable simple and uncontested succession applications to be received, confirmed, and recorded by a Registrar of the Māori Land Court, instead of going through a full court hearing process.

Whāngai

Whāngai are only entitled to succeed to interests if the Māori Land Court determines they have been formally recognised as being the whāngai of the deceased owner. The Bill clarifies that the tikanga of the relevant iwi or hapū will determine whether whāngai are eligible to succeed. In the event that the Court finds that the relevant tikanga does not recognise a relationship of descent, the whāngai will be eligible to receive income or grants from the estate and the right to occupy the family home.

Surviving spouse or partner

Currently, after the death of an owner, their surviving spouse or partner is entitled to receive a life interest in the ownership of their interests in Māori land. This means they can receive income and grants from the deceased owner's interests in the land, can occupy a family home situated on the land, and can participate (eg, vote) in decision-

making about the land. These interests only pass to the deceased owner's descendants once the spouse or partner has died, entered a new relationship, or surrendered the rights.

The Bill enables descendants to apply for succession straight away. This amendment will enable descendants to actively participate in decision-making over their land interests straight away, while protecting the surviving spouse's or partner's entitlement to receive income or grants from the deceased owner's interests in Māori land as well as the right to occupy the family home.

Dispute resolution

The Bill establishes a dispute resolution process based on tikanga Māori to assist owners of Māori land to resolve disagreements and conflicts about their land. The dispute resolution process recognises that disputes involving Māori land are often delicate and sensitive situations, involving people with close kinship ties to each other. Enabling the parties to come up with their own solutions to resolve the dispute outside of a court hearing process will help to maintain and restore the relationships between whānau.

The dispute resolution process will be limited to matters within the Māori Land Court's jurisdiction and administered by the Māori Land Court. The process will be available for proceedings that are already before the Māori Land Court as well as disputes for which court proceedings have not been initiated. The process will be confidential and without prejudice.

Māori Land Court

The Bill makes some improvements to the way the Māori Land Court functions. These changes include—

- allowing a Māori Land Court Registrar to deal with simple and uncontested trust applications;
- enabling the Māori Land Court to appoint experts in tikanga Māori or whakapapa as additional members of the court to assist in cases involving Māori land;
- providing Judges of the Māori Land Court with the power to hold judicial settlement conferences, which will enable the Judge to assist parties to resolve an issue without the need for a formal court hearing.

The Bill also expands the range of remedies that a Judge of the Māori Land Court can employ to achieve an adequate outcome of a matter, including—

- extending the ability to issue injunctions to include the power to compel action;
- authorising the Māori Land Court to grant equitable relief if satisfied it is necessary to achieve a just outcome where other remedies would be insufficient to achieve that outcome;
- ensuring that the Māori Land Court can send orders for the recovery of Māori land to the High Court or District Court for enforcement.

The Māori Land Court does not have jurisdiction to hear certain matters relating to Māori land, even though it may be the more appropriate forum to do so. The Bill allows the Māori Land Court to hear applications relating to Māori land for a greater range of matters associated with the Family Protection Act 1955, the Government Rounding Powers Act

1989, the Law Reform (Testamentary Promises) Act 1949, the Local Government Act 1974, and the Property Law Act 2007.

Māori housing tenure

The Bill recognises the need for owners of Māori land to be provided with better opportunities to use their land to meet their housing aspirations by—

- enabling the Māori Land Court to grant occupation orders in favour of a beneficiary of a whānau trust as long as the trustees of the whānau trust agree;
- allowing the trustees of a Māori reservation to grant a lease or occupation license for the purpose of papakāinga housing for periods longer than 14 years.

Minor and other technical amendments

The Bill also makes a small number of minor and technical changes to improve the operation of the Act.

Part Two: Background Material and Policy Information.

