

Te Ture Whenua Māori Amendment Bill

Advising agencies	<i>Te Puni Kōkiri and the Ministry of Justice</i>
Decision sought	<i>Agreement to amend Te Ture Whenua Māori Act 1993</i>
Proposing Ministers	<i>Hon Nanaia Mahuta, Te Minita Whanaketanga Māori Hon Andrew Little, Minister of Justice</i>

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

Māori freehold land is taonga tuku iho for retention through the generations. It contributes to the cultural and economic wellbeing of Māori and has unrealised potential for productive economic growth, including job creation for whānau. Working with Māori land owners to unlock this potential contributes to the Government's goals to grow and share New Zealand's economic prosperity more fairly, support thriving and sustainable regions, and build closer partnerships with Māori.

To support this strategic focus, the Government has established the Whenua Māori Programme, which will connect Māori land owners with better opportunities to govern, manage and develop their land that are presented in other sectors such as regional growth, afforestation, housing/papakāinga and conservation.

In order to take advantage of the initiatives proposed as part of the Whenua Māori Programme, whānau need to be able to access an effective legal and regulatory framework governing Māori land. Māori land is governed Te Ture Whenua Māori Act 1993 (the TTWM Act).

While the TTWM Act has supported Māori land owners to retain, develop and utilise their land, it adds a layer of complexity and compliance for Māori land owners that has hindered the successful functioning of the regulatory framework. This has impacted on the ability of Māori land owners to access decision-making and participation in governance and management over their lands, and is most noticeable in two areas: succession and trust matters.

(1) Succession and Trust Matters

To succeed to an interest in one or more Māori land blocks, an application must be made to the Māori Land Court to prove the successor's right to succeed. Currently, all succession applications need to be heard at a sitting of the Māori Land Court, most often in the district in which the Māori land is located. This often requires whānau to travel, or take time off work, to attend a hearing, which only takes a few minutes for uncomplicated applications where all family members agree who should succeed. Applications take between two to nine months to process depending on complexity and court scheduling pressures.

The succession process is further complicated by difficulties associated with identifying all of the deceased owner's interests in Māori land. For many Māori the potential benefits of succeeding to their interests in Māori land are not perceived as

being sufficient to compensate for the effort required to meet the administrative requirements to do so. The complexity and length of the succession process has been a disincentive for whānau applying for succession and have led to a high number of interests remaining in the name of a deceased person (and their land interests not transferring to their successors), resulting in reduced participation and access to decision-making by whānau over their lands. Approximately two-thirds of succession applications are simple matters that could, and should, be dealt with by a court registrar.

The Act also requires applications for the formation, variance and termination of a land management trust or whānau trust, and the appointment and replacement of a trustee to be considered by a Judge, even when they are uncomplicated such as when a trustee has passed away and the other trustees want to simply remove his or her name from the list of responsible trustees. This has created issues for the management of trusts, as the length of time it takes to deal with applications creates hardship and loss of potential income from investment of trust assets, particularly smaller trusts who may experience a lack of quorum to make decisions while an application is being processed. Unwarranted delay in dealing with trust matters may undermine confidence in the court process.

Requiring these applications to be considered by a judge is inefficient, incurs costs (to the applicant, their whānau and the Māori Land Court), and is unnecessary.

The changes proposed to address these impacts meet the threshold for RIA. We have identified two other issues that also meet this threshold.

(2) Dispute resolution

The Act does not provide Māori land owners with an alternative to litigation to resolve disputes relating to Māori land. Disputes involving Māori land are often delicate and unique situations that if not sensitively managed can lead to heightened levels of emotion for the parties involved. The current emphasis on litigation forces parties to focus on their legal rights and obligations as opposed to issues that are important to the parties, and is often time-consuming and expensive in terms of court fees, lawyer and expert fees and work time lost.

(3) Whāngai and adopted children

Whāngai and adopted children are treated differently for the purposes of succession.

Children adopted under the Adoption Act 1955 are currently entitled to succeed to their adopted parent's interests in the same way as any natural child. This is regardless of whether they are Māori or from the same hapū as their adopted parent. This has caused issues amongst the hapū where customary adoptions are not recognised in accordance with tikanga Māori. Such children are also prohibited from succeeding to their biological parents' land interests, which is possible in the case of whāngai.

On the other hand, persons adopted in accordance with tikanga Māori are only entitled to succeed if the Māori Land Court determines they have been recognised as being the whāngai of the deceased owner. While this is more closely aligned with Māori customary values and practices, the process is not codified, and different approaches may be taken in the different Māori Land Court districts.

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

The proposed amendments will reduce the complexity and compliance that Māori land owners encounter when they engage with the Māori Land Court, while maintaining the overall scheme. The Māori Land Court will continue to be the judicial forum responsible for facilitating the occupation, development and use of Māori land, and be seen as enduring and trusted by those that use its services.

