PSA SUBMISSION

on

Te Ture Whenua Māori Bill (Exposure Draft)

and

Proposed Māori Land Service

7th August, 2015

FINAL DRAFT

CONTENTS

1. SUBMISSION: PSA MĀORI LAND COURT DELEGATES

This submission has been prepared by the 18 New Zealand Public Service Association / Te Pūkenga Here Tikanga Mahi (PSA) Māori Land Court workplace delegates elected by PSA members from across 7 courts, an administration centre and an advisory office.

The PSA is the largest trade union in New Zealand with over 62,000 members. We are a democratic organisation representing members in the public service, the wider state sector (the district health boards, crown research institutes and other crown entities), state owned enterprises, local government, tertiary education institutions and non-governmental organisations working in the health, social services and community sectors.

In our rules the PSA affirms Te Tiriti o Waitanga/the Treaty of Waitangi as the founding document of Aotearoa/New Zealand and commits to advancing the Treaty principles in our activities pursuant to the purpose and objects of the union.

The PSA has over 5,700 Māori members, and Te Rūnanga o Nga Toa Āwhina is the Māori arm of the PSA. While the issues relating to Māori land canvassed by this review are likely to be of particular interest to all of those members, this submission puts forward the views of PSA members working at the Māori Land Court.

In preparing this submission the delegate group sought the views of members to five questions:

1. **Do you think the changes will lead to an improved functioning Māori Land Court or not?**
2. **What effects do you think the changes will have for the public and their ability to access quality public services?**
3. **Will job satisfaction/quality of jobs will improve or deteriorate with the potential changes?**
4. **What skills/Knowledge do staff have at MLC that will be lost if the functions are transferred to another department/agency?**
5. **Tell us why the MLC is so special for Māori?**

The full text of members' responses is attached as appendix 1. Members expressed a wide range of views in response to the questions; however, common themes are the unique and dedicated service currently provided to Māori landowners by the Māori Land Court, and the value of retaining the *Te Ture Whenua Māori Act* (1993). As an illustrative example of the responses we have selected three comments for inclusion here.

- *"The Māori Land Court has had a varied history over its 150 years. It has been the engine of alienation and it was part of the Department of Māori Affairs which oversaw many paternalistic policies.*

  But for all that history, in the 26 years since the dis-establishment of the Department of Māori Affairs and in the 22 years since the passing of Te Ture Whenua Māori Act 1993,

the MLC has been the only front line, on the ground, agency that has been working with Māori on a day to day basis - providing service in the same regional areas - to generations of the same families. Could we do things better? Absolutely - it has been woefully underfunded and undervalued.

The Māori Land Court is the protection mechanism for our land. It makes sure that only those who whakapapa can deal with our land, it protects our land from Government and Local Government and provides a medium through which our internal disputes can be dealt with - we don't want a coach, we come to the Māori Land Court for a referee.

The MLC is our safety net if something goes wrong with our land - and ensures that it continues to be a taonga available to future generations."

- *"We have good relationships with customers and stakeholders which have taken years to develop. We have many staff who have been here for a long long time and if MLC loses positions then you risk losing all of that corporate knowledge and the relationships that those people have forged. We know our business - how long will it take a new agency to learn the lessons that we have and begin to produce good results?"*

- *"There are plenty of arguments that MLC is unique because of staff's knowledge of local iwi, land blocks, and tikanga, which is correct. However, the new MLS could potentially also provide these unique features if they (a) recruit existing local MLC staff and (b) draw on this pool of local knowledge and tikanga in their additional recruitment."*

Thank you for the opportunity to submit on these important proposed legislative and institutional changes.

2. CONTEXT OF THE PROPOSED REFORM

The Crown recognises that Māori freehold land is a taonga tuku iho – an inheritance from tipuna with great meaning and significance. It also recognises its potential to contribute significantly to the cultural, social and economic advancement of whānau, hāpu and iwi.

The Crown has since the signing of the Treaty of Waitangi been instrumental in imposing legislation governing Māori land. That is, post Treaty settlement in order to expedite settlement the Crown needed to establish a European system of land tenure, as Māori had for generations exercised the 'ahi kā – burning fires of occupation' right to land-use through occupancy over long periods of time. The establishment of the Native Land Court in 1862 enabled the colonial government to begin issuing European title by way of 'Crown Grants of Title' which began the chain of title, enabling land to be subsequently partitioned and sold, and so began the alienation process.

Land remaining in Māori freehold title currently comprises approximately 5% of all land in New Zealand, or 1.5 million hectares.

The legislative framework currently governing the use of Māori land is the *Te Ture Whenua Māori Act* (1993) ['the Act'] which is preceded by a number of Acts and amendments dating from 1862. The current exposure draft Bill seeks to create an enhanced legislative

framework to realise the potentials cited above, alongside identified Māori landowner aspirations.[1] The Bill is being implemented in conjunction with proposed institutional and administrative changes to the services currently delivered by the Māori Land Court, comprising courts in each of the 7 land districts, one information centre and a national administration office. This new service delivery model will be administered by a new 'Māori Land Service' incorporating functions of existing agencies Land Information New Zealand and Te Puni Kōkiri, and also services from an unspecified number of external contractors.

3. INTENT OF THE BILL AND REFORM

The Bill and proposed administrative reforms give effect to the 10 recommendations made by an independent Review Panel in 2014, which were developed in response to 5 propositions, namely:

1) Utilisation of Māori Land should be able to be determined by a majority of engaged owners
2) All Māori land should be capable of utilisation and effective administration
3) Māori land should have effective, fit for purpose governance
4) There should be an enabling institutional framework to support owners of Māori land to make decisions to resolve any disputes
5) Excessive fragmentation of Māori land should be discouraged [2]

The above propositions were developed in response to the Panel's terms of reference which required it to recommend legislative amendments to help unlock the economic potential of Māori land for its beneficial owners, while preserving its cultural significance for future generations.

Accordingly, the Bill and related reforms seek to maintain the current retention focus of the Act, while 'empowering Māori landowners to pursue their aspirations for the sustainable development of their land'. That is, the reform has a heavy utilisation focus.[3]

4. PREMISE OF THIS SUBMISSION

The intent of the Bill and proposed administrative reforms is commendable. However, the below comments challenge many of the assumptions which underpin the proposals, specifically concerning the purported ineffectiveness of the current Act to realise the outcomes stated above. Indeed, the current Act explicitly cites in its preamble the dual goals of retention and utilisation, and contains provisions to give effect to these objectives.

---

[1] Hon Te Ururoa Flavell (Minister, Maori Economic Development) states the Bill's purpose is to: "…(change) *the rules for the use of Māori land, so it is easier for Māori to use and develop their whenua to meet their own aspirations and retain their land mō ake tonu*" … "*Māori owned land should be free from obstacles or constraints created by legislation*." (Forward, Te Ururoa Flavell, TTWMR Consultation Document, May 2015) < http://www.tpk.govt.nz/_documents/tpk-ttwconsulationdoc.pdf >

[2] Report: Te Ture Whenua Maori Act Review Panel (2014) < file:///C:/Users/PC/Downloads/Te-Ture-Whenua-Review-Panel-Report%20(3).pdf >

[3] 'Increasing the Utilisaiton of Maori Land': "*te Ture Whenua Maori Act has been regularly criticised for being too difficult to use and, in many cases, develop Maori blocks …*" (TTWMR Consultation Document, May 2015. p. 24.) < http://www.tpk.govt.nz/_documents/tpk-ttwconsulationdoc.pdf >

It is considered that the current terms of reference guiding the Ministerial Advisory Group are remiss in not investigating amendments to the current Act, or the channeling of increased resources to the service delivery model current administered by the Māori Land Court, this being a logical, more efficient and cost effective means to achieve the outcomes stated above.

It is further argued that the Ministerial Advisory Group have arrived at their recommendations from a partially-informed position, its members having limited collective experience of the functioning of the Māori land court and, in consequence, of landowner needs and aspirations. This proposition is demonstrated by the confusion evident at the consultation hui held throughout the country during May-June, with panel members and officials ill-equipped to answer questions and having to defer to Māori Land Court staff present, either in their official supporting capacity and, on occasion, on an informal impromptu basis.

It is therefore anticipated that this submission and its recommendations, having being developed by the PSA in consultation with its Māori Land Court members, will provide constructive commentary and practical recommendations to inform changes to the current legislation and to enhance existing retention and utilisation objectives.

5. COMMENTS ON PROPOSALS

5.1 New Governance Model

5.1(a) Rangatōpū Trusts

Proposal

Under the Bill there will be 3 categories of governance bodies available to manage the whenua for landowners, these being existing statutory bodies (e.g. Māori Trustee, the Public Trust), representative entities (iwi and hapū collectives) and Rangatōpū. The introduction of the Rangatōpū model is designed to provide flexibility about the type of legal entity available to landowners. Section 161(3)(a) identifies the 3 types of Rangatōpū governance entity which can be established, namely newly established Rangatōpū, an existing Rangatōpū with a governance agreement in place, and an amalgamation of 2 or more existing Rangatōpū. It is at the landowners' discretion whether the Rangatōpū will be a body corporate or a private trust.

Comment

Once established Rangatōpū will hold Māori land and other assets for the landowners in proportion to their interests, and they must manage this asset base in accordance with their 'governance agreement'. A Rangatōpū must have at least 3 'kaitiaki' at all times, with responsibilities outlined in section 191. In the case of existing trustees or governance bodies which transition to the Rangatōpū structure trustees will become kaitiaki. Section 164 of the Bill requires that a governance agreement must be approved by 50% of those owners who participate in the hui

which decides to establish the Rangatōpū. The governance agreement must state the objective of the owners and their broad vision for the optimum utilisation of their land, and take the form set out in Schedule 3 of the Bill.

The Ministerial Advisory Group argue that governance agreements, along with 'land management plans', discussed in section 4.5(c.) below, are the "key expressions of landowner aspirations and autonomy" and hence the Māori Land Court is relegated to a procedural review body. In fact the Rangatōpū model is largely identical to the current trust and incorporation structures. That is, governance agreements are similar to the current trust deed or constitution, and owner aspirations are captured in, and align with, the deed. The deed in the first instance is subject to judicial oversight before being formally adopted, and there is recourse to landowners to return to the court in the event that utilisation decisions do not align with the terms of the deed, or in instances of direct breaches. Similarly, asset holdings are the same as that which trusts may currently hold. In short, current ahu whenua and whenua tōpū trust structures are able to incorporate any additions to their responsibilities to achieve the same ends stated above, and it is therefore superfluous to introduce this new category of governance body.

The Bill sets out in Part 6 the powers, duties and responsibilities of governance bodies, including Rangatōpū. Again, these are similar to the powers, duties and responsibilities of trusts under the current Act. One notable difference is that Rangatōpū have three additional instruments to guide particular decisions. These instruments are the abovementioned land management plan, an allocation scheme (to ensure the value of owners' interests do not change in the event of partitioning, amalgamation, aggregation etc.) and a Court approved distribution scheme (sets out how the assets of a governance body will be distributed among the owners, after liabilities, when a governance agreement is cancelled). Currently a standard wide power trust deed or constitution, obtainable as templates from the Māori Land Court can cater to all three of these instruments.

