



NEW ZEALAND
LAW SOCIETY

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

26/11/2019

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1. Introduction

- 1.1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Bill (the Bill).
- 1.2. The Law Society is generally supportive of the proposed amendments in simplifying the administration of Māori land. Some brief comments on technical aspects of the Bill are set out below.
- 1.3. The Law Society does not seek to be heard.

2. Scope of the Māori Land Court's jurisdiction

- 2.1. While suggesting a number of changes to the operation of the Māori Land Court, the Bill does not appear to have specifically considered the implications for the Court's jurisdiction that arise from the Māori Appellate Court's recent decision in *Moke v Trustees of Ngāti Tarāwhai Iwi Trust*.¹
- 2.2. That decision related to an attempt to have the Māori Land Court consider issues associated with a trust originally established to hold and administer Treaty of Waitangi settlement assets.
- 2.3. The original decision of the Māori Land Court was that such trusts fell outside the scope of the Court's jurisdiction. That decision was overturned by the Māori Appellate Court which concluded that section 236 of Te Ture Whenua Māori Act 1993 (the Act) should be read to include trusts established to receive Treaty settlements. The Māori Appellate Court could not discern a clear statutory purpose that Parliament intended otherwise.
- 2.4. The difficulty is that the modern Treaty settlement entities have been put in place since the passage of the Act.² As a result, the jurisdiction of the Māori Land Court in relation to post-settlement entities would not have been within the contemplation of Parliament at the time.
- 2.5. The Law Society does not have a view, at this time, as to whether the Māori Land Court should have jurisdiction over these types of bodies. Instead this submission simply notes that this Bill is an opportunity for that debate to be had and clarify Parliament's intention.
- 2.6. In any event, *Moke* remains important to note. This is because the effect of the Māori Appellate Court's decision will be to apply a number of the changes proposed by the Bill to entities established as a result of Treaty settlements. This includes, for example, the dispute resolution processes. This may or may not be the appropriate outcome and it should be considered by Parliament.

3. Tikanga

- 3.1. The Law Society supports the inclusion of reference to tikanga at a number of points in the Bill.

¹ 2019 Māori Appellate Court MB 265

² The Waikato-Tainui raupatu settlement being the first of these in 1995.

- 3.2. However, we note that there is no one tikanga that will apply in all circumstances. Instead, issues of tikanga are likely to vary between iwi or regions. The variety and flexibility of tikanga should be reflected in the Bill's drafting. This does occur, for example, at clause 27 which appropriately references the tikanga of relevant hapū or iwi. However other clauses of the Bill simply refer to "tikanga".
- 3.3. To ensure that the scope of tikanga is appropriately acknowledged, and to avoid the perception that there is one set of tikanga that might apply, we suggest that reference might be more appropriately made to "relevant tikanga" at various points in the Bill. Such a reference might be made at the amendments contained in clauses 11, 31, and 35.

4. Mediation: clause 19

- 4.1. The Law Society supports the use of mediation for the resolution of issues arising before the Māori Land Court. We agree that any mediation process must be voluntary and that this Part of the Act is to be read with this underlying principle in mind (as set out in the new section 98J).

5. Uncontested issues

- 5.1. The Bill proposes that the Registrar will have the power to determine "simple and uncontested matters", instead of these matters going through a full Court hearing process. This power is set out in new section 113A (at clause 26) and new section 235A (at clause 41).
- 5.2. The Law Society broadly supports the intention of these changes, which is to streamline the processes of the Court and enable effective management of whenua. One concern is however raised. There are issues of natural justice if those potentially affected by "simple and uncontested" applications are unaware of them and unable to contest them. This is likely to be an increasing concern as, for example, the numbers of beneficiaries or landowners grow. The existing notification processes based on written pānui issued by the Court may be inadequate to ensure potentially affected parties are aware of relevant applications. We recommend these changes are accompanied by a review of the Court's communication processes, including resourcing required, to ensure they are adequate to support these changes.

6. Other provisions

- 6.1. The Law Society is broadly supportive of the other changes proposed by the Bill. This includes changes to succession, whāngai, and a number of technical amendments. We agree that these are needed to address shortcomings in the current legislation. We also commend the reference to the tikanga of particular iwi and hapū as the basis for determining a number of these issues.



Andrew Logan
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26 November 2019