(1) Succession and Trust Matters

Allowing a Māori Land Court registrar to process succession applications and trust matters will simplify and speed up the respective court processes, and resolve issues that have been previously identified in various reviews of TTWM Act.

(2) Dispute Resolution

Providing a dispute resolution process would avoid unnecessary litigation. It would also be less expensive for the parties compared to going to court. Dispute resolution would give the parties a sense of control over the decision-making process, lead to more durable resolution of disputes and help preserve the long-term relationship between the parties.

(3) Whāngai and adopted children

Providing that the ability of whāngai and adopted children to succeed to Māori land interests should be determined in accordance with the tikanga of the relevant iwi or hapū would bring the eligibility criteria into line with Māori customary values and practices. This would reduce concerns that the current process (which allows adopted children to succeed even though this may not be in accordance with the tikanga of a particular hapū) undermines such values. The change would allow an adopted child to inherit from his or her natural parents (if permitted by tikanga), which is not permitted under the current regime.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

(1) Succession and Trust Matters

Māori land owners are expected to have a better application-processing experience once the amendments come into force. The process will be faster and easier to navigate. This will enable more Māori land owners to begin to reconnect with their land, participate in its management and take advantage of the initiatives proposed as part of whānau development through whenua.

Providing for simple and uncontested applications to be received, confirmed and recorded by a court registrar would speed up the process and free up judicial time for other matters. It would maintain safeguards around the accuracy of any such determination, as all orders completed by a court registrar would be subject to appeal or rehearing by the Māori Land Court if a complication emerged.

(2) Dispute Resolution

The proposal to introduce a disputes resolution process will benefit all persons who are in a dispute involving Māori land (not just the owners of Māori land). The new process will be less expensive for the parties, give the parties a sense of control over the decision-making process, lead to more durable resolution of disputes and help preserve the long-term relationship between the parties. It will also lead to more flexible remedies than court, for example by making agreements that the Māori Land Court could not order. In addition, it will reduce the number of disputes that are taken to the Māori Land Court, which will free up judicial time for other matters.

(3) Whāngai and adopted children

The proposed change will codify the existing practice of the Māori Land Court for whāngai which would bring certainty for Māori land owners regarding who is entitled to succeed to their land and how they are to do so. The change will also ensure that whāngai and adopted children are able to succeed to their natural parents' land interests, if this is in accordance with tikanga Māori.

Where do the costs fall?

(1) Succession and Trust Matters

Allowing a Māori Land Court registrar to process simple succession applications and trust matters is expected to have some cost implications for the Māori Land Court. It is estimated that funding of up to \$1.405 million per annum will be required. This will enable the Māori Land Court to hire additional staff to support the changes that are being made to court processes and to deal with the expected increase in succession applications.

People who wish to succeed to interests in Māori land need to pay an application fee of \$60. We are not proposing to increase this fee.

(2) Dispute Resolution

It is proposed that the dispute resolution process will be publicly funded. This means that parties will not need to pay an application fee. However, the parties may choose to seek legal advice, the costs of which may be covered by the Māori Land Court Special Aid Fund.

Investment is required to implement the proposals. It is estimated that funding will be required of up to \$3.090 million per annum, the bulk of this cost going towards the payment of the fees and expenses of mediators.

(3) Whāngai and adopted children

As a consequence of the proposed amendment, children adopted under the Adoption Act 1955 will not automatically succeed to their adopted parent's land interests.

The costs associated with processing succession applications involving whāngai and adopted children are included in the costs for processing succession applications generally.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

(1) Succession and Trust Matters

If Māori land owners do not support or use the improved court services for process successions and trust matters, then the realisation of benefits will be adversely affected. This risk can be mitigated by engaging and collaborating actively with Māori land owners to inform, educate and elicit support for the delivery of fit-for-purpose services, as well as work with strategic partners to communicate the benefits for Māori land owners.

(2) Dispute Resolution

The effectiveness of the dispute resolution process relies on the availability of a sufficient pool of mediators with expertise in that field as well as in tikanga Māori. This pool is currently limited. Officials will explore ways to increase expertise in this area as part of the Bill's implementation. Māori Land Court judges will be able to act as mediators under the proposal, which will reduce the capability gap.

(3) Whāngai and adopted children

Some Māori land owners may not support the proposed changes to the succession rights of adopted children, as their adopted children will no longer be automatically entitled to succeed to their land interests. They will be required to demonstrate that the adoption is recognised by the tikanga of the relevant iwi or hapū. This risk is being mitigated by enabling the Court to appoint experts in tikanga Māori and whakapapa ("pūwānanga") as additional members of the Court in such cases. This will ensure that evidence about tikanga is properly understood, tested and accessed by the Court. In the event that the Māori Land Court finds that an adopted child is not entitled to succeed, the Court may provide the child with a life interest in the deceased owner's estate instead.

