

In Confidence

Office of the Minister of Justice
Office of Te Minita Whanaketanga Māori

Chair, Cabinet Legislation Committee

**Te Ture Whenua Māori (Succession, Dispute Resolution and Related Matters)
Amendment Bill: Approval for Introduction**

Proposal

1. This paper seeks Cabinet approval to introduce Te Ture Whenua Māori (Succession, Dispute Resolution and Related Matters) Amendment Bill (the Bill) to the House of Representatives.

Policy

2. A key aspect to supporting Māori land owners realise the full potential of their land is an effective legal and regulatory framework for Māori land tenure.
3. Māori land tenure is governed by Te Ture Whenua Māori Act 1993 (the Act), which recognises that Māori land is taonga tuku iho with special cultural significance for Māori. The Act endeavours to promote the retention of Māori land while facilitating the occupation, development and utilisation of that land for the benefit of its owners, their whānau, hapū and descendants. To achieve those goals, the Act encourages the collective management and governance of Māori land, and contains safeguards to limit the sale, gift and long-term lease of Māori land, including requiring all major dealings with Māori land to be examined and confirmed by the Māori Land Court.
4. In a July 2013 report, an independent panel appointed to review the Act recommended reform of Māori land laws. In September and December 2013 Cabinet agreed to implement the review panel's recommendations [CAB Min (13) 31/7 and CAB Min (13) 43/6 refer]. Te Ture Whenua Māori Bill (the former Bill) was introduced in April 2016.
5. In December 2017, Te Minita Whanaketanga Māori withdrew the former Bill and, instead, decided to pursue a targeted set of legislative proposals to better support Māori land owners to facilitate their participation in the governance, management and development of Māori land [CAB-17-MIN-0567 refers].
3. In April 2018, Te Minita Whanaketanga Māori indicated that the targeted set of legislative proposals would be advanced in two stages [CAB-18-MIN-0143 refers]. The first stage involves practical and technical changes to the Act. The second stage will address a range of matters that create impediments for Māori land owners (i.e. valuation, rating and public works).

7. In December 2018 Cabinet agreed to make targeted amendments to the Act that support the Māori Land Court and strengthen the regulatory framework for Māori land tenure [CAB-18-MIN-0643]. Cabinet also authorised Te Minita Whanaketanga Māori and the Minister of Justice to approve further minor and technical amendments, if required.
8. The main initiatives in the Bill are focused on improving the succession process and providing for a new dispute resolution process. Additional amendments will enable the Māori Land Court to deal with a greater range of matters relating to Māori land, ensure the remedies available to the Māori Land Court are practical and effective, and enhance Māori housing tenure. A number of minor and technical changes are also included.
9. The amendments seek to improve outcomes for Māori land owners' prosperity and intergenerational wellbeing, supporting both protection and development opportunities over their land. They also seek to reduce the complexity and compliance that Māori land owners encounter when they engage with the Māori Land Court, while maintaining the overall scheme of the Māori land tenure system.

Approval is sought for two further amendments

10. We seek approval for two further amendments to:
 - a. Extend the scope of the Māori Land Court's power to issue injunctions to include 'General Land owned by Māori' (which is a special category of land owned by a Māori or a group of Māori that is subject to the provisions of the Act). This amendment will contribute to the statutory objective of the effective use, management, development and retention of this land by its Māori owners. The court is currently able to issue injunctions for Māori customary land, Māori freehold land and Māori reservations only;
 - b. Simplify the process for converting Crown land into Māori customary land. Currently this can only be done by conferring special jurisdiction on the Māori Land Court, which is complicated and time-consuming. We have included a provision that allows a Minister to apply to the Court for an order for Crown land that was formerly Māori customary land to become Māori customary land. Such orders can only be made if there is sufficient degree of support for the proposal among the previous owners and their descendants.

Minor and technical changes

11. During the drafting of the Bill, some minor and technical matters were identified that required Ministerial approval under the delegation noted above. These included:
 - a. Clarifying that the dispute resolution process only applies to matters within the Māori Land Court's jurisdiction and not all land owned by Māori; and
 - b. Ensuring that, where relevant, the proposals apply to both types of Māori land (that is Māori freehold land and Māori customary land).

Commencement

12. We propose that the majority of changes will come into force no later than six months after Royal assent or by 1 October 2020, whichever is the latest. This

will ensure there is sufficient time to implement the proposed changes to the administration of the Māori Land Court and inform Māori land owners, governance bodies and others involved with Māori land on effect of the proposed changes. It will also provide time for the associated regulations to be updated.

13. We propose that initially only a judge of the Māori Land Court may be used to mediate a dispute involving Māori land. The proposal to allow external mediators to assist the mediation process should be brought in by Order in Council. This delayed commencement will provide time for the Māori Land Court to identify suitably qualified people skilled in both mediation and tikanga who are able to carry out this role.