Published reviews or evaluations

<p>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</p>	<p>YES</p>
<p><i>Ko Ngā Tumanako o Ngā Tangata Whai Whenua Māori: Owner Aspirations Regarding the Utilisation of Māori Land</i>, Te Puni Kōkiri, April 2011 http://www.tpk.govt.nz/en/a-matou-mohiotanga/land/owners-aspirations-regarding-the-utilisation-of-ma/</p> <p><i>Te Ture Whenua Māori Act 1993 Review Panel Discussion Document</i>, March 2013 https://www.tpk.govt.nz/en/a-matou-mohiotanga/land/te-ture-whenua-maori-act-1993-review-panel-discuss</p> <p><i>Report of Te Ture Whenua Māori Act 1993 Review Panel</i>, March 2014 https://www.tpk.govt.nz/.../Te-Ture-Whenua-Review-Panel-Report.pdf</p> <p><i>Te Ture Whenua Māori Reform: Summary of Submissions</i>, Te Puni Kōkiri, September 2015 http://www.tpk.govt.nz/mi/a-matou-kaupapa/crown-iwi-hapu-whanau-maori-relations/consultation/review-of-te-ture-whenua-maori-act-1993/</p> <p><i>He kura whenua ka rokohanga: report on claims about the reform of Te Ture Whenua Māori Act 1993 (wai 2478)</i>, Waitangi Tribunal, 2016 https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_101113166/He%20Kura%20Whenua%20ka%20Rokohanga%20W.pdf</p> <p><i>Te Ture Whenua Māori Bill: Report of the Māori Affairs Committee</i>, November 2016 https://www.parliament.nz/en/pb/sc/reports/document/51DBSCH_SCR71846_1/te-ture-whenua-maori-bill-126-2</p>	

Relevant international treaties

<p>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</p>	<p>NO</p>
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A Regulatory Impact Assessment was prepared in accordance with the necessary requirements, and was submitted when policy approvals were sought for the Bill in December 2018.</p> <p><i>Regulatory Impact Statement: Te Ture Whenua Māori Amendment Bill</i> (Te Puni Kōkiri and Ministry of Justice, 29 November 2018)</p> <p>The RIS can be found and downloaded from the Te Puni Kōkiri and Treasury's websites:</p> <ul style="list-style-type: none"> • https://www.tpk.govt.nz/documents/download/5985/regulatory-impact-analysis-te-ture-whenua-maori-amendment-bill.pdf • http://www.treasury.govt.nz/publications/informationreleases/ria 	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Regulatory Quality Team at the Treasury reviewed the Regulatory Impact Assessment "Te Ture Whenua Māori Amendment Bill" produced by Te Puni Kōkiri and the Ministry of Justice dated 29 November 2018. The review team considered it met the Quality Assurance criteria.</p> <p>RQT assessed an earlier version of this RIA in June 2018, at which time it was assessed as partially meeting the QA criteria. Since then, TPK and MoJ have significantly revised the RIA. The problem and proposed approach are clearly set out. The impact analysis is clear and convincing. TPK and MoJ have consulted extensively with the key stakeholders on the problem and options. Implementation steps will include the development of a transition plan. Finally, the monitoring and evaluation arrangements appear well considered to enable prompt identification of any issues with the system in practice.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>An analysis of the potential costs and benefits of the policy to be given effect by this Bill is described in the Regulatory Impact Analysis.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
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(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

Te Puni Kōkiri officials reviewed available lists of international treaties to which New Zealand is a party and international conventions supported or ratified by New Zealand in order to identify any obligations for which the policy to be given effect by this Bill may be relevant. In April 2010 New Zealand expressed support for the *United Nations Declaration on the Rights of Indigenous Peoples* and in November 1972 New Zealand ratified the *International Convention on the Elimination of All Forms of Racial Discrimination*. The policy to be given effect by this Bill is considered to be consistent with both of those conventions. No other international obligations of relevance to this Bill were identified.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Te Puni Kōkiri officials reviewed *The Principles of the Treaty of Waitangi*, an appendix to volume II of the *National Overview Report* of the *Rangahaua Whānui Series* published by the Waitangi Tribunal. The principles of the Treaty of Waitangi are expressed in a range of judgments and Waitangi Tribunal reports summarised in the appendix to the *National Overview Report*. The policy given effect by this Bill is consistent with these principles. In particular, addressing issues associated with Māori freehold land will reduce inequities and improve socio-economic outcomes for Māori. This will improve the Crown/Māori relationship and enhance the Crown's implementation of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General is generally expected to be available on the Ministry of Justice's website at introduction of a bill, and can be accessed at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