It is envisioned that this Bill will offer tools to make it simpler for Rangatōpū to raise funds and attract potential commercial partners by requiring that all governance bodies have a 'certificate of registration', as required for companies under general law, thereby creating greater certainty. However, when negotiating deals Rangatōpū will still require a majority of 75% agreement from those owners participating, with reference to their land management plan. Therefore, there is no real certainty that lenders will be any more attracted or willing than they are now under the trust provisions of the current Act.

The real challenge – not addressed by the proposed changes – will be the ability, expertise and funding available for Rangatōpū, their kaitiaki and landowners. At present trustees are offered free training as to their roles and responsibilities under *Te Ture Whenua Māori Act* (1993) facilitated by experienced Māori Land Court advisory services staff. Rangatōpū, as body corporates and private trusts, and their kaitiaki must be trained in company law and their legal responsibilities will far exceed those of current trustees and trusts. This increased level of responsibility

would require additional education and commensurate resources, otherwise there may be an unintended adverse impact on the availability of volunteer trustees. It is argued that governance agreements will empower landowners to direct kaitiaki under the Rangatōpū model; however, the reality will not be so simple. For example, should a block of 80 participating landowners when deciding which type of Rangatōpū or governance agreement to adopt be expected to analyse and dissect the legal terminology imposed by the Bill and also the *Companies Act* (1993)? This requirement may well necessitate the expertise of legal practitioners to assist landowners and therefore lead to large and on-going costs. The Ministerial Advisory Group's superficial vision concerning the effectiveness of new governance bodies as prescribed by the Bill raises many questions when more fully considered.

5.1(b) Participatory Owner Concept

Proposal

The primary means by which the Bill proposes to address concerns about the absence of owner participation is by establishing a new concept of 'participating owner' who are owners who front up to hui and participate in decision making. Voting threshold requirements are established to enable applications under relative sections of the Bill to be accepted. Some types of decision require 'all' owners to vote (e.g. sale of Māori land) and others only 'participating owners' (e.g. approval of governance agreement).

Comment

The concept of participatory owners within the Bill is extremely confusing and detailed, yet it is something Māori landowners will have to be very familiar with because it is about the rules they have to abide by to make their decisions. The consultation document paints a picture of decision making thresholds, but leaves out the confusing specifics of section 45 of the Bill – '*Decisions by specified majority of owners of Māori freehold land*'. The consultation document notes what percentage of participating owners are required for particular decisions, but not how many participating owners are required.

For a Bill that is promoted as 'simplifying' matters owner meetings will be anything but simple. For example, to establish a Rangatōpū entity over a block of 500 owners, the meeting must have 50 owners present, and their relative shares must be calculated to ensure that they make up at least 10% of the total shares. Then to decide the vote, owners with 50% of the total shareholding of those owners present must vote for the motion.

The above situation, which will occur very frequently, will be a major administrative challenge. Contrast this with the situation under the current Act where a quorum can be determined by a trust order, and can be lower than what is proposed in the Bill. In short, the current Act empowers owner decision making processes more effectively than the proposed Bill.

Further, decision making thresholds are decided by poll voting, rather than the currently accepted 'show of hands'. That is, the proposal in the Bill will distance owners without large shareholdings from their whenua as their vote will be deemed insignificant, whereas the current Act protects minority shareholders. This is another form of disenfranchisement.

Currently owners who disagree with a proposal or who were unable to attend the meeting in question get to have their day in Court. Under the Bill that recourse to redress is gone, which unfairly disadvantages landowners.

5.1(c) Transition Process

Proposal

Under Schedule 1, the Bill allows 3 years after enactment to transition existing trusts into a governance entity, such as a Rangatōpū structure.

Comment

This is similar to section 351 of the current Act, whereby following enactment all trusts created under the 1953 Act were required to be reviewed for compliance by 1 July 1996. However, this work was never completed. While all trusts were notified by Māori Land Court staff, owners were required to make the application and not all did this. In addition, this was a major draw on Court resources. The proposed application for transition process requires meetings of owners to be conducted, with participatory owner calculations to be completed, and will be both timely and costly. It is not apparent what resources will be put in place to ensure that this required process will be completed within the 3 year timeframe.

5.2 Retention

5.2(a) Protections Against Alienation

Proposal

For land not managed under a governance agreement the decision to offer the land for sale must be agreed to by a 75% majority of all owners. This retains the safeguards currently prescribed under section 150C of the current Act.

Comment

It is creditable that this safeguard against imprudent alienation is retained. However, this safeguard is weakened by the new provisions for partitioning of land in section 93. A partition can be agreed to by a governance body under their governance agreement or, where no governance body is in place by a simple majority of owners [s. 93(4)(a-b)]. Notice to ensure that preferred recipients (defined in section 76) are given opportunity to participate in the preferential tender process must be given. That notice must be sent to every preferred recipient whose address for notice is known to the seller, alongside publication in specified newspapers and via electronic media [ref. s.81(3)(a-c)]. It is conceivable that many affected landowners may not receive notice and that a sale could then proceed without their knowledge. The new owners of the partitioned block, now forming

100% ownership of that block, are then able to change its status from Māori to general title with a 75% majority [ref. s.26(3)(d)] and sell that land. This circumstance would disenfranchise both owners who never received notice and were therefore denied input, and future owners who have yet to complete succession.

5.2(b) Preferential Recipient Tender Process

Proposal

The Bill proposes a new 'preferred recipient tender' process, the objective of which is to allow for the sale of a parcel of land while, in the first instance, attempting to retain future ownership within the whakapapa group. This is achieved by first and second rights of refusal to a two tier system of 'preferred recipients'. In the event that no interested purchasers are found from within this pool, the process allows for the parcel to be offered on to the open market, the creation of an owner agreed reserve, and finally confirmation of the sale by the Court .

Comment

The outright sale of land is a type of application now seldom seen in the Māori Land Court under the current Act. This is due to a number of factors; the successful implementation of the current Act, the fact that there is far less land available with far more owners than under previous iterations of the Act, and the fact that more and more owners are aware that the permanent loss of their "taonga tuku iho" for a short term monetary benefit has, in retrospect, been detrimental to Māori in the long run.

The gifting or sale of interests within a land block or blocks under the Act [ref. s.164 TTWMA (1993)] is another matter, and these types of applications to the Court are very popular; however, it is noted that the proposed Bill now appears to curb this ability. It is further noted that the proposed system retains such alienations under the purview of the Court, and would therefore appear to be a type of application that will be processed by Māori Land Court Staff rather than Māori Land Service. whānau

The process of alienation of a part or a whole parcel is not specifically outlined in the current Act, and has been built upon with case law precedent under various sections such as s.147, s147A, s.148, s.150B, s.150C and s.164, while the 'preferred class of alienee' is defined in Section 4 of the Act.

In contrast, the proposed Bill outlines the recipient tender process in sections 80 and 81. The process builds upon the 'preferred class of alienee' requirement in the current Act through what is termed and defined at s.76 of the Bill as the 'preferred recipient'. While similar, the proposed Bill does change the reference to those associated with the land in accordance with tikanga Māori, by defining such through section 76(1)(a)(i)-(v). The current form allows for some interpretation with reference to Māori custom.

5.3 Succession

5.3(a) Proposed Succession Process

Proposal

The Ministerial Advisory Group advise that the land succession process, at least where a probated will is in place, will be made simpler (e.g. more time and cost effective) by becoming an administrative process undertaken by the new Māori Land Service, rather than requiring a Court application as is the present case.

Comment

Processing of succession applications is currently the most common transaction administered by the Court. The preparation process is currently straightforward, with dedicated application forms available both in the Courts and online for stakeholders to print and complete. The application forms were recently updated following the enactment of updated Court Rules in 2011, and stakeholder feedback shows these are achieving a high level of satisfaction.

Court advisory staff are also available to advise and guide applicants. This is an important part of the application process as these experienced staff ensure that the whakapapa connections to the land being succeeded to are correct, a task re-checked by the processing case manager. The new Māori Land Service's ability to maintain this check-and-balance for eligibility will be reliant on employing experienced staff not currently available within the ranks of Te Puni Kōkiri. Further, the degree to which this task is satisfactorily undertaken will determine the degree to which the Court is called upon to inquire into and determine whether a succession complies with the new Act [ref. s. 269(1)(b)]. In the event that an adequate pool of staff experienced in succession processes are not recruited and the Court is called upon to remedy incorrect allocation of land shares, this will thwart the stated goal of freeing up the Court to concentrate on more vexatious issues.

It would be more efficient to have Deputy Registrars within the Māori Land Court grant straightforward successions as they have the experience and a thorough knowledge of Court processes. A further consideration is that the number of successions with probated wills processed by the Court is relatively small – approximately 15% – and therefore, given this relatively small reduction in workload under the proposal, it would be logical to maintain this processing function within the Court which would still be processing successions for non-probated wills and intestate owners.

5.3(b) Whānau Trusts to Form Upon Intestate Succession

Proposal

The Bill proposes in section 233(2) that when an owner dies intestate with more than one eligible successor then a whānau trust must be established over the land or interest. Besides imposing a trust structure in this circumstance, the Bill also prescribes the trust terms.

Comment

This will create 2 types of ownership, namely 'interests' (for beneficiaries under a whānau trust) and 'shares' (for beneficiaries who are able to succeed in their own right when a will is in place). This separation of entitlement category will disadvantage beneficiaries unfortunate enough to have a parent pass away without a will. For instance, in cases where trusts count votes by the number of shares held, this being the case for all incorporations. In addition, beneficiaries not holding individual shares are disadvantaged should they wish to obtain a partition, an occupation license and, further, they are unable to receive dividend payments in their own right.

It is commendable that the Bill implements prohibition against trustees disposing of the beneficial interest in the land by way of sale, exchange, gift or mortgage [ref. s.239(1)], and that the trust deed can be amended upon application by a trustee or beneficiary under section 61(2). However, the former provision is weakened by allowing for changes to the trust deed to be made in regard to dispossession when there may be disengaged beneficiaries and the trustees secure this amendment unbeknownst to those beneficiaries. Similarly, the trust may be terminated when 'a 75% majority of the beneficiaries <u>who participate in making the decision agree</u>…" [ref. s.57(2)(a)(ii)] ". That is, in cases when there are large number of disengaged beneficiaries a minority of 'participatory owners' could have the trust terminated, the shares allocated, and commence the partition – alienation process described in section 4(3)(a) above.

A practical consideration is where these trustees will come from? Currently it is often difficult to find suitable trustees for whānau trusts. If trustees need to be appointed from outside the whānau, who would pay for their service and what surety would there be that they would act in the best interest of the whānau? Even in the event that trustees were appointed from within the whānau, sometimes whānau members do not all get along, in which case a situation of conflict would arise. It is apparent that any advantages in compulsorily forming a whānau trust in the case of intestate succession are far outweighed by the potential disadvantages.

Lastly, the Ministerial Advisory Group argue that this provision will stop fragmentation of land shareholdings. However, the ability to form a whānau trust is available under the current legislation and is frequently used by owners who have had shares allocated by the Court where no will, or no probated will, exists. In addition, there is the ability to establish a whenua tōpu trust which manages whole blocks of land in the interest of the iwi or hapū.