Impact analysis

14. A Regulatory Impact Statement was prepared on 29 November 2018 in accordance with the necessary requirements, and was submitted when policy approvals were sought for the Bill in December 2018 [CAB-18-MIN-0643].

Compliance

15. The Bill complies with the following:
 - a. the principles of the Treaty of Waitangi;
 - b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - c. the principles and guidelines set out in the Privacy Act 1993;
 - d. relevant international standards and obligations;
 - e. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
16. A disclosure statement has been prepared by Te Puni Kōkiri and the Ministry of Justice and is attached to the paper.

Consultation

Relevant government departments or other public bodies

17. The following government agencies were consulted on this paper: the Departments of Conservation and Internal Affairs; Land Information New Zealand; the Ministry for the Environment; the Ministries of Business, Innovation and Employment, Primary Industry, Housing and Urban Development, and Transport; and the Treasury. The Department of the Prime Minister and Cabinet was informed.

Relevant private sector organisations and other stakeholders

18. The key stakeholders associated with this work are Māori land owners, Māori leadership groups (such as the Federation of Māori Authorities, Iwi Chairs Forum, and the Māori lawyers association) and Māori law academics and practitioners. As these groups all submitted on the former Bill, Te Minita Whanaketanga Māori met with them during the development of the proposals (at various times and locations in 2018).

19. Overall, stakeholders were supportive of the proposed amendments to the Act. They supported the proposed approach to enable a Māori Land Court registrar to deal with uncontested succession applications and simple trust matters. In their view, these amendments would enable applications to be completed swiftly without the need for a court hearing. They would speed up the process and free up judicial time for other matters. Stakeholders were also in favour of establishing a dispute resolution process to be administered by the Māori Land Court, and supported the proposals to improve the functions and expand the jurisdiction of the Court, as well as the range of remedies that it may provide.

20. [REDACTED] 9(2)(ba)(i)

21. [REDACTED] 9(2)(ba)(i)

Binding on the Crown

22. The Act binds the Crown and the Bill does not change this.

Creating new agencies or amending law relating to existing agencies

23. The Bill does not create a new agency.

24. 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

25. The Bill involves the allocation of decision-making powers by removing the requirement that the Chief Executive of Te Puni Kōkiri must approve an application to form a Māori reservation after the application has been considered by the Māori Land Court as this is an unnecessary step in the process.

Associated regulations

26. Minor consequential updates will be necessary to the Māori Incorporations Constitution Regulations 2004 and Māori Land Court Fees Regulations 2013 to bring the proposed changes into operation. Changes will also be required to the Māori Land Court Rules 2011. The drafting instructions for the amendments to these regulations will be sent to the Parliamentary Council Office before the Bill proceeds to the committee of the whole.

Definition of Minister/department

27. The Bill does not contain a definition of Minister or department. The existing definitions in the Act will apply.

Commencement of legislation

28. The majority of the changes will come into effect six months after Royal assent or by 1 October 2020, whichever is the latest and the provisions that have delayed commencement are outlined in paragraphs 15 and 16.

Parliamentary stages

29. [REDACTED] 9(2)(h)

30. We propose the Bill be referred to the Māori Affairs Committee.

31. It is also proposed that the Minister of Justice and Te Minita Whanaketanga Māori be given delegated authority to make any changes to the Bill that are considered necessary to achieve its intended purpose during the remaining stages of the legislative process.

Proactive Release

32. Once the Bill has been introduced, Te Puni Kōkiri will proactively release this Cabinet Paper. Redactions will be made as appropriate in line with the Official Information Act.

Recommendations

33. The Minister of Justice and Te Minita Whanaketanga Māori recommend that the Committee:

1. [REDACTED] 9(2)(h)

2. note that the Bill makes targeted amendments to Te Ture Whenua Māori Act 1993 that support the Māori Land Court and strengthen the regulatory framework for Māori land tenure [CAB-18-MIN-0643];

3. agree to:
- a) extend the scope of the Māori Land Court's power to issue injunctions to include 'General Land owned by Māori', a special category of land that is subject to Act; and
 - b) simplify the process for converting Crown land into Māori customary land;

4. note that Cabinet authorised Te Minita Whanaketanga Māori and the Minister of Justice to approve further minor and technical amendments, if required [CAB-18-MIN-0643];

5. note that some minor and technical matters were identified that required Ministerial approval;

6. approve the Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

7. **agree that the Bill be introduced by 23 September 2019;**
8. **agree that the Minister of Justice and Te Minita Whanaketanga Māori be given delegated authority to make any changes to the Bill considered necessary to achieve its intended purpose during the remaining stages of the legislative process;**
9. **agree that the government propose that the Bill be:**
 - 9.1 referred to the Māori Affairs Committee for consideration; and
 - 9.2 [REDACTED] 9(2)(h)

Authorised for lodgement

Hon Andrew Little
Minister of Justice

Hon Nanaia Mahuta
Te Minita Whanaketanga Māori