The Bill enables the Māori Land Court to deal with matters relating to Māori land under the following provisions:

- section 3A of the Family Protection Act 1955 (clauses 67 and 68 of the Bill) which relate to family protection claims in relation to Māori land
- sections 48, 50, 55, 61, 74 and 76 of the Government Roding Powers Act 1989 (clauses 69 to 75 of the Bill) which relate to:

<ul style="list-style-type: none"> ○ seeking relief from a notice issued by the Minister of Transport (section 48) or the New Zealand Transport Agency (section 61) of an intention to carry out work or to remove any material ○ seeking relief from a notice issued by the Minister of Transport or the New Zealand Transport Agency not to remove any material if doing so could cause damage to an adjacent bridge or culvert (section 50) ○ seeking relief from a notice issued by a responsible authority to cut down, lower or trim trees, hedges or shrubs, adjacent to a road or public work or to remove an encroaching structure (section 55) ○ seeking relief from a notice issued by the person in charge of a motorway construction to temporarily occupy land (section 74) ○ a dispute relating to road access to land that is cut off by a new motorway (section 76) <ul style="list-style-type: none"> ● section 5 of the Law Reform (Testamentary Promises) Act 1949 (clauses 76 and 77 of the Bill) which relate to testamentary promises claims in relation to Māori land ● section 446 of the Local Government Act 1974 (clauses 78 and 79 of the Bill) which allows a council to enclose and cover a watercourse on a parcel of land, including Māori land, that may become a nuisance or dangerous to the public ● Part 3 (relating to mortgages of Māori land) and sections 313, 317 and 318(3)(relating to the enforcement, modification or extinguishment of easements and covenants) of the Property Law Act 2007 (clauses 7 and 8 of the Bill) <p>It increases the powers of the Māori Land Court in respect of injunctions and disputes resolution, which include the ability to make an order confirming the terms of the resolution.</p> <p>It also modifies the range of orders that can be made by the Māori Land Court relating to equitable relief, Registrar's determination of succession and trust matters, determination of whāngai and descent relationships and for the rights of whāngai children, occupation orders, Māori reservations for communal purposes and Māori reservations.</p> <p>The appeal rights relating to landlocked land are amended.</p>
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3.4.1. Was the Ministry of Justice consulted about these provisions?	N/A
The Ministry of Justice is involved in the development of this Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>During the policy development stage Te Minita Whanaketanga Māori met with a range of interested parties including those involved with the Māori Land Court, as well as groups of Māori law academics and practitioners, Māori land entities, iwi chairs, and Māori land owners regarding the proposals which were modified to take account of comments.</p> <p>The Māori Land Court Judges were provided with an earlier draft of the Bill, and made several drafting suggestions to improve the workability of the proposed amendments. The Judge's feedback was incorporated into the Bill, with the exception of comments that required policy analysis or did not reflect the approach as agreed by Cabinet. These matters will be tested during the select committee process to ascertain their support amongst Māori owners.</p> <p>The Chief Justice also received this earlier draft of the Bill but made no drafting comments.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
The Bill enables the Judges of the Māori Land Court to act as a mediator in disputes about Māori land. New section 98N provides that in such situations, the Judge is to be treated as acting judicially and retains the same immunities as when acting as a Judge.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The Bill expands the range of matters that can be covered by the Māori Land Court Rules (amended section 95). This will enable the Māori Land Court to develop rules relating to the appointment of additional members, the new dispute resolution process, and procedures for succession and trusts applications dealt with by a Māori Land Court Registrar.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
The Bill recognises the role that tikanga Māori plays in resolving disputes about Māori land. For instance, the Bill establishes a disputes resolution process that will enable people to resolve disputes about Māori land themselves and to do so, as far as possible, in accordance with their own tikanga and values	