5.4 Dispute Resolution Process

5.4(a) <u>Dispute Resolution as Prerequisite to Court Action</u>

Proposal

One of the major reforms of the Bill seeks to resolve certain types of disputes about Māori Land at an owner level before escalating through to the judicial process, much

like the Employment and Family Court models. The Court will also be able to refer disputes to this service. This service will be administered by the new Māori Land Service who will engage or employ a 'Kaitakawaenga'" to provide dispute resolution services to clients using whatever knowledge and attributes are required to negotiate with parties.

Comment

It is commendable to provide a service to clients which could ease the workload placed upon the Judiciary, and therefore Māori Land Court staff, while also empowering parties to resolve their disputes internally and privately. As this is a new service, and as the form, full function and fee structure of the Māori Land Service are all unknown at this point, a large number of questions exist:

- How will such a service be staffed? In particular, will the Kaitakawaenga be employed permanently and on a full time basis by the Māori Land Service, or will their services be contracted? It is noted that the Bill allows for both [ref. s.289 and s.290].
- How will these persons be trained? In particular, if services are contracted, who will be responsible for making sure these persons have the required knowledge of the Bill, skills associated with good mediation practice and an understanding of universal and local tikanga Māori a iwi, tikanga a Hāpu [ref. s.292(2)].
- Section 292 indicates that parties have the ability to appoint kaitakawaenga within a particular period after the lodgment of notices. Will this be from a list of kaitakawaenga provided by the Māori Land Service or do parties have the opportunity to appoint persons other than those that maybe employed or otherwise contracted to the Māori Land Service?
- While the Consultation Document states that the Māori Land Service will meet the cost of kaitakawaenga, it is not apparent what additional costs will this process have on the parties involved?
- Where will the mediation hui take place, will there be an ability for such to be held outside of the kaitakawaenga, such as on Marae? If so, who will pay for the costs associated with the Marae?

5.4(b) <u>Tikanga-based Dispute Resolution</u>

Proposal

Section 289 refers to "matauranga takawaenga" as the process used to guide persons and groups during dispute resolution. This process includes reference to tikanga, values and kawa of hāpu associated with the relevant land. Māori landowners will therefore be able to develop a process with the kaitakawaenga to give effect to their tikanga and expectations.

Comment

The former Chief Judge of the Māori Land Court, Edward Durie, has stated that tikanga were 'values, standards, principles or norms to which the Māori community generally subscribed for the determination of appropriate conduct'.

As with the current Act, the Bill invokes tikanga Māori without defining such or offering particular guidelines. The reason for this is understandable as, unlike written law, tikanga can be fluidic and even situational in nature, hence variation between iwi and Hāpu. As the Law Commission has stated, tikanga should not be regarded as fixed but rather as being "based on a continuing review of fundamental principles in a dialogue between the past and the present".

Due to the nature of the work currently undertaken by the Māori Land Court, involving as it does a largely (though not exclusively) Māori clientele and workforce, various forms of tikanga Māori are often normalised within the workplace. This occurs both subtly through social norms, such as the removal of hats inside or not sitting on tables, or through more obvious means which include investigation of customary titles under the current Act, the use of karakia, or the recitation of whakapapa and waiata. Court staff may also interact with the public at Marae, hold whakatau and pōhiri, and learn waiata.

However none of the above instances exemplify how the process envisaged in section 289 of the Bill would work in the context of adversarial parties and a kaitakawaenga. For example:

- What would happen if the two parties had conflicting views regarding tikanga and could not agree on protocol?
- How long is the development of the tikanga protocols between the parties and the kaitakawaenga expected to take?
- Where one of the parties was not Māori, for example a lessee, would the tikanga and kawa of the owners still be used as part of the 'matauranga takawaenga'?
- what would the response be where law and tikanga were in conflict? For example, what if a younger brother could not speak regarding a particular matter if his elder brother was present? What if the Hāpu or iwi do not recognise whāngai as owners?

As is evident in the above examples, for such a proposal to work well, the Kaitakawaenga would need to have a deep understanding of universal and local tikanga Māori a iwi and tikanga a Hāpu. That is, it will not be a simple matter to give practical effect to this legislative direction which, as outlined above, already occurs in the normal course of events under the current Act.

5.5 Utilisation of Māori Land

5.5(a) <u>The Utilisation Goal</u>

Proposal

Both the Bill and administrative reform proposals have a heavy emphasis on enhanced utilisation of Māori land. This emphasis has its genesis in several recent reports released by government agencies the Ministry for Primary Industries (MPI)

and, prior to 2011, the Ministry of Agriculture and Forestry [4]. The brief of these reports is twofold, as made clear in the 2013 report:

1) Is there an economic framework that can be developed and used to analyse the potential benefits associated with **deploying a new governance and management model** to under-performing and under-utilised Māori freehold land?
2) What is the **potential size of this economic benefit** if the land could be brought into production at national benchmark levels?

That is, the reports emphasise the economic benefits which might be realised from implementing new governance structures. In regard to potential economic benefit some significant figures are arrived at. For instance, the 2013 MPI report concludes that:

> *"bringing in just under 1 million hectares of under-utilised and under-performing land will have significant economic benefits; around $8 Billion in total output and around $3.7 Billion in contribution to GDP in nominal terms …(and) around 3,600 jobs over a 10 year period".*[5]

In regard to governance, the assumption is posited that governance is a critical issue inhibiting development of Māori land because 'of the complex nature of the ownership structures covering many Māori land blocks and the laws covering the administration of such lands.' Further, that:

> *"Facilitating better governance and management processes amongst Māori agribusinesses aligns neatly with the Government's Business Growth Agenda (BGA) in terms of assisting with the development of viable primary sector businesses…"*[6]

Comment

It is beyond the scope of this submission to assess the economic modeling used to derive the above figures; however, there can be little question that most Māori and indeed general land has unrealised economic potential. Where Māori land is underutilised there are many reasons for this, such as landlocked land, marginal use land, and small blocks with housing capacity but large numbers of owners, which the Ministerial Advisory Group have not considered.

A more pertinent question is: **"is potential economic development a sound basis upon which to introduce new legislation?"** It is apparent that a primary driver of the legislative change is to meet the government's Business Growth Agenda;

---

[4] *Maori Agribusiness in New Zealand: A Study of the Maori Freehold Land Resource*. Ministry of Agriculture and Forestry. (March 2011) < http://www.tetumupaeroa.co.nz/file/23353 >.
Growing the Productive Base of Maori Freehold Land (Price Waterhouse Coopers), Ministry for Primary Industries. (February 2013) < https://www.mpi.govt.nz/document-vault/4261 >. (p. 32).
Growing the Productive Base of Māori Freehold Land: Further Evidence and Analysis. Ministry for Primary Industries (Price Waterhouse Coopers). (December 2014) < https://www.mpi.govt.nz/document-vault/4957 >

[5] *Growing the Productive Base* (February 2013). (p. 32).

[6] *Growing the Productive Base* (February 2013). (p. 9).

however, the aspirations of Māori landowners have been inadequately canvassed and feedback received during the previous consultation process in 2013 not taken on board. During that consultation round Māori did call for more resources to support their use of land and supported some progressive change to parts of the current Act. However, there was no call for new legislation, and this call has never been heard by Māori Land Court staff who work alongside Māori every day; therefore, the answer to the above question is a resounding **'no'**.

Moreover, the proposed new legislation and supporting administrative reforms unjustly and unfairly target Māori landowners, such as having the proposed new Māori Land Service appoint administrative Kaiwhakarite for at least 7 years where no governance body is in place, and where owners are unable to be located*. This is potentially detrimental in that an appointed administrator will have a contractual obligation to look after the land, rather than direct responsibility to landowners as under the current trustee model. For instance, a Kaiwhakarite might secure a long-term lease over Māori land which would alienate owners for the lease duration should they subsequently form a governance structure – as allowed for under the Bill – and wish to work the land themselves. Similarly, the requirement for a governance body to have a land management plan is no doubt a creditable goal; however, its approval by 75% of participating owners as required under the Bill [ref. s. 202(2)] disenfranchises owners who for legitimate reason are not 'participatory' at the time of the decision.

> **It is not clear whether the Māori Land Court or the new Māori Land Service will have responsibility to appoint Kaiwhakarite as the Bill allows for this under section 134, while the Consultation Document states that the Māori Land Service will be undertaking this responsibility (ref. Consultation Document, p. 50)*

Notably, there is no equivalent legislation setting out governance criteria for general land. The prospect of having these overriding legal procedures imposed on Māori land may even prompt owners to change the status of their land to that of general, thereby thwarting the retention goal of the proposed changes. Lastly, it is likely that the proposed reform constitutes a breach of both Article 1 of Te Tiriti ō Waitangi and Part 1A of the *Human Rights Act* (1993).

In regard to governance, it is acknowledged that the lack of basic governance skill and business acumen, alongside access to finance (discussed below) are the two biggest impediments to maximising Māori land's potential. To address this issue requires greater access to, and quality of, governance education for landowners and administrators alike, rather than the introduction of new legislation. It should be noted that the Māori Land Court currently provide this function in the form of both advisory services and Principal Liaison Officers, and that increased resourcing and promotion of these existing services would be a more efficient and cost-effective means to achieve greater Māori governance capability.

5.5 (b) <u>Access to Development Finance</u>

Proposal

The proposed changes, it is argued, will make it simpler to raise finance and attract commercial development partners, by way for 3 new mechanisms:

- Ability to leasehold land (e.g. as loan security without placing whenua at risk) [ref. s.110(4)(a)]
- Ability to use buildings and improvements as mortgage security [ref. s.110(4)(3)]
- Certainty for lenders and partners from Rangatōpū structure (e.g. Rangatōpū will require 'certificate of registration' as under present company law) [ref. s.178(2)]

These proposed changes are designed to create certainty for potential lenders and investors by clarifying the legal structure in regard to land security and governance responsibility.

Comment

The above purported advantages for access to mortgage finance are in fact not new. Under the current Act leases are able to be mortgaged and buildings used as security. Neither does the proposed Rangatōpū structure offer the enhanced level of security suggested, as a majority of owners are able to contest a loan and have it terminated. By comparison, the current trust or incorporation structures have a public appeal process which allows for the exercise of judicial discretion, which is also subject to judicial review.

A key mechanism to unlock Māori Land's potential, which the proposed reforms do not adequately address, is the creation of a sufficiently resourced contestable pool of development finance. The Minister for Māori Development, Te Ururoa Flavell, has announced such a pool to complement the reforms, which will be administered a new 'Te Ture Whenua Māori Network'.[7] While this is a commendable step, there is little detail about the new Māori Network, how the funds will be allocated, and the $12.8m budget over 4 years is a small amount when considered against the required $3 Billion over 10 years, identified in the 2013 Ministry for Primary Industries Report.

5.5(c) Land Management Plans

Proposal

The Ministerial Advisory Group promote a framework that empowers landowners to pursue their aspirations for the sustainable development and effective utilisation of their land, a key tool being 'land management plans'. While not obligatory, land management plans are required by governance bodies operating under 'governance agreements' in certain circumstances, most notably to identify proposed changes to the land such as improvements, dispossession by way of sale or exchange, or partitioning or amalgamation. Accordingly, most governance bodies will have a land management plan, the requirements for which are set out section 202. These

[7] Press Release: '*$12.8m for New Te Ture Whenua Māori Network'*. (Te Ururoa Flavell). (21/05/2015). < https://www.beehive.govt.nz/release/128m-new-te-ture-whenua-m%C4%81ori-network >.

requirements include transparency and accountability mechanisms such as explaining how the proposed changes will improve the ability of the governance body to manage the asset base in accordance with its governance agreement, and risk factors. The land management plan must be approved by a 75% majority of landowners who participate in the decision to adopt it.