We will monitor the impact and effectiveness of the targeted amendments as part of the Ministry of Justice's standard and ongoing monitoring of the operation of all courts and tribunals and Te Puni Kōkiri regulatory stewardship responsibilities. We expect to receive feedback on any aspects of the new legislation causing concern through our regular contact with the Māori Land Court Judges and with Māori land owners through the delivery of associated regional advisory services.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

With clear drafting, broad public awareness of the policy purpose of the proposed amendments, we cannot see any significant incompatibility between these reforms and the list of expectations for the design of regulatory systems.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

The proposed amendments are supported by both qualitative and quantitative evidence. During the development of the former Te Ture Whenua Māori Bill (the former TTWM Bill), officials heard from numerous Māori land owners about the problems discussed in this report, and the impact they were having in reduced participation and access to decision-making by whānau over their lands. These problems were confirmed by those involved with the Māori Land Court. In terms of quantitative evidence, the Ministry of Justice has provided statistics from the Māori Land Court on the number of applications for succession and trust matters, and the length of time it takes to process these applications. These statistics support the need for change.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

The Regulatory Quality Team at the Treasury

Quality Assurance Assessment:

The Regulatory Quality Team at the Treasury has reviewed the Regulatory Impact Assessment (RIA) "Te Ture Whenua Maori Amendment Bill" produced by Te Puni Kōkiri (TPK) and the Ministry of Justice (MoJ) and dated November 2018. The review team considers that it meets the Quality Assurance criteria.

Reviewer Comments and Recommendations:

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.

Impact Statement: Te Ture Whenua Māori Amendment Bill

Section 1: General information

Purpose

Te Puni Kōkiri and the Ministry of Justice are responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.

Key Limitations or Constraints on Analysis

The former TTWM Bill sought to repeal and replace TTWM Act. During the select committee process, Māori land owners raised several issues about the former TTWM Bill. In particular, there were concerns that the proposed participating model would open the door for manipulation and abuse, and lead to small groups of owners making decisions that would have a significant and long-lasting impact on the rights of other owners. Concerns were also raised about the detrimental effect the proposals would have on existing trusts and Māori incorporations and the perceived weakening of the Māori Land Court's role to protect Māori land against alienation.

The former Bill was withdrawn earlier this year and, instead, the government decided to pursue a targeted set of legislative proposals to support the governance, management and development of Māori land. As part of this decision, it was decided that the proposals in the former Bill that were widely opposed would not be progressed.

Because of the narrow scope of the change proposals, there are few significant limitations or constraints on RIS. The narrow set of problems being addressed by the amendments are widely acknowledged and have been well scoped.

This was confirmed by the meetings that Te Minita Whanaketanga Māori had with Māori land owners, Māori leadership groups (such as the Federation of Māori Authorities, Iwi Chairs Forum, and Māori lawyers association, and Māori Women's Welfare League), Māori law academics and practitioners as well as those involved in the Māori Land Court regarding the proposals, which were modified to take account of their feedback.

A more comprehensive consultation process was considered unnecessary as the key proposals were all included in the former TTWM Bill. The reports and reviews that formed part of the reform process, as well as the numerous hui that were conducted and submissions received during the process, including during the select committee process, are a rich source of ideas about solutions and helped to develop the chosen policy solutions.

There are some limits on available data from the Māori Land Court: for instance, the Court does not collect data on the number of succession applications that involve whāngai and adopted children. However, we are confident the cost estimates provide a reasonable picture of how those costs will fall after the amendments are made.

Responsible Manager:



Miriam Eagle
Manager (Acting), Economic Wealth
Policy Partnerships
Te Puni Kōkiri

29 November 2018



Andrea King
General Manager (Acting)
Courts and Justice Services Policy
Ministry of Justice

29 November 2018

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Whenua is a fundamental point of reference in te ao Māori, providing a sense of cultural identity and belonging for current and future generations. The total amount of Māori land has been reduced to approximately 1.4 million hectares, out of a total land mass of 26.711 million hectares. This equates to around 5% of New Zealand's land area, with most concentrated in the mid to upper North Island.

The New Zealand Māori Council described Māori land in the following terms:

Māori land has several cultural connotations for us. It provides us with a sense of identity, belonging and continuity. It is proof of our continued existence not only as a people, but as tangatawhenua of this country. It is proof of our tribal and kin group ties. Māori land represents turangawaewae.

It is proof of our link with the ancestors of our past, and with the generations yet to come. It is an assurance that we shall forever exist as a people, for as long as the land shall last.

But also land is a resource capable of providing greater support for our people – to provide employment – to provide us with sites for our dwellings – and to provide an income to help support our people and to maintain our marae and tribal assets.

Māori land has unrealised potential for productivity growth and for achieving economic benefits for whānau. Unlocking this potential is a critical part of the government's vision of a thriving regional Aotearoa.

To support this strategic focus, the Government has established the Whenua Māori Programme, which will connect Māori land owners with better opportunities to govern, manage and develop their land that are presented in other sectors such as regional growth, afforestation, housing/papakāinga and conservation. In addition, whānau will be supported to reach their aspirations and full potential by enhancing whenua productivity and contributing to their wellbeing and prosperity. The Programme expects to deliver a range of services for whānau that are pragmatic, tangible and effective.

In order to take advantage of the initiatives proposed as part of this programme, whānau need to be able to access an effective legal and regulatory framework governing Māori land. While the TTWM Act has supported Māori land owners to retain, develop and utilise their land, it adds a layer of complexity and compliance for Māori land owners that has hindered the successful functioning of the regulatory framework. This has impacted on the ability of Māori land owners to access decision-making and participation in governance and management over their lands.

This document focuses on three of the targeted amendments that meet the threshold for RIA:

- Succession and trust matters,
- Dispute resolution, and
- Whāngai and adopted children

2.2 What regulatory system, or systems, are already in place?

Māori land tenure is governed by TTWM Act, which recognises that Māori land is a taonga tuku iho with special significance for Māori. TTWM Act endeavours to balance the retention of Māori land while facilitating the occupation, development and utilisation of that land by its owners, governors and their whānau, hapū and descendants. To achieve those goals, TTWM Act encourages 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.

2.3 What is the policy problem or opportunity?

In order to take advantage of the initiatives proposed as part of the Whenua Māori Programme, whānau need to be able to access an effective legal and regulatory framework governing Māori land. While the TTWM Act has supported Māori land owners to retain, develop and utilise their land, it adds a layer of complexity and compliance for Māori land owners that has hindered the successful functioning of the regulatory framework.

(1) Succession and Trust Matters

This is most noticeable in the areas of succession and trust matters. The Māori Land Court receives on average 2,241 succession applications each year and a further 1,590 applications relating to trust matters. All applications to succeed to the interests of a deceased Māori land owner as well as those relating to formation, variance and termination of a land management trust or whānau trust, and the appointment and replacement a trustee, need to be heard at a sitting of the Māori Land Court. This often requires whānau to travel, or take time off work, to attend a hearing, including for uncomplicated applications where all owners agree. On average, it takes two to six months from the time an application is made to approval for simple matters, and six to nine months for more complex applications. Unwarranted delay in dealing with these applications may create hardship for applicants and loss of dividends, grants and other opportunities (in the case of succession) and potential income from the investment of trust assets (in the case of trust matters).

The processes for dealing with these matters needs to be addressed to reduce the need for Māori land owners to attend court on simple and uncontested applications. Amongst other things, this would make it easier for the living generation to become owners so that whānau can reconnect with their lands and take full advantage of their ability to have a say in what happens on those lands.

(2) Dispute resolution

If an application is contested (for instance, where there is a disagreement as to whether a whāngai should succeed to a deceased owner's interests in Māori land), the only way to resolve the dispute is through a court hearing.

Disputes involving Māori land are often delicate and unique situations that if not sensitively managed can lead to heightened levels of emotion, particularly as whānau disputes are aired in open court, with a written record held in perpetuity. These disputes may create problems that could lead to long standing whānau disagreements that have lasting negative impacts on relationships between the individuals in dispute, trustees and other owners, for ongoing generations.

The current processes to resolve disputes place undue emphasis on litigation. There is no alternative process available to resolve such disputes. This forces the parties to focus on

their positions or the outcomes sought, and not on the real issues that are important to the parties. Taking a case to court is also time-consuming and expensive in terms of court fees, lawyer and expert fees and work time lost. Many disputes that end up in the Māori Land Court could have been resolved earlier had an alternative mechanism been in place to resolve the dispute.

(3) Whāngai and adopted children

Whāngai and adopted children are treated differently for the purposes of succession. Children adopted under the Adoption Act 1955 are entitled to succeed to their adopted parent's interests in the same way as any natural child regardless of whether they are Māori or from the same hapū as their adopted parent. This occasionally causes issues amongst the hapū where customary adoptions are not recognised in accordance with tikanga Māori.

Children adopted in accordance with tikanga Māori are only entitled to succeed if the Māori Land Court determines they have been recognised as being the whāngai of the deceased owner. While this is more closely aligned with Māori customary values and practices, the process is not codified and different approaches may be taken in the different Māori Land Court districts.

2.4 Are there any constraints on the scope for decision making?

The former TTWM Bill sought to reform the regulatory framework for the governance, management and administration of Māori land. The former TTWM Bill was withdrawn on 20 December 2017. Instead, Cabinet decided to pursue a targeted set of legislative proposals to better support the governance, management and development of Māori land [CAB-17-MIN-0567 refers]. Only proposals in the former TTWM Bill that were not widely opposed are being progressed as part of this work.

Decision-making in this area depends on collaboration with other agencies, most notably the between Te Puni Kōkiri and the Ministry of Justice with respect to changes to the Māori Land Court's jurisdiction and court processes.

2.5 What do stakeholders think?

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 Māori lawyers association, and Māori Women's Welfare League), Māori law academics and practitioners as well as those involved in the Māori Land Court. 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), and their feedback has helped shape the policy options contained in this RIA.