Comment

To expand on the above section 202 requirements of the Bill, these include identification of the specific land parcel within the asset base, details about the proposed changes to the land (e.g. acquisitions, dispositions, improvements), explanation about how these changes will improve the ability of the body to manage the asset according to their governance agreement, how the governance body will achieve the proposed changes and any financial implications, alongside all risks of either adopting or not adopting the land management plan. This list of requirements will entail comprehensive research by kaitiaki, and will also likely in many cases give rise to landowner differences about aspirations making the 75% participatory owner threshold difficult to achieve. Further, disputes could arise from differences that landowners and kaitiaki have about what is best for the land. These eventualities are contrary to the Ministerial Advisory Group intent of empowering owners and simplifying the process for land management. By comparison, trustees under the current Act have the power to make decisions and conclude contracts on behalf of the landowners and report back on these decisions, with the check-and-balance of recourse to the Court if those decisions are not in their best interest. The Bill does not set out remedies for land management plans that are unable to gain approval due to conflicting goals.

With regard to dispossessions the land management plan must explain why it is necessary with reference to the governance agreement, and how this process will be managed by the governance body. As a concept this is a useful tool for owners and governance bodies and will indeed provide a forum of discussion for landowners during any major changes that may affect their land. However, it certainly does not offer the same protection when dispossession disputes arise that the current Act does. That is, all alienations are confirmed by the Māori Land Court, however under the proposed Bill governance bodies will have the ability to dispose of the land without this confirmation following adoption of their land management plan. The role of the Māori Land Court is diminished to that of mere procedural oversight body, ensuring that the sale process undertaken was compliant with the Bill. Where are the safeguards for landowners who had valid reasons why the dispossession should not occur and who may have formed the minority when voting for the land management plan or, indeed, may not have even been aware that the alienation proposal was being discussed (e.g. non-participatory owners)?

5.5 (d) <u>Whenua Tāpui</u>

Proposal

The Bill details in sections 28-38 the provisions which will apply to land reserved as whenua tāpui. Land may be reserved as whenua tāpui for a variety of purposes,

including for a marae, papakāinga housing, an urupā, and as a place of special significance according to tikanga Māori [ref. s.28]. Once reserved, the land is vested in an administering body, which is a body corporate that holds the land in trust "*for the purpose for which it is reserved"* and *"may do anything authorised by this Act, or anything else that a natural person may do, for the purpose of performing its function*" [ss.35-36]. Section 38 states that land reserved as a whenua tāpui may not be disposed of, although it is specified that this does not prevent the granting of an easement, lease, occupation licence or "*a disposition of an individual freehold interest in the land separately from the other individual freehold interests in the land*".

Whenua tāpui will replace Māori reservations, the law for which is currently set out in sections 338-341 of the current Act. Under Schedule 1 (s.16) of the Bill all existing Māori reservations will become whenua tāpui.

Comment

This submission supports the proposal for Māori to continue to have the ability to reserve their land as a Māori reservation/whenua tāpui, along with the provisions to have that land held and administered for a specified purpose and protected from alienation/disposition. Much of what is proposed in the Bill replicates the provisions of the current Act relating to Māori Reservations. However, there are some important differences between the proposed Bill and the Act which raise the following questions:

- Why are whenua tāpui now only to be managed by body corporates with no option for the reservation to be held by trustees? The current Act allows for a reservation to be vested in either a body corporate or in trustees [ref. s 338(7)]. Māori landowners mostly chose to hold reservations in trust, rather than as a body corporate. It is not apparent what the rationale is for the Bill to remove this choice, especially when it is considered that no such change has been sought by landowners.
- While it is stated that land reserved as whenua tāpui "must not be disposed of", this appears to be a lesser protection than is made in the current Act for Māori Reservations. Firstly, the Bill allows for the disposition of 'an individual freehold interest' in a whenua tāpui, which is not provided for in the current Act. Secondly, the current Act states that Māori reservations are "inalienable, whether to the Crown or to any other person." This inalienable status includes a bar to any compulsory alienation by the Crown under the *Public Works Act* (1981), as confirmed in the recent court case brought by Patricia Grace.[8] The Bill defines a 'disposition' as including "an agreement to the acquisition of land under the Public Works Act", but not including "any vesting of an estate or interest in land ...by or under any Act" [ref. s. 5]. This appears to mean that a compulsory requisition under the Public Works Act is not a 'disposition' under

[8] *Grace – Ngarara West A25B2A* (2014) 317 Aotea MB 268 (317 AOT 268), <http://www.justice.govt.nz/courts/maori-land-court/documents/judgments/pdfs-maori-land-court-sittings/2014/grace-2013-ngarara-west-a25b2a-2014-317-aotea-mb-268-317-aot-268>

the Bill, and that whenua tāpui can be legally alienated by the Crown. Is it intended that the protections against alienation of Māori reservations/whenua tāpui be reduced in this way? If so, what evidence it there that this change is sought by landowners?

5.6 Proposed Māori Land Service Model

5.6(a) Māori Land Register

Proposal

A Māori Land Register to be administered by the Māori Land Service is proposed, with responsibility for its integrity resting with the Chief Executive. The Register will maintain both private and publicly available information, which is classified into 6 categories, as below:

- Māori customary land (e.g. blocks and class of collective owners)
- Māori freehold land (incl. names of owners, trustees and kaiwhakarite; encumbrances such as leases or mortgages; occupation licenses; unclaimed dividends)
- Governance Agreements (e.g. general info., incl. transitional agreements)
- Rangatōpū (e.g. Governance Agreements; kaitiaki names and contact details)
- Whenua Tāpui (e.g. blocks and administrators' details)
- Trusts existing prior to new Act (e.g. Ahu Whenua, Whenua Tōpū etc.)

Comment

It is creditable to maintain comprehensive information about Māori land blocks along with governance, administrative and other details affecting the utilisation of those blocks. All of the above information currently generated and collected by the Māori Land Court is publically available both remotely, by means of Māori Land Online (land block and owner details), and from Court locations in the form of both original hardcopy and digital format (Māori Land Information System database [MLIS]). This is a requirement of the *Public Records Act* (2005) [ref. s.17 – 'Requirement to create and maintain records']. It appears that the new Māori Land Register will collate the same information already kept by the Māori Land Court, with the addition of new information prescribed by the Bill such as unpaid dividends and transitional agreements. This repository is clearly beneficial to both landowners and staff working alongside owners, however, as stated above, is not a new development.

The MLIS database administered by the Māori Land Court, the primary storage and retrieval mechanism for the Court record, is not a fit-for-purpose business tool. It is technologically archaic and a major drag on productivity and, accordingly, stakeholder service. Therefore, a key technical consideration is the development of a new fit-for-purpose electronic database. Whether used by the Māori Land Court as an enhancement to current services – a possibility not considered by the Ministerial Advisory Group – or by a new Māori Land Service, it is imperative that adequate resources be made available to develop a robust electronic database.

The Bill sets out types of information which will be contained in a 'public part' and an 'administrative part' of the register. Under section 251 the 'public part' must be publically available, while the 'administrative part' will only be publically available to persons authorised under the new Act. As under the current Act, Schedule 4 (section 2) of the Bill allows for owners or governance bodies to lodge potentially commercially sensitive information such as leases or mortgages. Such information would reside in the 'public part' of the Register; however, there are no privacy provisions prescribed, which only apply in regard to appointment of kaiwhakarite [ref. s.250(3)(A)].

Lastly, the new Register will only record current owners who have most recently succeeded, and not retain succession history. This history has provided an invaluable source of whakapapa history and connection to the whenua since the first sitting of the Native Land Court in 1865. It would therefore be both inconsistent and negligent to discontinue collating this information.

5.6(b) <u>The Hardcopy Court record</u>

Proposal

The Consultation Document states that the Māori Land Court will continue to be the court of record. It also lists the record keeping functions which the new Māori Land Service will administer, including those currently undertaken by the Court (e.g. Māori freehold land title and its beneficial owners), along with new records which will be generated by the Bill (e.g. receive application and issue certificate of registration for Rangatōpū).

Comment

The Ministerial Advisory Group are ambiguous on the matter of the respective record-keeping responsibilities of the Māori Land Court and the new Māori Land Service. On the one hand the Consultation Document states:

> *"The Māori Land Court will continue to be the court of record and will keep the information in the record safe. The Māori Land Court will continue to provide access to information in the Māori Land Court record, including to the Māori Land Service"* [Ref. Consultation Document, p. 58]

The continuation of the Māori Land Court's primary role as a court of record is confirmed in section 308(1) of the Bill. However, the Consultation Document then goes on to state the numerous record keeping functions of the new Māori Land Service which incorporate record types currently administered by the Court. This raises the question "which entity will in fact have definitive record keeping responsibility?" If the Māori Land Court is to be the definitive record keeping body as outlined in the Bill, and then have that record made available to the Māori Land Service who will be generating much of that record in the first instance, does this mean that the Land Service will create records to then pass back to the Māori Land Court as a repository? If so, this duplication of administrative responsibilities would be nonsensical.

An associated question is: "will the record continue to be kept in hardcopy format?" The Bill specifies that the chief executive must keep the Māori Land Register in electronic format; however, beyond that they may keep it "in any other form that the chief executive sees fit" [ref. s.248(2)(b)]. That is, there is no legal obligation to continue to maintain the record in hardcopy format. This advent would break the continuous hardcopy recordkeeping function of the Māori Land Court which has existed since 1865, and which is accessed across the Courts each day by Māori, many of whom do not have adequate access to computers or are simply not technologically savvy. Moreover, it is unlikely and undesirable that digital technology will ever supersede the hardcopy record as the definitive Court record. For instance, contemporary Court practice is to print the Minute from each case onto quality bond paper, have it signed by the presiding Judge and then bound into volumes for posterity. Any corrections to Court Minutes or Orders (separate documents which give legal effect to the judicial pronouncement for each case) are made on these hardcopy records first, which it is also crucial to have recourse to when technology fails such as when a digital scan disappears into the ether.

In summary, it is not at all clear how the separate entities of the Māori Land Court, which will continue to be the Court of Record, and the proposed Māori Land Service which will be charged with running a new Māori Land Register, will maintain consistent and accessible record keeping?

5.6(c) Proposed 'One Stop Shop' Service Delivery Model

Proposal

The Māori Land Service is proposed as a 'one stop shop' as outlined in the consultation document. It is proposed that the new Māori Land Service will provide the following services to Māori landowners:

- Supporting owner decision making processes
- Providing dispute resolution services, including Court-ordered mediation
- Maintaining the record of Māori landownership and title
- Providing registry services for Māori land governance bodies
- Appointing and monitoring external managers

Comment

The Māori Land Court provides most of these services already. It does not provide specialist dispute resolution services or appoint external managers because there is no mechanism within the current legislation to do so. However, it should be noted that it does in effect already deal with disputes through both the judicial process and current administrative services, for instance by way of advice available from advisory services and by hosting meetings of owners. The more specialist services proposed could be delivered expertly by existing Māori Land Court staff with additional training, and with changes to the current legislation to allow this. It is not apparent why the Ministerial Advisory Group have elected to create a whole new entity with the Māori Land Service when the Māori Land Court has the resources to readily do the job? Lastly, the proposed service delivery model is promoted as being a 'one stop shop'; however, it appears as if land owners will in fact be dealing with any

number of personnel from multiple agencies (e.g. LINZ, TPK, dispute resolution contractors) who may not have the empathy with local iwi and tikanga values which Māori Land Court staff have developed over many years of working alongside owners.

6 SUMMARY

The main driver of the proposed legislative and associated institutional and administrative reform is enhanced utilisation of Māori land. However, utilisation in this context has a specific economic meaning as demonstrated by the number of recent government commissioned reports which attempt to quantify this unrealised potential. The voices of Māori land owners at the various consultation hui held around the motu during May-July proclaiming: "*if I want to grow gorse and graze goats on my land then that is my prerogative*" appear to have been lost to the winds of economic imperative. That is, there is a divergence between the government's narrow understanding of taonga tuku iho as being something to be quantified in monetary terms, and that of Māori who understand this as a cultural value, the whenua having deep ancestral bonds.

This disconnect likely explains the real sense amongst many Māori landowners that they are about to lose, rather than gain, something under the proposed changes. Certainly proposals such as the mandatory formation of whānau trusts upon intestacy and the appointment of Kaiwhakarite where no governance body exists or owners are not able to be located straightway give legitimate cause for concern that autonomy is under threat.

Undoubtedly utilisation and economic reward is an aspiration of many land owners and it is generally acknowledged that changes which will assist in achieving this goal are desirable, and should be explored. However, the current Act does already make explicit in its preamble the dual goals of retention and utilisation, and largely contains within it the legislative mechanisms to achieve both. It is therefore logical and practical to enhance the existing legislative provisions which have served landowners well for over 20 years, alongside the administrative functions of the Court. There has been no resounding call from landowners for either revocation of the current Act, or to relocate service delivery outside the Court.

Indeed, the Māori Land Court is where the existing pool of staff administrative expertise resides, along with local knowledge, networks and the passion to assist Māori landowners to manage their whenua. There are a number of ways in which the existing suite of court services could be enhanced which have not been considered by the Ministerial Advisory Group. These include a better resourced and trained advisory services who could engage with the wider community in providing governance and land management education. Similarly, to the degree that access to mediation would free up judicial resources, this service could be provided by qualified in-house court staff. Research services for Māori wanting to explore whakapapa and their historical connection to the whenua could also be made available. A recurrent call from Māori Land Court staff is for the revamping of the MLIS database which is technologically outdated, a major drag on productivity and,

accordingly, on stakeholder service. These enhancements would require resourcing, and while costings for the proposed Māori Land Service have not been undertaken, it is likely that these goals could be more cost effectively achieved by building existing court staff capacity.

Should the proposed Māori Land Service proceed the same resourcing imperative would apply. Specifically, the opportunity to introduce new technology and fit-for-purpose computer systems, such as a new database, would benefit both landowners and staff. Paramount would be the recruitment of qualified staff and the logical pool from which to draw these personnel is the Māori Land Court where there exists a unique repository of expertise, local knowledge and empathy with both the whenua and tangata whenua.

Lastly, the Māori Land Court has existed since its initiation as the Native Land Court under the Native Lands Act in 1862 and is an integral part of the history of this country. It will therefore continue to exist, just as its governing legislation will continue to change to give effect to Māori aspirations, and in accordance with the relationship between the Crown and Māori established under the Treaty of Waitangi. In 2015 the dual goals of retention and utilisation endure. To the degree that these goals can be better met by amending the current Act, such as by streamlining the succession process, referring disputes for resolution or providing judicial governance oversight these amendments should be explored. However, it is neither necessary nor desirable to repeal the current Act to achieve these ends.

7 RECOMMENDATIONS

That the Māori Development Minister, Te Ururoa Flavel:

1) Immediately halt further development of the Te Ture Whenua Māori Bill and the Māori Land Service service-delivery model
2) Reconvene a Review Panel to include an even mix of members with working knowledge of the functioning of the Māori Land Court, the administration of Māori land, and with economic development credentials
3) Develop new propositions for the Review Panel to make recommendations on, based on wide consultation with Māori landowners
4) Reconvene the Ministerial Advisory Group to include a majority of members with working knowledge of the functioning of the Māori Land Court
5) Redraw the Terms of Reference for the Ministerial Advisory Group to include:
   (i) consult and gather feedback from Māori landowners, and members of both the judicial and administrative branches of the Māori Land Court
   (ii) investigate means by which the Māori Land Court could deliver the outcomes specified in the new Review Panel recommendations

(iii) develop amendments to the *Te Ture Whenua Māori Act* (1993) which would enable the Māori Land Court to deliver the outcomes specified in the new Review Panel recommendations

(iv) establish a clear business case for the Māori Land Court to achieve the outcomes specified in the new Review Panel recommendations

6) Present the newly created amendment Bill to the Law Commission for scrutiny

7) Secure funding from Vote Māori Development to enable the new Māori Land Court service delivery model to be operationalised

Appendix 1

Collated feedback from PSA members working at the Māori Land Court

Q1. Do you think the changes will lead to an improved functioning Māori Land Court or not?

- *Improvement in some areas but not in others.*

  Successions and the like will be able to be processed a lot faster than present, but we could do that at present with the same structure if they just amended the legislation to allow us, and same goes for a lot of other changes in the new Bill.

  The other great advantage of the new Bill is the promise of new technology and computer system for Māori Land, which again if they provided that to us now it would go a long way to achieving the same advantages.

- Don't know enough about how the functions will work

- *I think the Minister should have had a thorough induction into the system and understood the issues facing MLC, this would have provided him with actual knowledge on the changes needed. The promotion of the review is worded as if MLC hinders progress and that's just not true. The real issues are levels of resourcing and our tools i.e network issues and the MLIS*

- No. I believe that it will take more funding to set up the new system and mean that customers may have to deal with two entities (Māori Land Service and the Court) instead of one. LINZ, the Māori Land Service and the Court will have to have excellent system/systems of communication in place to be able to assist people in a consistent non-obstructive way.

  With regard to the funding, I suspect it would be a lot more fiscally responsible to use a fraction of the funding that would have been required to set up new systems on fully staffing the Māori Land Court (especially Advisory Teams enabling them to get out into the community to assist people BEFORE they file applications to the Court) AND to upgrade or replace our tools to bring them up to speed. MLIS is slow, crashes frequently and is not compatible with Microsoft Outlook (Outlook has to be closed down before reports are run to prevent MLIS from crashing mid-report).

- *For MLC Court? Yes if all they are doing is having the sitting. But if you are talking about the clients? Then definitely not. Clients will be expected to go to 3 different offices for what they effectively get from us.*

- Not so much improve it's function but more a 'return' (if I can put it that way) to its correct role as a Court. At present Court staff are involved with trustee training, facilitators of owners meetings etc. this is something District Court don't do. They

usually call upon lawyers or other independent bodies to facilitate these 'extra' roles to help achieve the District Courts desired result.

- *Absolutely not. If you want to improve how things function then properly fund and resource us, instead of spending millions standing up a superfluous service which will do nothing to solve the issues around multiply owned land and can only slow the process. Flavell might want a legacy but if this Bill is it, he'll regret it in the long run.*

- There may be some improvements, some are required, but is there a need for such wholesale changes?

- *No. The changes break what is now the Māori Land Court into different pieces, and I believe that our clients need a seamless process that leads from their initial enquiry to the completion of the process. I've long said that the MLC should not be part of the MoJ, because MLC should be Māori driven, not MoJ driven. I believe it is important to have continuity, which the new system won't provide. I do think, though, that the present legislation needs tweaking. I am hoping that the new Māori Land Service (MLS) will provide better help for clients throughout the process than the current Court does. I feel that too many of our clients can't cope with the bureaucracy involved, so they stay away.*

- With so many unknowns - i.e. who will be the service providers; what information will be available and the possible costs of mediation / registration / succession etc, it is difficult to see 'how' this is likely to be an improvement to the Māori land owners.

  Under the new reform, the Māori Land Court as we know it will be disestablished, so how is that an improvement?

- *No. The proposed reforms create a transactional process for the transfer of Māori Land interests rather than the current judicial process. Whilst I agree that the current judicial process can be better streamlined and made more efficient - the judicial transaction has been a function of the Māori Land Court for 150 years - there are very good reasons to have an impartial party determining transfers or disputes surrounding Māori Land.*

  The current legislation establishing that interests in Māori Land may only be transferred to blood relatives - the current judicial model establishes a regime through which appropriate checks are made, firstly that the interests relate to a particular person, but also that parties claiming to have an interest are actually beneficiaries of those interests.

  The current transactional nature of transfer proposed under the Bill removes that check - and places the onus on individuals to provide lawful declarations that the information they have provided is true and correct. There is no check that they are entitled to those interests, there is no determination that the interests actually belong to the named parties, there is no determination as to the beneficiaries of that estate and the evidence is no subjected to any judicial review.

Any transaction record becomes a departmental record - and does not become part of the enduring record of the Māori Land Court - and the underlying testimony as to why land has transferred from one source to another is lost.

- Will the Bill make transactions faster - absolutely it will. But the cost will be in the potential fraud that will occur, the loss of the korero that underpins that transfer and the only remedy that will be open to Māori Land owners after the fact will be through judicial review in the High Court or prosecution of the applicant through the District Court for filing a false statement.

  Only minor adjustments to the current legislation will provide for the same mechanism of transfer that is being proposed, but will ensure that any transfer is subject to proper research and determination and enables remedy through the Māori Land Court and not through an expensive legal process in District or High Court.

  The problem here is that TPK, who is primarily responsible for the legislation, has failed in its duty of care to Māori. It has failed to keep pace with the needs of the Court - through maintenance and update of the current regulations and rules - and has failed to maintain the current Act. It applies changes to the Act without meaningful engagement and advice from the Māori Land Court Administration (who deals with the day to day running of the Court) or its judiciary - who are the experts in the application of the legislation.

  The proposed reform is not supported by any in depth case studies, there has been no review of the way in which applications are currently managed, there has been no on the ground feedback from actual users of the current Court service at hearings or at Court sites, there has been no robust review of existing systems, there has been no policy work to review what, if any, issues have been raised with actual users of the service at the places at which that service is provided (Māori Land Court sites).

  The underlying reasons for change - unlocking potential in Māori Land - is not hindered by the current legislation. And even it was - only minor amendments would be required.

  Māori Land remains underutilised - mostly for three reasons, 1/ because Māori want it that way; 2/ because access to capital is difficult to achieve on terms that are acceptable to both parties (a return on investment vs protection of the land from alienation); and 3/ because Māori land is located in regional areas - and, like other general land in the regions, requires significant investment from government to ensure a wider range of investment opportunities exist for areas outside of the major cities.

  These are things that are not hindered by the current legislation - but seem to be an economic mindset of the current government.

  Even in the brave new world of reform - the Māori Land Court Administration is already equipped to manage any legislative change and/or process change. A new organisation is not required - and the proposed reform has failed to address how the current reform could be achieved by enhancing the existing service - rather than dis-establishing it and replacing it with something that will not work and which will ultimately fail Māori.