Overall, stakeholders were supportive of the proposed amendments to TTWM Act. In relation to the three issues set out in this RIS, 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 such 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 (Issue 1). Stakeholders were also in favour of establishing a dispute resolution process to be administered by the Māori Land Court (Issue 2) and did not oppose the proposed approach relating to whāngai and adopted children as this best reflected tikanga Māori (Issue 3).

Stakeholders and other members of the public will be able to make submissions on the Bill to the Māori Affairs Committee once it is introduced to the House of Representatives.

Section 3: Options identification

3.1 What options are available to address the problem?

(1) Succession and Trust Matters

A range of regulatory and non-regulatory options were considered to improve the numbers of whānau wishing to succeed to the interests of a deceased Māori land owner and the ability of trusts to deal with various governance matters.

The policy objective could be achieved by amending TTWM Act 1993 to allow for simple and uncontested succession applications and trust matters to be approved by a court registrar (**option 1**). Improving the ease and speed of court processes would lead to more whānau succeeding to their Māori land interests, as the process would no longer be a disincentive for whānau applying for succession. It would also ensure that trusts are not unnecessarily delayed when it comes to managing the land blocks they administer.

This objective could also be achieved by increasing the judicial resources within the Māori Land Court or, in the case of succession, by establishing dedicated succession facilitation services to support owners succeed to their interests in Māori land (**option 2**). These services would include raising awareness amongst whānau of the benefits of succeeding to Māori land, promoting the importance of having a will, working with whānau to determine whether a deceased owner had signed a will before he or she passed away, advising whānau on the probate process, and assisting with research for historical succession claims.

Another option would be to establish a process whereby uncontested and simple succession applications and trust matters could be dealt with administratively and the outcome registered with the Māori Land Court registry (**option 3**). Only if the matter was challenged would the Māori Land Court become involved, although the matter could be referred to dispute resolution. This option does not provide the same level of protection currently offered by the Māori Land Court, which is important given the decreasing amount of Māori land in Aotearoa.

(2) Dispute resolution

Three options were considered in relation to providing owners with an alternative to litigation to resolve disputes relating to Māori land.

A dispute resolution process could be established within the structure of the Māori Land Court (as it is already handling requests for dispute resolution in other areas) (**option 1**). The parties would be able to access the Crown funded process themselves by contacting a Māori Land Court registrar or if a case has already been filed through a referral by a Māori Land Court judge, where the judge considers that dispute resolution would support a speedier resolution. A suitably-qualified mediator would be appointed to help create the right environment for the parties to resolve the dispute. The process would be confidential and without prejudice. Where an agreement is reached, the terms of settlement would be final and binding on the parties.

We also considered establishing a stand-alone service to deal with disputes involving Māori land (**option 2**). With the assistance of appropriately trained mediators, the parties would be supported to find their own solutions to the dispute without having to apply to the court and accept an outcome imposed on them by a judge. This approach would better support the ongoing relationships between the parties by avoiding the stigma of court proceedings. However, this option does not contain the same enforcement opportunities that would be

available if the Māori Land Court was involved.

The final option was to require parties who want to resolve a dispute using alternative disputes resolution to seek out private mediation or arbitration providers themselves (**option 3**). The registry staff of the Māori Land Court would provide assistance to identify suitable providers but the resulting process would not be delivered through the Court.

(3) Whāngai and adopted children

Three options were considered under this issue. The first is to treat whāngai and adopted children differently for the purposes of succession (**option 1**), but to codify the process for whāngai so that there are no differences in approach between Māori Land Court districts. This would mean that children adopted under the Adoption Act 1955 would still be entitled to succeed to their adopted parent's interests in the same way as any natural child, whereas a customary adoption would only be recognised if it was in accordance with the tikanga of the relevant hapū or iwi.

Another option is to provide that whāngai and adopted children may always succeed to their adopted parent's interests, irrespective of whether such adoptions are recognised by the tikanga or the relevant hapū or iwi (**option 2**). Such an approach would cause issues amongst the hapū whose tikanga does not allow adopted children to inherit. It would also prevent whāngai and adopted children succeeding to the lands of their biological parents.

The last option is to provide that the ability of whāngai and adopted children to succeed to Māori land interests shall be determined in accordance with the tikanga of the relevant iwi or hapū (**option 3**). This option would bring the eligibility criteria into line with Māori customary values and practices, and would reduce concerns that the current process undermines such values. The change would enable all adopted children to inherit from his or her natural parents (if permitted by tikanga).

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

The proposals 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.

A number of secondary objectives are associated with one or more of the proposed targeted amendments including:

- Ensure that the proposed solutions are effective and address the identified problem;
- Promote the efficient operation of the court system by reducing the length of time associated with the processing of applications
- Decrease the costs associated with court proceedings (lawyer and expert fees, travel expenses and work time lost);
- Ensure that remedies available to enforce a decision are practical and effective
- Ensure that the proposed solutions are proportionate and capture the appropriate balance between competing rights and freedoms
- Support and recognise tikanga Māori
- Ensure that the court processes are fit-for-purpose and that the legal framework for Māori land tenure is accessible, clear, modern and future-proofed.