- *Of course not!! The changes will in fact impede the current services, and Māori Land Courts capacity will diminish*

- The object of the change is to farm out many current administrative services to the new Māori Land Service, incorporating LINZ and TPK, with the outcome that the Court will become specialized in dealing with more vexatious issues such as succession without wills, disputes which have not been resolved at mediation. So long as the Māori Land Service is able to successfully duplicate and expand services (as proposed) currently provided by Māori Land Court this may improve the operations of the Court, at least in regard to the new specialist judicial functions it will provide .

- *I do not think the change will provide an improved function initially. As with all new organisations there will be teething issues. Who is to service the Court when a mediation process is filed? How is this to function, what processes are in place? How would clients know which agencies they need to contact if the trusts/trustees are not providing sufficient information?*

- As I understand it the functions of the Maori Land Court after the reform will be significantly lessened by the reform. Whether that is perceived as improved I am not convinced. From a customer's perspective I suggest it would depend how I felt about the organisation now and what I thought about the lessened functions. As a land owner (which I am) I am happy with the legislation as it is and the requirements that need to be met. I don't see, or have, the same level of comfort in the new legislation.

- *I believe the changes will decimate an organisation which already functions and serves it clients well.*

- The MLC today is a thriving machine that gets things done – evidence shows the MLC continues to achieve flight plan goals and are determined to pick up momentum after each target is met and then drive ourselves forward again to meet new targets put in front of us. The MLC office can be proud of how we work together as one unit and how we make the unit move together as individual sites to collectively achieve our objectives together. The function of the MLC today has surpassed any output previously measured. Also the MLC has proved we can function on a trim budget and staff vacancy lags. Regardless of the pressure, the MLC today have a caliber of staff knowledge and experience that can adapt to any proposed changes and improve the functions of the Court to provide a public service second to none.

- *The MLC today will not let any function be less than it should be:*
    - *MLC staff is capable of delivering a range services that meet the customers' needs.*
    - *Staff experience of working with customer needs continually define if our functions are working or not.*
    - *Profoundly the MLC today are more than capable of making necessary changes where required with great success.*

- *The MLC functions will deteriorate if there are no experienced staff capable of blending any proposed changes into current practices that already have been tried and tested.*

- It seems that this new reform will create an organization which will debilitate a system that is already working well.

- *No the changes will not lead to an improved functioning MLC.*

- It will lead to more convolution to the public, it's already hard for the public to understand Te Ture Whenua Maori Land Act.

Q2. <u>What effects do you think the changes will have for the public and their ability to access quality public services?</u>

- *If it is done right it should make it better for most clientele, but a key to such will be retaining staff with the required knowledge and not carrying out the full plan due to budget constraints.*

- More expensive if dealing through main Court, less expertise in the area of Māori land issues if dealing with a new team of people or LINZ , ERRORS if the people searching successions have no experience or knowledge of whakapapa anomalies i.e. various generations within families having the same names and therefore transfer of incorrect shares.

- *Very confusing, Māori will continue to look for the Māori agency, not LINZ. Quality is subjective, it is based on the definitions provided by management which are usually nothing to do with quality.*

- People who are currently not aware of the scope they have with their Māori land will be disadvantaged as they will be not be seen as engaged owners. Currently they have the opportunity to succeed through the Courts and often are made aware at this time of opportunities of being an owner e.g. Setting up whānau or ahu whenua trusts, attending meetings of owners or ahu whenua AGMs. If they are deemed to not be engaged or if they do not have a will trusts can be set up without their knowledge and/or approval.

- *Clients' expectations will not be met. They have always had an understanding that their issues will get dealt with by MLC. That ultimately the staff and Judge will deal with them*

  This change will benefit the few who are well informed of the legislation affecting their lands and who know how to utilize these pieces of legislation and are actively involved with their lands. It will not benefit the majority of owners as many are dis-engaged from their lands and have no desire to be engaged. They are the ones who do not utilize

the public services available due to lack of knowledge or understanding of their functions.

- Again, we currently have Te Tumu Paeroa, Te Puni Kokiri and Te Kooti Whenua Māori. How on earth can adding another service simplify things for the customer.
  The vast majority of our customers are very happy with the service we provide and the issues which stymie the expeditious processing of applications will not be helped by the Bill or the proposed MLS. So in short the customer will most likely be worse off as at present we have everything under one roof; meaning advisory, the court record, case managers etc. If you split that up you'll only be complicating things.

- *Some of the changes may be good, but has the cost of the change been balanced against what is being achieved with the current set up.*

- For myself, I see this as yet another example of the client's needs being decided by others without actually asking them, "the client" what they want. Probably the biggest concern to our present clients (as stakeholders) is the time taken in processing their applications. This is primarily a resourcing issue - not enough staff available to do the work and the current system (Māori Land Information System) being antiquated and past its due by date.

  If the financial support and resources being offered to 'other' offices / businesses to take-over these services could have been allocated to the MLC years ago, then we wouldn't be in this current position.

  There are definitely areas of Te Ture Whenua Māori Act 1993 which need to be amended or enhanced and in particular, those areas which relate to the *utilisation and development of the land.* (Give a man a fish v teach a man to fish).

  Under the new reform is it not proposed to centralise services? Given that Waiāriki District have the most clients/Māori land owners throughout Aotearoa having to travel any further than Rotorua (eg: Hamilton) will be at a huge cost and inconvenience for many of our clients.

  The inability to pay for documents that we (MLC) currently do not charge for (eg: Certificate of Title) will also have a negative effect on our people.

- *I agree there needs to be better co-ordination between agencies that support Māori. Presumably that should have been done by TPK - and the Māori Land Court is now going through a reform process because TPK has fundamentally failed in its duties to Māori.*

  Notwithstanding - the creation of a new service is not necessary - it will not make the savings that government are hoping for and will not achieve the outcomes promised.

  When the case for the proposed Māori Land Service is considered - the majority of services are already being supplied by the Māori Land Court at little or no cost. The mechanisms and organisation structure for the service already exists, the expertise already exists, the systems and technology already exists, the case management expertise, the transactional expertise, the registry expertise, the land transaction

expertise, the business expertise - already exist in the current Māori Land Court structure.

The problem has always been that the current Māori Land Court is funded out of Vote Courts - and is therefore subject to the same conditions as any other business unit within the Ministry of Justice - it must provide a Court service at reduced cost and through processing efficiencies continue to save money.

This epitomises the failure of TPK and successive governments - whist advisory functions have been established, their ongoing funding has been integrated back into base line budgets - funding for front line service should have been ring fenced and funded from Vote Māori Affairs (now Māori Development). The Ministry of Justice has done the best it can within its vote to continue to provide a service - but it is limited by the fact that Vote Courts and Vote Justice do not account for this level of service.

If the Minister and government are serious about a dedicated Land Service, then they would invest in a properly funded service from the Māori Land Court - it needs to be one from the MLC because, the expertise already exists, as does the structure.

Māori expect a service to be on the ground, face to face and in person. That is the level of interaction that Māori Land Court staff have with their clients.

I am surprised that LINZ even has anything to do with this process - I would question when the last time one of their staff spend 2 hours at a public counter dealing with a Nanny who has travelled in from the regions to review succession applications with a Māori Land Court staff members. LINZ has experience in dealing with legal practitioners and conveyors. Since they closed their regional offices - they no longer have the ability to deal with general members of the public. Sure they have a Māori strategy - and engage with Post Settlement Entities - but Māori Land is about individuals and their families - what experience does LINZ have in dealing with local families?

The public will remain in the dark as to what their legal rights will be for a number of things that currently occur on a daily basis. They will be given the run-a-round from pillar to post, to see who provides what piece of information, the client needs to their issue. Their right to Justice will be eroded and will be portrayed as the last post, rather than the pillar it should be. Their basic human rights will be eroded. The changes only have affect over Māori land!! Why aren't the rules the same for general land?? Māori will look at changing the status of their land from Māori Freehold to General land, opening their land up to be seized and sold without the protection of the Māori Land Court intervening in that process. Major stakeholders - Local Authorities, Roading contractors, will lose sight of what agency is responsible for what type transactions with them and where are those agencies located now.

- If the new Māori Land Service is able to deliver on the proposed new services then this will improve the publics' access to quality service. Because of the specialist knowledge required to deliver these services many current MLC staff will have employment opportunities with the new MLS.

- *Integrating services within other agencies (LINZ, TTP, TPK) may not be as accommodating, the services our clients currently receive and the varied issues received, we provide instantly could take a back seat to the new agencies. These agencies may concentrate more so on their own processes leaving our clients out on a limb if their tāke is too difficult to deal with.*

- Who knows as that has not been established yet? I do think that whatever the Service looks like it will take its lead from the legislative changes and be promoting whatever that entails. Is that good for Maori? For some maybe - for those in our Rohe absolutely not. I actually think it's another land grab exercise.

- *The effects will confuse the public, and make things ultimately harder for them to access the services they require, by segregating the functions of the Court.*

- I pre-scribe a quality MLC service as simply to progress public through Court process step by step without it being arduous or stressful and the process is completed in a timely manner.

- *MLC Staff knowledge and experience is invaluable:*

    - *Knowing the provisions of the Act*
    - *Knowing intimately the preferences of presiding Judges attached to your district*
    - *Knowing Judiciary application of the provisions of the Act*
    - *Experience working alongside Judiciary at hearings and reading judgments and directions.*
    - *MLC staff today knows what will go through Court cleanly with minimal stress to customers because everything required to satisfy the Court has been explored thoroughly.*
    - *Delivering a service without the cost of engaging legal representation.*
    - *It will be a huge loss if the strong relationship built between MLC today and Judiciary diminishes.*

- Any new service created will/may reduce kanohi-ki-te-kanohi opportunities.

- *I believe that the public will at the end of the day have to pay handsomely for the information that they have a right to access and that the MLC currently provides for them. The public will need to go to other places to get the information that they need to make application to the Court. The people providing the information will have little or no knowledge of the Court or its processes, the history of the land. It will ultimately hinder the in their quests or even put them off if they are given the wrong information. It will allow more entities that do not have legal standing to pry on those that do not know. More people will be getting the saying: Ignorance is not an excuse. For them it may well be too late.*

- With all the changes it's going to be done, the public will have less & quality services to them. There will be staff cuts down the track, call center base in bigger regain (Auckland or Wellington) like the District High Court will not work for the MLC, cause call center people do not have the basic idea of the area. They don't have the knowledge of the area.

Q3. <u>Will job satisfaction/quality of jobs will improve or deteriorate with the potential changes?</u>

- *For the majority of MLC staff I actually see it as a means to improve the quality of our jobs, but again that's only if they make the effort to retain staff in the right positions and fund them properly, both pay-wise and resource-wise.*
- Don't know because we don't know who will be doing what. At the moment, part of the job satisfaction is that we are here to maintain / retain ownership of what is left of Māori land, within the hapu and iwi, therefore what we are doing feels right and good.

  If we have to support an Act which appears to be a "land grab" or enables those who are greedy and have the skills and knowledge to manipulate the less active … then this act supports "active" owners in potentially "grabbing" land and /or creating opportunities for their own selfish needs, and I would not feel happy about being part of that.