3.3 What other options have been ruled out of scope, or not considered, and why?

Including Māori land within the scope of statutes of general application that govern the formation of wills was excluded as an option. As noted by the Law Commission (in its 1996 report on testamentary claims), Te Tiriti o Waitangi confirms and guarantees to Māori *te tino rangatiratanga*. The Crown must respect Māori control over the inheritance of property. Laws affecting succession to Māori land, Māori incorporation shares and trust property should recognise that the fundamental principles of *tikanga* apply amongst Māori people.

Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

(1) Succession and Trust Matters

	Status Quo	Legislative amendments (option 1)	Additional judicial resources (option 2)	Processed administratively (option 3)
Effectiveness (address identified problem)	0 (Current processes will still be seen as a disincentive to whānau applying for succession, and will still create delays in carrying out trust business)	++ (Substantial improvement in the processing of succession applications and trust matters)	+ (Moderate improvement in the processing of succession applications and trust matters)	+ (Moderate improvement in the processing of succession applications and trust matters but requires substantial investment to upskill whānau and trustees on how to process applications)
Efficiency (reduce time to process applications)	0 (Delays in the processing of applications will continue, and are likely to increase as more people become eligible to own Māori land)	++ (Substantial improvement in efficiency through reduced time to process applications)	+ (Additional judicial resources will allow for hearing to occur sooner)	+ (Avoiding having to go to court will reduce time to process applications, but contested applications would take longer as they would need to be referred to court for resolution)
Decrease costs	0 (No change to the costs associated with lawyer/expert fees, travel expenses and work time lost)	+ (Avoids costs associated with lawyer/expert fees, travel expenses and work time lost for simple and uncontested cases)	0 (Owners will still incur costs associated with lawyer/expert fees, travel expenses and work time lost)	+ (Processing applications administratively will reduce costs associated with lawyer/expert fees)
Improve effectiveness of judicial remedies	0 (No improvement to the remedies available to applicants)	0 (No improvements to the remedies available to applicants)	+ (Increased opportunities to obtain judicial remedies)	0 (No improvements to the remedies available to applicants)
Fit-for-purpose (accessible, clear, modern and future-proof)	0 (Does not provide a fit-for-purpose system)	+ (Provides accessible, modern and future-proofed court process)	0 (No change to court processes)	0 (No change to court processes)
Overall assessment	0	++ Much better than doing nothing/the status quo	+ Better than doing nothing/the status quo	+ Better than doing nothing/the status quo

(2) Dispute Resolution

	Status Quo	Within Māori Land structure (option 1)	Court	Stand-alone service (option 2)	Parties seek dispute resolution privately (option 3)
Effectiveness (address identified problem)	0 (No change to the availability of dispute resolution mechanisms)	++ (Substantial improvement in provision of alternative ways to resolve disputes regarding Māori land)	++ (Substantial improvement in the time taken to resolve disputes)	++ (Substantial improvement in provision of alternative ways to resolve disputes regarding Māori land)	0 (No change to the availability of dispute resolution mechanisms)
Efficiency (reduce time to process applications)	0 (No change to the time taken to resolve disputes)	++ (Substantial reduction in the time taken to resolve disputes)	++ (Substantial reduction in the time taken to resolve disputes)	++ (Substantial reduction in the time taken to resolve disputes)	0 (No change to the time taken to resolve disputes)
Decrease costs	0 (No change to the costs associated with resolving disputes)	+ (Avoids costs associated with court application fees, lawyer/expert costs and travel expenses but parties will still need to take time off-work to attend mediation process)	+ (Avoids costs associated with court application fees, lawyer/expert costs and travel expenses but parties will still need to take time off-work to attend mediation process)	+ (Avoids costs associated with court application fees, lawyer/expert costs and travel expenses but parties will still need to take time off-work to attend mediation process)	0 (No change to the costs associated with resolving dispute)
Improve effectiveness of judicial remedies	0 (No change to the effectiveness of judicial remedies)	+ (Improved range of solutions combined with effective judicial remedies)	+ (Improved range of solutions combined with effective judicial remedies)	0 (Improved range of solutions but judicial remedies are not available)	0 (No change to the effectiveness of judicial remedies)
Support tikanga Māori	0 (Does not support the objective to better recognise tikanga Māori during the disputes resolution process)	+ (Better accords to tikanga Māori)	+ (Better accords to tikanga Māori)	+ (Better accords to tikanga Māori)	0 (Would not support the objective to better recognise tikanga Māori during the disputes resolution process)
Fit-for-purpose (accessible, clear, modern and future-proof)	0 (No improvements in whether process is fit-for-purpose)	+ (Dispute resolution process will be accessible, clear, modern and future-proofed)	+ (Dispute resolution process will be accessible, clear, modern and future-proofed)	+ (Dispute resolution process will be accessible, clear, modern and future-proofed)	0 (No improvements in whether process is fit-for-purpose)
Overall assessment	0 (No change)	++ (Much better than doing nothing/the status quo)	++ (Much better than doing nothing/the status quo)	++ (Much better than doing nothing/the status quo)	0 (No change)