  It feels like another land grab for what's left of land that the crown want to generate income from. I have pride in what I do at the moment …. will I have pride in the new Act …. hmmm not sure about that

- *Depends on the resourcing and structure, can't comment until that's defined*

- This is hard to answer from the time we sit in - I like a feel that I own a task (enjoying the intrinsic reward from taking it and completing it) and suspect that the new system will have more limited task ownership - but this is just supposition.

- *It will deteriorate cos there is no variation of work and only a third of the work force in MLC if that.*

- There will be no improvement or deterioration of my position as I'm guessing that it will go as a result of it not fitting in with the kaupapa of the new legislation changes which again I've assumed to be a drive toward self-governance. There most likely will be completely new roles in place and those roles are may be to assist the Court in its 'pure' role, very much like with the District Courts.

- *Assuming that we still have jobs here, if most of the advisory/customer service components of the job are gone then that will certainly lessen the job satisfaction. Also if we have to liaise with yet another agency to do our jobs then that can only cause frustration too. On the other hand if the Māori land Service pays a decent wage (unlike MOJ), and they give me a job then perhaps there could be a silver lining to all of this. For me. Not the customers.*

- The changes have the potential to upset some of the efficiencies gained in recent years.
- *For MLS staff, I think it will improve, for Court staff I think it will deteriorate.*
- Without knowing the particulars of who is expected to do what, by when etc it is difficult to know. (Note: Remainder of this comment redacted from this report as it identified an individual)
- *Unsure. Unable to make an assessment as currently it is unknown what the functions of the proposed "Māori Land Service" will be.*

  There is still no clear business case for the establishment of a Māori Land Service - so it's difficult to determine what, if any, differences there will be between the current Māori Land Court service and any new proposed Land Service.

  Based on what I've seen, the MLC will need to contract - that's a fact. We will be required to have a registry office in each of our districts, so will retain a regional presence, however my feeling is that these will be reduced to information/research hubs. If the current proposals continued then I would think that we would close our Auckland office (they would be serviced by the Land Service), Whangārei, Hamilton, Rotorua, Gisborne, Hastings, Whanganui and Christchurch - would be scaled back to probably a site manager and two or three staff (depending on the size of their local records) and the dis-establishment of the National Office in Wellington.

  The Māori Land Court would be integrated into the Specialist Courts branch of Special Jurisdictions - there would be no need for a dedicated National Office function.

  The number of staff would fall from the current 170 FTE's to maybe 30 FTE nationally and maybe 25-30 FTE's at the centre as a processing/research unit.

  Regional case management would disappear - and be centralised - probably even integrated into the current Ministry CPU regime.

  Whilst I suspect there will be some transition to the new Land Service, Māori Land Court staff have an average length of service of over 20 years - I myself have 10 years (and I'm considered new) - I believe a number of our staff will active seek redundancy - and their technical skill and experience will be lost in any new implementation.

  The Māori Land Court - as a business unit as we know it - will cease to exist. Its case processing will be centralised, its regional offices will be downsized and staffed by researchers who specialise in researching the record for the Court or the Land Service - with very little front line interaction - and its National Office will be downsized and integrated into the existing Specialist Court structure alongside the Environment Court and Employment Court.

  The quality of all jobs will deteriorate significantly - there just won't be the same roles - the size and location just couldn't justify or sustain the expertise required in the current operating model.
- With all the changes currently hanging over our heads, - Special Jurisdictions review, Te Ture Whenua Act Review, PDP's and how they are moderated, I think it would be fair to comment that the current staff of Māori Land Court are feeling suppressed, currently

there is NO job satisfaction, quality of jobs is highly unlikely when the lead agencies don't have an understanding of "What Māori Land Court Do" else the need for a change of this nature would be occurring in this manner, therefore "Improve - unlikely, Deteriorate - I think that is the intention for the changes"

- *Hard to say - again, if the new MLS and the pared-back MLC are sufficiently resourced then this will certainly improve job satisfaction. For instance, staff currently employed by MLC providing land registry services will likely be picked up by LINZ, operating within the MLS, and LINZ are known to be a better employer than the MoJ (at least in terms of remuneration!).*

- Passing enquires from one agency to another is not an ideal situation for any person, agencies already take too long to answer your enquiry, or you are put on hold and are required to wait until the next staff member is available, or will there be a "ring back" option as utilised by Spark? Currently clients call or arrive at the office and we deal with them on the spot. I personally prefer to have a service that is instant, I don't need to be listening to an animated voice to press 1, 2, 3, 4, 5 ,6 ,7 or 9

- *Over time probably improve as knowledge of the legislation and service grows. In the short term definitely deteriorate as we deal with learning the legislation and having to be those fronting delivery in legislation that people will perceive has having been forced on them.*

- It depends on what jobs remain, and what salaries are offered.

- *Firstly how is the new agency to operate? Is it a call centre the clients ring/contact and does this centre then transfer the client to the appropriate agency? If this is how operations are to function I believe job satisfaction/quality would deteriorate not only for staff but also our clientele.*

- I grit my teeth at the thought of implementing the Bill but not in anger. But because I can see the many people who continue to contest the current Act for their own selfish gains and failed, they may now find obvious gaps in the Bill where they can test Judiciary and may well succeed. The current Act has the necessary safeguards against these types of people who are patiently waiting for the Bill to arrive.

- *Chaos in the Court room lessens job quality and satisfaction:*

    - *Dealing with people who are legally allowed to make a mockery of the Justice system for their own personal gains by using the provisions of the Bill*
    - *Dealing with the pressure to do things right even if you know it is wrong.*
    - *Knowing when the current Act is revoked for the Bill, those who opposed the Bill will enquire if their land is secure but you cannot totally guarantee their lands are going to be safe.*
    - *Re-addressing past judgements that were put to bed by Judiciary, they now can rear their heads again in some cases under the Bill.*

- Depending on any new salary bands.

- *I see job satisfaction deteriorating with the potential changes. I believe that the job will become more stressful because the client will potentially come with different expectations that MLC staff will need to clarify. Or, will we be required to just say, go back to where you came from and get them to explain things properly. Where is the service in that. That is not service by anyone's standards.*

- I do not believe the job will improve, it will become worse over time we would have to fix all the problem it create

Q 4. <u>What skills/Knowledge do staff have at MLC that will be lost if the functions are transferred to another department/agency?</u>

- MLC is historical by nature and certainly any knowledge of the historic Court record and legislation is a huge part of what we do on a daily basis, in my current position it is absolutely essential. There are current MLC staff with years of knowledge and experience in that regard, whom if they are lost we will lose that knowledge by not having anyone to pass it on to newer staff (Already with staff leaving over the years that knowledge has diminished, as it's not really the sort of thing you can just document, you need to show and tell people on the ground so it sinks in).

  Case processing in itself is quite an intricate process that is not easily taught to newcomers, so again that skill and knowledge needs to be retained.

- *Scrutinising whakapapa to ensure the right peoples interests are transferred and not being bullied into believing the whakapapa presented to us when it clearly does not match.*

  The whole of the transference and succession of land is based upon the correct research being completed and, as mentioned, it is common to have various families from various generations, upwards and across, having the same names.

- Taha Māori, tikanga, whakapapa, ihi, wehi, mana, te reo……..the list goes on. Kei konei nga taonga tuku iho.

- *Knowledge of the record, of the history of systems operated over Māori land in the past, legal history (legislation since the Native Land Court began). A built up understanding of expectations and requirements of our customers, ways for customers to use the current system to their advantage.*

  Most of the experience will have to go to other divisions like the Māori Land Service.

- The knowledge of all legislation associated with Māori land will go but more importantly the ability to find this information relative to the enquiry at a moment's notice. Example, we want to call a meeting of owners but we don't know how to do it. There are at least three pieces of legislation that come into play here if one wishes the Court to facilitate an owners meeting. At present, Court staff in this office are able to arrange a hui in a very short time frame or provide the enquirer with the information necessary to call one at no cost to them. We often get such enquiries from lawyers who then convey this information to their clients at a cost.

- *We have good relationships with customers and stakeholders which have taken years to develop. We have many staff who have been here for a long long time and if MLC loses positions then you risk losing all of that corporate knowledge and the relationships that those people have forged. We know our business - how long will it take a new agency to learn the lessons that we have and begin to produce good results?*

  The Court record is a morass of ancient documents, and the further back you go the less legible they are. Indexing will appear arcane to those who are unfamiliar. I've been here two years and I'm still learning to manipulate the Court Record to find what I need, good luck to the newbies!

- At the moment there is ability to access the whole data base and record relevant to the Māori Land in one resource, there is a need for an improvement in the way the old records have been stored electronically so that public will be able to follow the chain of title, without which the historical record will be lost to them.

- *Most current staff have a knowledge of the whole Court process. In the new system, they will have a knowledge of only that part they are involved in. However, that needn't make any difference, as long as the client experience is of a seamless process. My experience tells me that one of the most important things for our clients is that they have one person they can deal with, who can help them and answer their questions.*

- The MLC staff have a comprehensive knowledge and understanding of current legislation, the importance to Māori of the land being a taonga tuku iho and the desire for it to be retained (not as a commodity or asset) BUT as their whakapapa and birth-right.

  I am concerned that Māori land owners are likely to be considered "second class citizens" - since the laws in respect of estates and intestacies as would apply to any other citizen ARE LIKELY to be denied to Māori, as a result of these proposed changes. In addition, the possible costs of administration of estates and registration of multiple ownership is likely to lead to LESS living owners being recorded on the ownership - and possibly play into the hands of the legislators by showing the people to be "disengaged".

- *Perhaps, this an area which should be referred to the Human Rights Commissioner?*

- If the owners are considered to be disengaged an AGENT may be appointed and that agent can decide how best to utilise the land without the benefit of consultation and agreement of the owners.

- *Te reo me ōna tikanga Māori.*

- As indicated above, the MLC as we know it will cease. The MLC will mostly consist of records staff regionally, and a small case processing unit (probably located in the Ministry CPU) in Wellington. All other administrative function would be taken over by the Specialist Court Business Unit.

  The ability to understand and interact with the existing record of the Court will be lost. Many of our current staff, having worked with the Court for over 20years, have worked through and understand the Māori Affairs Act 1953, the Māori Affairs Amendment Act 1967, the Māori Purposes Act 1975 and Te Ture Whenua Māori Act 1993. The taonga that is the Court record, as it was created in each office, requires a high level of expertise to navigate - and requires staff who understand what type of legislative activity was underway at any given time to enable them to locate and decode specialised land records.

  I guess the one major loss will be that the knowledge of "why" something has occurred on Māori Land will be lost - as will the ability to find the records that support the "why".

- *Local Knowledge and history. Networks. Client accessibility to Justice services. Cost of the services from MLC -practically free but no more than $200.00. Registering Māori Land with LINZ to create own Certificate of Titles to meet Financial agencies requirements. To check status of land before any encumbrances are registered against the land. All aspects relating to "Who is entitled to Māori land " to the utilisation of the land, to the taking of the land under the Public Works Act.*

- None if experienced staff transfer across to MLS - this should be the thrust of this part of the submission. It would be nonsensical for MLS to recruit new staff and train them, which would require existing MLC staff to do this training anyway.