(3) Whāngai and adopted children

	Status Quo	Treat whāngai and adopted children differently (option 1)	Always succeed (option 2)	Succeed if in accordance with tikanga Māori (option 3)
Effectiveness (address identified problem)	0 (Will not address problems associated with succession)	+ (Will address concerns that whāngai are treated differently across the Māori Land Court districts)	+ (Will address the concern that adopted children and whāngai are treated differently for the purposes of succession)	++ (Will address the concern that adopted children and whāngai are treated differently, ensuring that tikanga Māori is respected)
Efficiency (reduce time to process applications)	0 (All applications involving whāngai will need to be considered by a Māori Land Court judge, but applications involving adopted children will only need to be considered by a judge if they are contested)	0 (All applications involving whāngai will need to be considered by a Māori Land Court judge, but applications involving adopted children will only need to be considered by a judge if they are contested)	+ (Applications involving whāngai and adopted children will only need to be considered by a Māori Land Court judge if they are contested)	+ (All succession applications involving whāngai and adopted children will need to be considered by a Māori Land Court judge)
Improve effectiveness of judicial remedies	0 (Limited transparency in the process for dealing with applications involving whāngai)	+ (Ensures the process for dealing with applications involving whāngai is transparent)	+ (Improves the ability of whāngai to succeed to adopted parents' land interests)	+ (Improves the ability of whāngai and adopted children to succeed to biological parents' land interests)
Proportionate (balances competing rights)	0 (No change to the rights of whāngai or adopted children)	0 (No change to the rights of adopted children but ensures process for dealing with applications involving whāngai is transparent)	+ (Ensures whāngai and adopted children are treated the same, without reducing the rights of these persons, but does impact on the cultural rights of wider hapū members)	+ (Ensures whāngai and adopted children are treated the same. While it impacts the rights of adopted persons, it recognises the cultural rights of wider hapū members)
Support tikanga Māori	0 (No change)	0 (No change)	+ (Does not comply with tikanga Māori)	+ (Better accords to tikanga Māori)
Overall assessment	0 (No change)	0 (No change)	+ Better than doing nothing/the status quo	++ Better than doing nothing/the status quo

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

(1) Succession and Trust Matters

The preferred option is to amend TTWM Act to allow for simple and uncontested succession applications and trust matters to be approved by a court registrar.

Improving the ease and speed of the court process would lead to more whānau succeeding to their Māori land interests, as the process would no longer be a disincentive for whānau applying for succession. It would also ensure that trusts do not face procedural barriers when it comes to making the best decisions for the land blocks they administer.

A key consideration was a high level of stakeholder support: proceeding with legislative amendments is likely to be well received.

(2) Dispute Resolution

The preferred option is to establish a dispute resolution process within the structure of the Māori Land Court.

The Court is already handling requests for dispute resolution in other areas, so has considerable expertise in the dispute resolution process. It is also in a better position to appoint a suitably qualified mediator to assist the parties resolve the dispute, given its understanding of the land blocks and the parties in dispute.

(3) Whāngai and adopted children

The preferred option is to provide that the ability of whāngai and adopted children to succeed to Māori land interests shall be determined in accordance with the tikanga of the relevant iwi or hapū. This option would bring the eligibility criteria into line with Māori customary values and practices, and would reduce concerns that the current process undermines such values. The change would enable all adopted children to inherit from his or her natural parents (if permitted by tikanga).

5.2 Summary table of costs and benefits of the preferred approach

Additional costs of proposed approach, compared to taking no action			
Affected parties	Comment	Impact	Evidence certainty
Regulated parties			
Māori land owners	Seeking advice on new court processes	Low	High
Māori incorporations	Seeking advice on new court processes	Low	High
Regulators			
Ministry of Justice	Administrative costs in terms of succession and trust matters (already covered under current Māori Land Court processes)	+\$1.405m (annual cost)	High
	Costs associated with providing dispute resolution services	+\$3.090m (annual cost)	High

Māori Land Court	Replacement of forms and information material	Low	High
Wider government			
Parliamentary Counsel Office	Costs of drafting the amendments to TTWM Act	Low	High
Local government	Supply of information about land use	Low	High
Other parties			
Total Monetised Cost		+4.495m (annual cost)	High
Non-monetised costs		Low	High