- *The skills and knowledge are of a specialist nature. Our clients will probably not receive the high quality responses they currently receive on the spot. These would include the historical knowledge, the variances to deal with the wide range of enquires relating to Māori land issues and their ongoing family dynamics.*

- Kanohi ki te Kanohi relationships with our client - that's an important aspect for the client, Intimate knowledge of the record, Intimate knowledge of the Legislation (in the short term), historical knowledge of the Maori Land Court as an organisation - which is helpful with assisting clients with their own understanding of the processes to name a few!

- *The MLC has a core staff of dedicated, extremely long serving employees. An infinite and priceless amount of experience and knowledge will be lost within this change.*

- The point of difference that MLC today have over other agencies like TPK and LINZ is that we know how to search the historical Court record and interpret the findings for the public to understand or to inform Court process. If you are not MLC today it is too late for you to gain the necessary knowledge required to action a successful search of the historical Court record. The Court record is the heart of the MLC. To lose the knowledge of how to find the proverbial needle in a haystack is to lose the critical function of keeping the Courts' record alive. If no one can search the historical Court record and understand what it says, then what use is the record?

- *The worst case scenario is not being able to provide historical information from the Court record. For the survival of the Court record we need:*
  - *The original record to be held in their respective districts*
  - *To retain staff knowledge of the historical Court record for each district*
  - *To maintain the utmost integrity of the Court record in each district*
  - *To keep local hapu and iwi informed if the original Court record (whakapapa) is transferred outside of the district*
  - *To ensure the historical Court record is readily available for public to access*

- Advisory services and researching/institutional knowledge.

- *Depending on where the record is held, the potential for getting all the information required for the Court may not be easy. The satisfaction that what you are putting to the Court is accurate is lost because you cannot guarantee that what you are looking at is how it is supposed to be. The ability to move with pace at the moment is reliant on all tasks being undertaken in a timely manner. With the functions transferring to another department/agency, the ability to support this move is significantly hindered because there are surely things the new department /agency will initiate to benefit themselves. The process has potential to be cumbersome rather than seamless. The importance of being able to move at pace is imperative for matters of urgency.*

- Well, new staff members will not have the skill to do searches & knowledge of the old records. It takes time to learn what's what in the old records, these skill can't just pick up overnight it's like a fine wine, it takes time. Joe from the street can't just walk in and start picking up skill from MLIS & the old records too.

Q5. Tell us why the MLC is so special for Māori?

- *MLC is historical by nature and certainly any knowledge of the historic Court record and legislation is a huge part of what we do on a daily basis, in my current position it is absolutely essential. There are current MLC staff with years of knowledge and experience in that regard, whom if they are lost we will lose that knowledge by not having anyone to pass it on to newer staff (Already with staff leaving over the years that knowledge has diminished, as it's not really the sort of thing you can just document, you need to show and tell people on the ground so it sinks in).*

  Case processing in itself is quite an intricate process that is not easily taught to newcomers, so again that skill and knowledge needs to be retained.

- Māori communicate and understand whakapapa and Māori issues. We have a connection to iwi hapu land so we understand the importance of ensuring people are not removed from their tribal connection to whenua, by the stroke of a pen. Due to the inexperience or apathy towards the land and whakapapa

- *Mana Whenua, Mana Tangata , whakapapa, turangawaewae - Who am I……it is the basis for all Māori, the knowledge contained in the archives speaks of our tupuna, it uses their names, the lands they inherited, our whakapapa connections across the motu. It is sacred, tapu ne ra?*

- Its record gives a record of whakapapa starting from the second half of the 19th century.

  It provides Māori with a reasonably cost effective way to transfer their land from deceased owners to their successors without having to engage lawyers for conveyancing.

  It gives them a forum where they can apply to have wrongs or perceived wrongs or injuries over their interests in land looked at fairly by way of reviews of trusts, by way of mediation if necessary, by way of Chief Judge applications.

  It teaches skills and advises of suitable use for land e.g. trustee training clinics, Principal Liaison officers (who can liaise between owners and Councils, banks, IRD etc.), advisory clinics where people can seek advice re their land.

- *Māori land court is special because we have a different clientele to other courts. We want to help our people, it's a passion not a job. It's about helping our people. Our record consists of whakapapa, whānau connections and ensuring our people get the results they are after.*

- It is special because it houses a record (Court minutes typed out verbatim) since its beginnings some 150 years ago. The early records are now consider a very special taonga because the people can read what their tupuna said. This is a unique function this Court has and if the Māori Land Court is to conform to the way the District Court operates this function will go. More recently, the service provided is very affordable to many of its clients who are not well to do financially. If one were dealing with general land, they would need to work in with lawyers and Land Information New Zealand (LINZ) in respects of such lands and this may carry considerable costs that many Māori land owners would not be able to afford if Māori land were to be dealt in the same way as general land.

- *Same themes as above. We work hard to develop and maintain good relationships with our customers. We care about the outcomes of their applications. We have a history with them and a trust which has been hard won after the historical errors of previous iterations of the Court.*

  I don't believe that this relationship would be quickly or easily replicated by some new service which promises so much and yet, from my reading, lacks the tools to deliver.

- It provides a service to Māori to allow them access to the historical and future information on the ownership of Māori Land, it is almost a requirement under the Treaty for this to be maintained.

  They have 150 years' experience with the Court. The Court and their land are a big part of their history. It is one constant amidst a lot of change.

- *Currently today, there is a Department of Pacific Island Affairs and a Department of Women's Affairs BUT Department of Māori Affairs was devolved in 1989, with all services (housing, rural lending, community services, trade training etc) being moved to mainstream departments.*

  The Māori Land Court, is the only remaining service from the Department of Māori Affairs (administered as a Court under the umbrella of the Ministry of Justice). I believe it is the oldest government department established 1865 AND it is the only Government department / agency which is here to serve Māori people.

  In our somewhat chequered history, there have been many legislative changes which did not have the best interests of Māori people in mind. These changes were designed to weaken Māori land ownership and land holdings. [Less than 5% of all land remains Māori land].

- The principles contained in the Preamble TTWMA are … it is desirable to recognise that the land is a taonga tuku iho of special significance to Māori people and, for that reason, to promote the retention of that land in the hands of its owners, their whānau, and their hapu, and to protect wahi tapu, and facilitate the occupation, development and utilisation of that land for the benefit of its owners, their whānau, and their hapu.

- *I am having a difficult time, believing that the proposed changes will preserve the whenua for the benefit of future generations OR; that Māori people will be provided with an opportunity to make decisions for their own land and in their own interests.*

- The work and matters before the Court are uniquely Māori issues and should be dealt with ultimately by Māori. Notwithstanding the importance of LINZ with regards to ensuring the registration of all lands.

- *The Māori Land Court has had a varied history over its 150 years. It has been the engine of alienation and it was part of the Department of Māori Affairs which oversaw many paternalistic policies.*

  But for all that history, in the 26 years since the dis-establishment of the Department of Māori Affairs and in the 22 years since the passing of Te Ture Whenua Māori Act 1993, the MLC has been the only front line, on the ground, agency that has been working with Māori on a day to day basis - providing service in the same regional areas - to generations of the same families. Could we do things better? Absolutely - it has been woefully underfunded and undervalued.

  The Māori Land Court is the protection mechanism for our land. It makes sure that only those who whakapapa can deal with our land, it protects our land from Government

and Local Government and provides a medium through which our internal disputes can be dealt with - we don't want a coach, we come to the Māori Land Court for a referee.

The MLC is our safety net if something goes wrong with our land - and ensures that it continues to be a taonga available to future generations.

- It offers protection to all owners in Māori land against - the taking, utilisation, grievances relating to the land and those managing and utilising it. It allows every owner the right to be heard and to have their day in Court. Right to Justice before a Judge. We are a court of record. Paper and Electronic. We and we alone hold all the history and whakapapa -genealogy for, Whānau, Hapu, Iwi, and agencies that regularly need to come before the Court when dealing with Māori land. Free Mediation with a Judge. The staff that work for MLC are passionate about the people, the work that is involved with MLC and assists the people to make informed decisions. Staff make home, hospital visits to meet with clients wanting to interact with MLC. In-depth knowledge of the TTWMA 1993 and can assist whānau to do what they want sometimes in a different way to what they expect but to get the outcome they want. Relationships with our Judiciary and stakeholders.

- *There are plenty of arguments that MLC is unique because of staff's knowledge of local iwi, land blocks, and tikanga, which is correct. However, the new MLS could potentially also provide these unique features if they recruit existing local MLC staff and draw on this pool of local knowledge and tikanga in their additional recruitment*

- As a staff member my experiences have been great. We have had clients ring for any type of issues not in all cases relating to Māori land. The highest contributions being assisting Māori in their endeavours to utilise the land, resolve disputes and general information regarding their whenua or their whakapapa. What agency has the ability to advise on the spot that relate to their whakapapa? What are the costs to obtain this information?

- *The former legislation dealt with matters where associated parties were not informed or the legislation had the power to alienate owners from their land without their knowledge. Since the introduction of Te Ture Whenua Māori Act 1993, Māori have gained that trust in the Māori Land Court largely due to the preamble of the Act along with clear and concise procedures. There have been cases where trustees have needed to be accountable, the Court has played an intricate role in progressing these matters to the High Court. When this Bill is passed, what trust will the beneficiaries have in their trustees. If the Court is only here as a mediator, where do the higher concerns progress to? Again what are the costs going to be for our people?*

- I see it has having been the organisation that has mainly looked after Maori when there hasn't been a high level of understanding of what has gone on. It has had an obligation (in the Judiciary) to ensure fairness with regards to the legislation has been demonstrated. It has also been the organisation that has maintained a record which has encapsulated whakapapa knowledge which is important to Maori, who we are and where we come from. I'm not sure how to explain it in greater detail!

- *It assists them to look after their heritage and taonga and it should be preserved as is.*

- Maori land owners are by no means rich in monetary terms. The MLC today is so special for Maori because:
  - You can make a direct enquiry and receive an answer free of charge. If you engage a solicitor you will face excessive charges up $500
  - We will send you the minutes of your hearing directly to you free of charge. If you engage a solicitor you will face excessive charges up $200
  - We will print the Court record for you free of charge. Elsewhere printing can cost you up to 50c per copy.
  - We will print you a Certificate of Title free of charge. LINZ would charge you at least $12 a copy.
  - If you have a Community or Gold card you can request a fee waiver for an application. Application fees range from $60 to $200.

- *It is one of the few, if not the only service that remains that came out of the former Maori Affairs Department and that Maori "generally" have an affinity to and for the Court. The Court is not an anachronism as it has had to change and adapt to suit the needs of its clients - both Maori and Pakeha.*

- We are the place that is seen as the protector in most instances. We are the people that consider the smaller shareholders as well as the larger ones. We are the place that does not allow other owners to lord it over matters where they really do not have any rights. We are the place where everyone is given an opportunity to have their say. We explain to our customers what happened with their lands. We are the place that people are beginning to learn who they are. We are the place that people are beginning to trust. The trust was taken away because of prior legislation. That created an atmosphere of mistrust. We have worked long and hard to change that feeling all for nothing now.

- *MLC is special, it's the only department though NZ or the world that looks after its old records & history of that area. Maoris can walk in from the street and ask for they whakapapa, we can give them right there all the information regards to the blocks and chair of succession to their fore fathers. I haven't heard any other places in the world that looks after its indigenous people. No other indigenous people in other part of the World have this. That's why Maori Land Court is very special to its people in this country.*