Expected benefits of proposed approach, compared to taking no action			
Affected parties	Comment	Impact	Evidence certainty
Regulated parties			
Māori land owners	Faster, more efficient court process Improved awareness among landowners of how to access comprehensive land interest records and begin the court process	High Medium	High High
Māori land trusts	Faster, more efficient court process Increased numbers of owners participating in decisions around the management of Māori land	High Low	High Low
Māori incorporations	Better, easier ways to identify the successors to a deceased owner's interests in Māori land	Low	Medium
Regulators			
Ministry of Justice	Less requests to access the records of the Māori Land Court	Medium	Medium
Māori Land Court	Changes should mean less filings, greater emphasis on settlements rather than litigation, reduced hearings and case preparation and less repeated re-litigation	High	High
Wider government			
Local government	Better access to information about the use of Māori land (for instance, which blocks are subject to an occupation order)	Medium	Medium
Other parties			
Total Monetised Benefit		-	-
Non-monetised benefits		Medium - High	Medium - High

5.3 What other impacts is this approach likely to have?

There are no other significant impacts or risks associated with the proposals.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

As outlined below, the preferred option of proceeding with the amendments is compatible with 'Expectations for the design of regulatory systems', because:

- The objectives of the proposals are clear.
- The proposals seek to achieve those objectives in a least cost way, and with the least adverse impact on property rights, and individual autonomy and responsibility.
- TTWM Act provides the Māori Land Court with the flexibility it needs to implement the changes while providing predictable and consistent outcomes for Māori land owners across time and place.
- The proposals are proportionate, fair and equitable in the way they treat Māori land owners and align with existing requirements (they do not significantly affect the current overall scheme, design or purpose of TTWM Act).
- The proposals conform to established legal and constitutional principles and support compliance with New Zealand's international and Treaty of Waitangi obligations.
- Drafting will ensure that TTWM Act sets out legal obligations and regulator expectations and practices in ways that are easy to find, easy to navigate, and clear and easy to understand.
- There is some scope to evolve if there are changes in the way Māori succeed to Māori land, Māori incorporation shares or trust property.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

A transitional period from enactment to commencement is proposed for the Bill. This is to allow time to train staff on the new court processes, develop relevant documentation and establish the dispute resolution process (such as identify and recruit suitably qualified mediators). The transition period will also enable Te Puni Kōkiri and the Ministry of Justice to raise awareness of the legislative amendments amongst Māori land owners, including how the new court processes will work, including dispute resolution. This can be done by working with specialised partner organisations to implement strategies for effectively communicating to Māori land owners, as well as developing discussion documents and information packages targeted at Māori land owners to raise awareness about how the new court processes will work, and how to access them. Te Puni Kōkiri will also collaborate closely with Māori leadership groups, who can communicate the benefits for Māori land owners, and provide guidance for beginning the process if necessary.

6.2 What are the implementation risks?

One of the main implementation risks is the relatively challenging timeline. Careful planning will be required to ensure that the changes are implemented smoothly within the proposed deadlines. Other implementation risks fall into two broad categories.

Firstly, if the required funding or specialised expertise (such as advisors skilled in tikanga) cannot be sourced, then only limited capacity will be deployed to the targeted areas. This risk can be mitigated by creating a detailed programme resource plan that aligns to the implementation schedule, and engaging with specialist agencies involved in dispute resolution.

Secondly, if Māori land owners do not support or use the improved court services, then the realisation of benefits will be adversely affected. This risk can be mitigated by engaging and collaborating actively with Māori land owners to inform, educate and elicit support for the delivery of fit-for-purpose services, as well as work with strategic partners to communicate the benefits for Māori land owners. This will ensure that Māori land owners are aware of the services, and that the court application process is easier and less time consuming than it has been in the past.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The operation of the legislative amendments, including the dispute resolution process, will be monitored by Te Puni Kōkiri and the Ministry of Justice, as part of their regulatory stewardship responsibilities and the latter's standard and ongoing monitoring of the operation of all courts and tribunals.

The Ministry of Justice will monitor the number of applications (both succession and trust matters) that are processed in total, as well as keeping track of how many are referred to dispute resolution, and to the Māori Land Court for hearings. It will also keep track of how many interests are not being pursued (that is, land interests which remain in the name of deceased owners).

This data will enable Te Puni Kōkiri and the Ministry of Justice to determine whether the new processes have improved outcomes for Māori land owners (including making succession more accessible). Consultation with community leaders and Māori land owners will be continued to gain insights into how the new succession processes are working, including whether the dispute resolution process is fit for purpose.

Te Puni Kōkiri and the Ministry of Justice expect that any concerns with the effectiveness of the system will be picked up as part of this monitoring process.

7.2 When and how will the new arrangements be reviewed?

No formal evaluation of the targeted amendments after enactment is planned as the Ministry of Justice and Te Puni Kōkiri will monitor the impact and effectiveness of the amendments as part of Ministry's standard and ongoing monitoring of the operation of all courts and tribunals and Te Puni Kōkiri's regulatory stewardship responsibilities.

Agencies expect to receive feedback on any aspects of the new legislation causing concern through their regular contact with the Māori Land Court judges and with Māori land owners through the delivery of associated regional advisory services.

If there are any issues or concerns requiring legislative amendment, there will be an opportunity to address them as part of a Māori Purposes Bill.

